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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

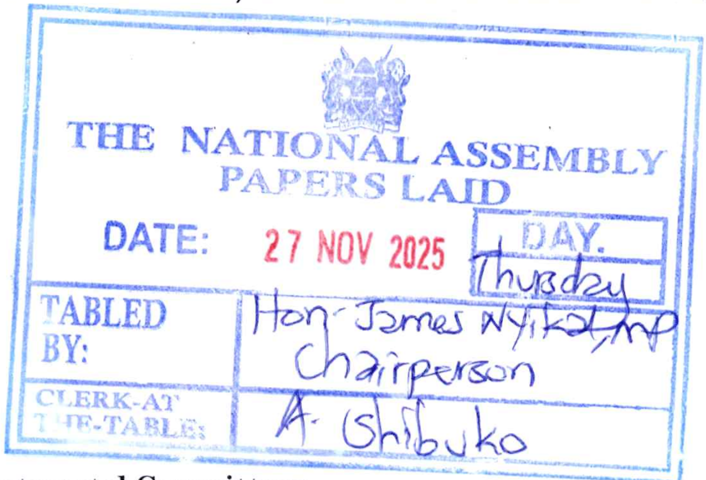
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

....

REPORT ON THE HEALTH (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 56 OF 2024) BY HON. JANE NJERI MAINA, MP



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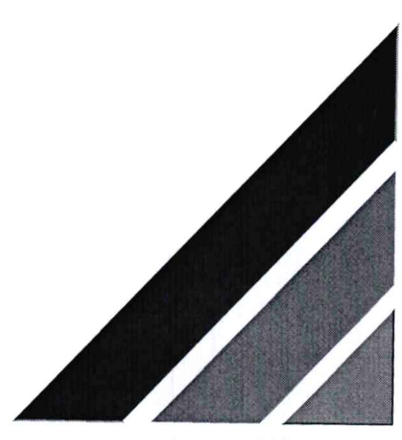

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Health on its consideration of the Health (Amendment) Bill, 2024 (National Assembly Bill No. 56 of 2024), which was published on 27th December, 2024. The Bill was read the First Time in the House on Wednesday, 4th June 2025, and thereafter committed to the Departmental Committee on Health for consideration and reporting to the House pursuant to the provisions of Standing Order 127.

The Bill seeks to amend the Health Act, Cap. 241, to provide for access to emergency treatment and health care services prior to the payment of prospective medical costs by users. The Bill further seeks to make it an offence for public health facilities and health care providers in charge of health facilities to detain the body of a deceased person as a means of enforcing settlement of outstanding medical bills. The proposed amendment is therefore intended to resolve the problem of patients or their relatives/kin having to pay medical fees and/or admission fees prior to their admission and treatment in public health facilities.

Following the placement of an advertisement in the print media on 13th June, 2025 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received submissions from four (4) stakeholders including; the Ministry of Health (MOH), Office of the Attorney General and Department of Justice (OAG), the Kenya Law Reform Commission (KLRC) and the National Gender and Equality Commission (NGEC),

The Committee also engaged various stakeholders, including the Ministry of Health (MOH) the Office of the Attorney General and Department of Justice (OAG and DOJ) and the Kenya Law Reform Commission (KLRC), to make submissions on the Bill. The meeting was held on Tuesday, 7th October 2025.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who submitted memoranda on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat for their valuable contributions towards the consideration of the Bill and the production of this Report

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the **Health (Amendment) Bill, 2024 (National Assembly Bill No. 56 of 2024) by Hon. Jane Njeri Maina, MP**

It is my pleasure to report that the Committee has considered the Health (Amendment) Bill, 2024 (National Assembly Bill No. 56 of 2024) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

HON. DR. NYIKAL JAMES WAMBURA, CBS, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:

    a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;

    b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;

    c) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;

    d) To study and review all legislation referred to it;

    e) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;

    f) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;

    g) To 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);

    h) To examine treaties, agreements and conventions;

    i) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;

    j) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and

k) To examine any questions raised by Members on a matter within its mandate.

1.2 Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to health, medical care and health insurance, including universal health coverage.

1.3 Oversight

3. In executing its mandate, the Committee on Health oversees the:

i. State Department for Medical Services
ii. State Department for Public Health and Professional Standards.

1.4 Committee Membership

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

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

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

Hon. Owino Martin Peters, MP
Ndhiwa Constituency
ODM Party

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

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

Hon. Kipng'ok Reuben Kiborek , MP
Mogotio Constituency
UDA Party

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

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

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

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

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

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

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

Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency
ODM Party

1.5 Committee Secretariat

5. The Committee is facilitated by the following staff secretariat:

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

Mr. Timothy Kimathi Samson
Clerk Assistant III

Ms. Gladys Jepkoech Kiprotich
Clerk Assistant III

Ms. Marlene Ayiro
Principal Legal Counsel I

Ms. Faith Chepkemoi
Legal Counsel II

Mr. Hiram Kimuhu
Fiscal Analyst III

Mr Eric Lungai
Hansard Reporter II

Ms. Sheila Chebotibin
Senior Serjeant-At-Arms

Ms. Abigel Muinde
Research Officer III

Ms. Rahab Chepkilim
Audio Recording Officer II

Mr. Hillary Mageka
Media Relations Officer III

CHAPTER TWO

2.0 THE HEALTH (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 56 OF 2024)

6. The Health (Amendment) Bill, 2024 (hereinafter referred to as "the Bill"), sponsored by Hon. Jane Njeri Maina, MP, has been referred to the Departmental Committee on Health for consideration after First reading on Wednesday, 4th June 2025.

7. The Bill seeks to amend the Health Act, Cap. 241, to provide for access to emergency treatment and health care services prior to the payment of prospective medical costs by users. The Bill further seeks to make it an offence for public health facilities and health care providers in charge of health facilities to detain the body of a deceased person as a means of enforcing settlement of outstanding medical bills. The proposed amendment is therefore intended to resolve the problem of patients or their relatives/kin having to pay medical fees and/or admission fees prior to their admission and treatment in public health facilities.

2.1 OVERVIEW OF THE BILL

8. **Clause 1** provides the short title of the Bill.

9. **Clause 2** amends section 2 of the Health Act by deleting the definition of the term "emergency treatment" which means "the necessary immediate health care that must be administered to prevent death or worsening of a medical situation". This definition is proposed to be substituted with the following new definition—

   "emergency medical treatment" means the necessary initial or immediate medical care that is administered to a critically ill or injured person to avert or prevent death, disability, unnecessary morbidity or worsening of a medical situation".

10. **Clause 3** amends section 7 of the Health Act by:

    (a) inserting the words "prior to the payment of prospective medical costs" immediately after the words "medical treatement" in subsection (1);
    (b) inserting the words "including the appropriate or recommended medical care provided at the scene of injury or illness, during transportation to a health facility, and through to a department responsible for emergency treatment and early in-patient care" immediately after the word "care" appearing in subsection (2)(a);

(c) deleting the words “the individual” in subsection (2)(b) and substituting therefor the words “a critically ill or injure patient prior to transportation to a definitive healthcare facility”;

(d) deleting the words “the victim” and substituting therefor the words “a patient who is critically ill or injured” in subsection 2(c); and

(e) inserting two new subsections immediately after subsection (3) that:

   (i) makes it an offence for a person in charge of a public health facility if the person demands or permits the demand of payment of prospective medical fees or admission fees prior to providing emergency treatment; this offence shall attract a fine not exceeding three million shillings; and

   (ii) makes it an offence for a person in charge of a public health facility if the person detains or permits the detention of the body of a deceased person for purposes of enforcing the settlement of pending bills; this offence shall attract a fine not exceeding two million shillings.

11. **Clause 4** amends section 12 of the Health Act by inserting a new subsection (2A) to the effect that “all health care providers in the public sector shall not demand for prepayment of prospective medical costs as a condition for the provision of emergency treatment to a user”.

CHAPTER THREE

3.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

3.1 LEGAL PROVISION ON PUBLIC PARTICIPATION

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

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

6. Standing Order 127(3) provides that—

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

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

7. Standing Order127(3A) further provides that—

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

3.2 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

8. The Health (Amendment) Bill, 2024 (National Assembly Bill No. 56 of 2024), which was published on 27th December 2024. Pursuant to Standing Order 127(1), the Bill was referred to the Departmental Committee on Health, having been read the First Time in the House on Wednesday, 4th June 2025

9. Pursuant to the aforementioned provisions of the Constitution and the Standing Orders on public participation, the Committee, through local daily newspapers (Nation and Standard) of Friday, 13th June 2025, published an advertisement inviting the public to submit memoranda on the Bill.

10. The Committee also sought comments on the Bill from relevant stakeholders, namely the Ministry of Health, the Office of the Attorney General and the Department of Justice, and the Kenya Law Reform Commission, vide letter dated 25th July 2024.

11. Further, vide a letter dated 25th September 2025, the Committee invited the Ministry of Health, the Office of the Attorney General and Department of Justice (OAG & DOJ), and the Kenya Law Reform Commission (KLRC) to appear before the Committee to submit their memoranda on the Bill: The meeting to consider their submissions was held on Tuesday, 7th October 2025.

3.3 SUBMISSIONS ON THE BILL

12. The Committee received submissions through oral presentations and written memoranda from the following institutions:

    a) The Ministry of Health (MOH);
    b) The Kenya Law Reform Commission (KLRC);
    c) The Office of the Attorney General and Department of Justice (OAG and DOJ);
    d) The National Gender and Equality Commission (NGEC); and
    e) The Pharmaceutical Society of Kenya (PSK) Nairobi Branch.

13. The **Ministry of Health (MOH)** submitted as follows:

a) Delete Clause 2 as the definition of the term "emergency treatment" as provided in Section 2 of the Health Act, provides a holistic interpretation of the term "emergency treatment" and covers all aspects of emergency situations.

   The removal of the word "must" from the original definition substantially broadens the scope of what may be classified as an emergency medical condition.

   Furthermore, the inclusion of the term "injured person" without qualifying the degree or severity of injury is problematic. Emergency care frameworks are typically structured around the urgency and seriousness of a condition.

   The addition of terms such as "disability" and "unnecessary morbidity" may expose healthcare providers and facilities to increased legal liability, particularly in contexts where outcomes are difficult to predict or where resource constraints affect care.

   Committee Resolution: Adopted. The proposed definition of the term "emergency medical treatment" is complicated and may lead to operational and legal uncertainty. The current definition, as provided in Section 2 of the Health Act, Cap. 241 provides a holistic interpretation of the term "emergency treatment" and covers all aspects of emergency situations.

b) Delete Clause 3(a) as primarily, the proposed amendment is a direct affront to the principle of Article 43(2) of the Constitution of Kenya, which recognizes every person's right to receive emergency treatment. The amendment will, in no doubt, result in loss of life, permanent disability and irreversible harm for persons seeking emergency treatment.

   The amendment, further, fundamentally undermines the principle of non-discrimination in access to healthcare and will result in the erosion of public trust in the health system. The amendment also grossly contravenes the principle of the Government's Bottom-Up Economic Transformation Agenda (BETA) that has prioritized the delivery of Universal Health Coverage, by introducing financial barriers in the access to essential healthcare services.

   Further, the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cater for any medical costs related to the provision of emergency medical treatment.

Committee Resolution: Adopted. The right to emergency medical treatment as drafted in section 7(1) of the Health Act, Cap. 241 is sufficiently guaranteed.

c) Clause 3(b) be deleted as the term 'pre-hospital care" as used in Section 7(2) (a) of the Health Act, reflects the globally-recognized term as provided by the World Health Organization (WHO) i.e., the provision of emergency medical services (EMS) for resuscitative, preventative, analytical, and stabilizing purposes, both at the scene of an emergency and during transportation to a hospital or other emergency medical facility.

Further, Regulation 28(2)(j) of the Social Health Insurance Regulations, 2024, recognizes emergency services to include ambulance and evacuation services.

Committee Resolution: Adopted the term "pre-hospital care" includes medical care provided at the scene of injury to the point where comprehensive healthcare is provided at a health facility.

d) Clause 3(c) be deleted as the proposed amendment is too prescriptive and will result in exclusion of legitimate persons in need of emergency treatment. Notwithstanding this, the definition of the term "medical emergency" as provided in Section 2 of the Health Act, already recognizes that a person in an emergency situation is one facing an acute situation of injury or illness that poses an immediate risk to life or health or has potential for deterioration in the health of the person or if not managed timely would lead to adverse consequences in the well-being.

Committee Resolution: Adopted with amendment. The issue of "prior to transportation to a definitive healthcare facility" deleted as stabilization of a patient is not solely for purposes of transportation to a definitive health facility.

e) Clause 3(d) be deleted as section 7(2)(c) of the Health Act already adequately provides for the stabilization of the victim, patient, or person within the context of medical emergency treatment. The current phrasing captures the core objective of emergency care—stabilization—and aligns with internationally accepted emergency care principles.

The proposed insertions or modifications to this subsection do not add substantive value and may instead introduce redundancy or ambiguity. Given that the section specifically pertains to emergency medical treatment, any further elaboration may be unnecessary and could complicate interpretation without improving clarity or effectiveness.

Committee Resolution: Not adopted. The proposed amendment clarifies that the victim in the case of a health facility is a patient who is critically ill or injured.

f) Clause 3(e) be deleted as the proposed amendment contradicts the proposed amendment to Section 7(1) of the Health Act. Nonetheless, the constitutional guarantee for every person to access emergency medical treatment bars any health facilities from requiring payment of prospective medical fees or admission fees prior to providing emergency treatment.

Further, the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cater for any medical costs related to the provision of emergency treatment. Fundamentally, mortuary services are categorized as billable services, and are

therefore subject to applicable fees and charges as per the institution's approved rates. The charging of such services cannot, therefore, be criminalized as proposed.

Further, these services are already provided for under the tariffs for health care services under the social health insurance scheme so as to alleviate any financial burdens that may be experienced. Any issues relating to the same can therefore be handled administratively.

Committee Resolution: Not adopted. The amendments are necessary to guarantee the right to emergency treatment in health facilities and to prevent the detention of bodies of dead persons for the enforcement of pending hospital bills.

g) Delete clause 4 as the proposed amendment contradicts the amendment proposed by Hon. Jane Njeri Maina, MP under the proposed changes to Section 7(1). Nonetheless, the constitutional guarantee for every person to access emergency medical treatment bars any health facilities from requiring payment of prospective medical fees or admission fees prior to providing emergency treatment.

Further, the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cater for any medical costs related to the provision of emergency medical treatment.

Committee Resolution: Not Adopted. The amendment is necessary to guarantee the right to emergency treatment in health facilities.

14. **The Office of the Attorney General and Department of Justice (OAG)**, while noting that the policy informing the Bill lies with the Ministry, and that the Office had sought the Ministry's guidance on the Bill, submitted as follows:

a) In clause 2, define the term "definitive healthcare facility" as the term is used in the proposed clause 3(c), which proposes to amend section 7(2) (b) of the Health Act, Cap. 241.

Committee Resolution: Not adopted. The issue of "definitive healthcare facility" is proposed for deletion.

b) Amend clause 3(f) in relation to the new subsection (4) to apply to both public and private health facilities; the proposal applies to public health facilities only. Section 12 of the Health Act, Cap. 241 imposes a duty upon all healthcare providers, whether in public or private, to emergency medical treatment. The proposal should therefore apply to both public and private health facilities. Section 28 of the Social Health Insurance Act, No. 16 of 2023 establishes the Emergency, Chronic and Critical Illness Fund to cover the cost of emergency treatment. All public and private health facilities should be able to provide emergency medical treat and recover the cost from this Fund.

Committee Resolution: Adopted. This will guarantee the right to emergency treatment in all health facilities.

c) Clause 3(f) in relation to the proposed new subsection (5) should be provided as a separate provision and amended to apply to both public and private health facilities. The proposal is outside the scope of section 7 of the Health Act, Cap. 241, which deals with the provision of emergency medical treatment.

Committee Resolution: Adopted. The proposed amendment is outside the scope of section 7 of the Health Act, Cap. 241, which deals with the provision of emergency medical treatment.

d) New proposal-amend the marginal note of section 7 of the Health Act by deleting the words "emergency treatment" and substituting therefor the words "emergency medical treatment". This is as a consequence of the proposal in clause 2 to amend section 2 of the Health Act, Cap. 241 to delete the definition of the term "emergency treatment" and substituting therefor the term "emergency medical treatment".

Committee Resolution: Not adopted. The proposed amendment of clause 2 is dropped and hence no need for the amendment.

e) New proposal-amend section 15(1) of the Health Act in paragraph (a) and (c) by deleting the words "emergency treatment" and substituting therefor the words "emergency medical treatment", this is as a consequence of the proposal in clause 2 to amend section 2 of the Health Act, Cap. 241 to delete the definition of the term "emergency treatment" and substituting therefor the term "emergency medical treatment".

Committee Resolution: Not adopted. The amendment of section 2 of the Health Act, Cap. 241 is proposed for deletion and hence there is no need for this consequential amendment.

15. **The Kenya Law Reform Commission (KLRC)** submitted as follows:

a) The Commission supports clause 2 to align the definition of "emergency medical treatment" with Article 43(2) of the Constitution, ensuring it covers immediate, necessary, and life-saving interventions without prior conditions such as payment guarantees, thereby safeguarding the right to health and life.

Committee Resolution: Not adopted. The proposed definition of the term "emergency medical treatment" is complicated and may lead to operational and legal uncertainty. The current definition, as provided in Section 2 of the Health Act, Cap. 241 provides a holistic interpretation of the term "emergency treatment" and covers all aspects of emergency situations.

b) Proposes to include new definitions as follows:

"detention" means any act of restraining a person from leaving hospital premises, or withholding the body of a deceased person, for non-payment of hospital bills or medical expenses in whole or in part. To clarify and standardize the scope of "detention" in the context of medical facilities, ensuring alignment with constitutional protections against unlawful deprivation of liberty.

Committee Resolution: Not adopted. The term is used in its ordinary sense.

"guarantee" means an expressed assurance by a person to a health facility that certain facts or conditions are true or will happen, to pay the unpaid hospital bills or medical expenses of a patient. To clearly define the legal obligation undertaken by a guarantor to prevent disputes and improve enforcement.

Committee Resolution: Not adopted. The term is used in its ordinary sense.

"health care guarantor" means a person, natural or juridical, who binds himself jointly and severally to pay the unpaid hospital bills or medical/hospitalization expenses of the patient. To ensure accountability by defining the party responsible for fulfilling the guarantee and to protect health facilities from non-payment risks.

Committee Resolution: Not adopted. The term is not used within the text of the proposed amendments

"hospital bill" means the amount owing for clinical and ancillary services rendered, charges for room, meals, medical supplies, drugs and medicines, and payments for use of equipment; and

"medical expenses "means any costs incurred in the prevention or treatment of injury or disease.

To clarify the scope of recoverable costs by health facilities, preventing ambiguity or disputes about what constitutes hospital or medical expenses.

Committee Resolution: Not adopted. The terms need not be defined as they used in their ordinary sense.

"Pre-hospital care" means any medical care received by a patient from an emergency medical service before arriving at a hospital, including any medical care provided at the scene of an injury or illness or during transportation to a health facility. The definition is introduced to provide clarity on the scope of services considered as pre-hospital care. It ensures that both on-scene emergency interventions and medical assistance provided during transport to a health facility are expressly covered. This promotes consistency in interpretation and aligns the provision with recognized emergency medical service practices.

Committee Resolution: Not adopted. The term is used in the Health Act, Cap. 241 based on its ordinary meaning.

"promissory note" means an unconditional promise made in writing by a patient or the patient's next of kin to the hospital or medical clinic, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money for any hospital bill or medical expenses in the course of medical treatment. To provide a clear legal framework for payment commitments to health facilities, facilitating debt recovery while protecting patient rights.

Committee Resolution: Not adopted. The term as used will adopt the meaning as set out in section 84 of the Bills of Exchange Act, Cap. 27.

c) In relation to clause 3(a), delete the words "prior to the payment of prospective medical costs" and instead use the following phrase-(a) in sub-section (1),by inserting the words," prior to the payment of any hospital bill or medical expenses" immediately after the words "medical treatment". The amendment is intended to enhance clarity and precision in the provision. The phrase "prospective medical costs" may be ambiguous and open to varying interpretations, particularly regarding whether it applies to anticipated, estimated, or actual medical expenses. By replacing it with the words "any hospital bill or medical expenses", the provision is aligned with common usage in medical and legal contexts,

ensuring certainty and ease of implementation. This also harmonizes the terminology with existing statutory and regulatory language governing medical treatment and related financial obligations.

Committee Resolution: Not adopted. The right to emergency medical treatment as drafted in section 7(1) of the Health Act, Cap. 241 is sufficiently guaranteed.

d) In relation to clause 3(b), the original phrase in section 7(2)(a) be retained as follows—

"(2) For the purposes of this section, emergency medical treatment shall include—
(a) Pre-hospital care. The retention of the phrase "pre-hospital care" acknowledges the critical role of emergency medical services in saving lives before hospital admission.

Committee Resolution: Adopted. The term "pre-hospital care" includes medical care provided at the scene of injury to the point where comprehensive healthcare is provided at a health facility.

e) In relation to clause 3(b), the words "through to a department responsible for emergency treatment" be deleted. The deletion is necessary to remove redundancy and avoid limiting the scope of emergency care to hospital-based departments only. It also prevents an unduly restrictive interpretation that might exclude other valid forms of emergency medical treatment. Pre-hospital care is an entire framework that goes beyond hospital settings. It encompasses ambulance services and management, regulation and deployment of emergency medical technicians, the role of emergency medical personnel, and overall emergency care management—including the critical role played by bystanders and members of the public in providing first response.

Committee Resolution: Adopted. The term "pre-hospital care" includes medical care provided at the scene of injury to the point where comprehensive healthcare is provided at a health facility.

f) In relation to clause 3(c), delete and insert the following words –in sub-section (2) (b) by deleting the words "the individual and substituting therefor with the following words "a critically ill or injured patient including the appropriate medical care provided at the scene of injury or illness during transportation to a health facility, a department responsible for emergency and early patient care." The amendment seeks to broaden the scope of emergency medical treatment under sub-section (2) (b) by expressly recognizing the continuum of care provided to an individual at different stages of an emergency. By inserting the words "including the appropriate medical care provided at the scene of injury or illness during transportation to a health facility, a department responsible for emergency and early patient care", the provision ensures clarity that emergency treatment is not confined to hospital-based interventions alone but extends to pre-hospital and early hospital-based care.

This clarification is necessary to align the law with practical realities of emergency medical services, which involve immediate response at the scene, care during transportation, and prompt attention at the receiving facility. It further promotes comprehensive protection of the constitutional right to emergency medical treatment under Article 43 of the Constitution of Kenya by guaranteeing access to timely, coordinated, and life-saving interventions at every stage of the emergency care chain.

Committee Resolution: Not adopted. Stabilization of a patient is not solely for purposes of transportation to a definitive health facility.

g) Supports clause 3(d), the use of the word "victim" is ambiguous and is already defined in another statute, the Victim Protection Act. The proposed amendment will bring statutory harmony with section 9 of the Act which provides as follows—

"9. No specified health service may be provided to a patient without the patient's informed consent unless—

(d) The patient is being treated in an emergency situation.

The amendment replaces the term "victim" with the more accurate and medically appropriate expression "a patient who is critically ill or injured". The word "victim" is contextually linked to criminal law and justice processes, and its continued use in a health statute creates ambiguity and inconsistency with existing laws such as the Victim Protection Act.

The proposed wording reflects the medical nature of emergency treatment, ensures statutory harmony within the Act, and aligns with Section 9 on informed consent in emergency situations. By adopting this language, the provision clearly centers on the patient's health condition rather than their legal or social status, thereby promoting clarity, precision, and uniformity in interpretation.

Committee Resolution: Adopted. The proposed amendments seeks to clarify that the victim in the case of a health facility refers to a patient who is critically ill or injured.

h) In relation to clause 3(f) and the new subsection (4), proposes the following new subsection (4)—

"(4) A health facility that refuses to discharge a patient after medical discharge has been indicated, for reasons of non-payment in part or in full of hospital bills or medical expenses, commits an offence and is liable on conviction to a fine not exceeding three million shillings."

The current amendment limits protection to public hospitals, leaving patients in private facilities vulnerable to unlawful detention and denial of emergency care. While this is a positive step, the provision fails to address hospital detention and discriminates against patients in private facilities, where violations are equally prevalent.

This proposal must consider the following constitutional contexts, Article 43(1)(a) which guarantees that every person the right to the highest attainable standard of health, applicable in both public and private facilities, and Article 29 which protects individuals from arbitrary detention, including wrongful confinement for unpaid medical bills.

Kenyan courts have repeatedly affirmed that hospital detention, whether in public or private facilities, is unconstitutional:

Gideon Kilundo & Daniel Mwenga v Nairobi Women's Hospital [2018] – Detaining patients for unpaid bills violates the right to freedom.

Christine Kidha v Nairobi Women's Hospital [2016] – Detention to compel payment of a contractual obligation undermines liberty.

Tryphosa Jebet Koskey v Elgon View Hospital [2016] – Hospitals must pursue debt recovery through lawful civil processes.

Tryphosa Jebet Koskey v Elgon View Hospital [2016] eklr where it was held that the hospital could have released the petitioner and recovered the outstanding debt as provided by law.
The proposed amendment by KLRC:

(a) ensures equal protection of patients' rights across all facilities.
(b) aligns legislation with constitutional provisions and judicial precedents.
(c) encourages lawful debt recovery mechanisms without compromising patient dignity.

Committee Resolution: Adopted with amendments. The provision extended to private health facilities so as to guarantee access to emergency treatment and to ensure that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights.

i) In relation to clause 3(f) and the new subsection (5), proposes the following new subsection (5)—

"A health facility that refuses to release the body or bodies of deceased patients for reasons of non-payment in full or in part of hospital bills or medical expenses commits an offence and is liable on conviction to a fine not exceeding five million shillings."

Section 7 of the Public Health Act, Cap 241 currently lacks a clear prohibition against the detention of deceased bodies by hospitals due to unsettled medical bills. The proposed amendment seeks to address this gap by criminalizing such practices and ensuring that the dignity of the deceased and their families is protected.

Judicial Precedent

In the case of ***Mary Nyang'anyi Nyaigero & Another v Karen Hospital Ltd & Another [2016] eKLR,*** the High Court ordered the immediate release of a dead body that had been withheld by the hospital over pending bills. The court held that detaining a body as security for payment is unlawful and violates the dignity of the deceased and the rights of surviving family members.

The KLRC proposal therefore recommends strengthening the provision to cover all health facilities, not just public ones, and to impose a higher penalty. It will also ensure a uniform and comprehensive legal framework prohibiting the detention of deceased bodies, strengthen patient and family rights, and uphold constitutional and human dignity standards. This further-

(a) upholds human dignity by preventing the commodification of deceased bodies.
(b) extends protection to both public and private facilities to eliminate discrimination.
(c) aligns statutory law with constitutional rights under Articles 28 (human dignity) and 29 (freedom and security of the person).
(d) reinforces judicial pronouncements that hospitals must pursue lawful civil debt recovery mechanisms rather than detaining bodies.

Committee Resolution: Adopted with amendments. The provision extended to private health facilities so as to guarantee access to emergency treatment and to ensure that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights.

j) The new subsection 12A be amended to state as: "(2A) A healthcare provider shall not demand prepayment of prospective medical costs as a condition for the provision of emergency treatment to a user." Section 12 of the Principal Act currently regulates the provision of healthcare services but does not comprehensively prohibit demanding prepayment for emergency medical treatment. The proposed amendment seeks to address this gap by protecting patients in life-threatening situations from denial of urgent care due to financial constraints. The KLRC proposal recommends broadening this protection to include all healthcare providers, both public and private, to ensure non-discriminatory access to emergency care and ensuring that no life is put at risk due to inability to prepay. The KLRC proposal will-

   (a) promote access to healthcare services without discrimination based on the type of facility.
   (b) ensure equality and non-discrimination of public facilities. Limiting protection to public facilities undermines constitutional principles of equality under Article 27.
   (c) promote the realization of the right to health. Requiring upfront payment during emergencies can lead to preventable deaths and violates the duty of care owed by healthcare providers.

Committee Resolution: Adopted with amendments. The provision extended to private health facilities so as to guarantee access to emergency treatment and to ensure that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights.

k) Recommends deletion of Section 12(3) (a) of the Health Act as follows. "Section 12 of the Principal Act is amended by deleting subsection (3)". Deletion of section 12(3) (a) in its entirety will safeguard patients' constitutional right to health and prevent arbitrary administrative actions. The deletion will:

   (a) ensure uniform access to healthcare services nationwide.
   (b) protect healthcare providers from unjustified restrictions based on their health status.
   (c) promote fair, transparent, and rights-based health governance.

Section 12(3) of the Health Act, which currently grants the head of a health facility discretionary power to impose conditions on the services provided by healthcare professionals based on their own personal judgement as opposed to the law. The provision has been prone to arbitrary interpretation and application, resulting in the denial or limitation of patients' constitutional right to health. While the provision was intended to ensure patient safety and maintain professional standards, in practice, it has:

   (a) granted unchecked legislative power to facility heads, enabling them to unilaterally impose restrictions without clear legal or medical guidelines.
   (b) created inconsistent application across facilities, leading to unequal access to healthcare services.
   (c) been used, at times, to discriminate against healthcare providers, especially those living with chronic conditions or disabilities.

(d) indirectly denied patients' right to access essential health services by reducing available providers or limiting the scope of services offered.

If section 12(3) (a) remains, the following risks persist:

(a) arbitrary restriction of healthcare services- Facility heads can limit or deny services without justification, disproportionately affecting marginalized populations.
(b) workforce demotivation-Healthcare providers subjected to unwarranted conditions face stigma, reduced morale, and potential attrition.
(c) (c) Exacerbation of inequities in health access-Patients, particularly in rural and underserved areas, are most affected when qualified providers are restricted.

Should patient safety considerations require assessment of a healthcare provider's health status, this should be addressed through separate regulations developed by the Ministry of Health in consultation with professional bodies, ensuring due process and adherence to human rights standards.

Committee Resolution: Not adopted. The provision is necessary to give health facilities some level of discretion as need dictates.

l) Amend section 12 of the principal Act by inserting a new Section 12A as follows:

"Health facility Payment Guarantee

12A. (1) A health facility may demand a payment guarantee from a patient after medical discharge has been indicated, where there is non-payment in part or in full of hospital bills or medical expenses.

(2) The payment guarantee under subsection (1) shall be in the form of a promissory note issued to the health facility to facilitate lawful debt recovery.

(3)A health facility shall ensure that the payment guarantee upholds the patient's rights and dignity.

(4) The Cabinet Secretary may prescribe in regulations the manner in which payment guarantees to health facilities shall be enforced."

One of the key challenges facing healthcare facilities is recovering unpaid hospital bills without infringing on patients' rights. While detaining patients for non-payment has been declared unconstitutional by Kenyan courts, there is currently no clear legal framework providing hospitals with lawful avenues for debt recovery. The proposed insertion of section 12A seeks to address this gap by allowing health facilities to request payment guarantees rather than resorting to illegal detention practices and infringing on patients' constitutional rights.

This amendment introduces a balanced approach. By allowing health facilities to request a payment guarantee — in the form of a promissory note — after medical discharge is indicated, the law provides hospitals with a legitimate mechanism to facilitate debt recovery while ensuring that patients are not unlawfully detained. It safeguards the dignity of patients as protected under Article 28 of the Constitution by ensuring that financial inability does not result in deprivation of liberty or degrading treatment.

Moreover, the amendment strikes a fair balance between the financial sustainability of healthcare providers and the protection of patient rights. Hospitals require practical solutions to recover costs and remain operational, but these solutions must comply with the Constitution and existing jurisprudence. By formalizing the use of payment guarantees, the proposed Section 12A replaces coercive practices with a rights-based, lawful, and enforceable alternative that benefits both patients and health facilities.

In essence, this amendment promotes a patient-centered approach that respects fundamental freedoms while providing hospitals with a transparent and legally compliant framework for managing unpaid bills. It represents an important step toward harmonizing healthcare financing, constitutional rights, and judicial directives.

Lastly, this provision empowers the Cabinet Secretary responsible for health to develop regulations detailing how payment guarantees will be enforced within the health sector.

Committee Resolution: Adopted with amendment. To introduce the aspect of payment guarantee and promissory notes. This will allow health facilities to request payment guarantees rather than resorting to illegal detention practices and infringing on patients' constitutional rights.

m) The KLRC made the following general comments on the Bill:

(i) KLRC supports the proposal as a timely and necessary reform that aligns with the Constitution, particularly Articles 26 (Right to Life), 28 (Human Dignity), and 43(1) (a) (Right to the Highest Attainable Standard of Health).

(ii) Hospital detention practices (HDP), the unlawful detention of patients who are medically cleared for discharge or the withholding of deceased bodies due to unpaid bills — have been documented in both public and private facilities in Kenya. The practice has attracted condemnation for violating fundamental human rights, including the rights to health, dignity, and freedom of movement. The World Health Organization recognises HDP as a serious but underreported global health and human rights concern, especially prevalent in low- and middle-income countries where healthcare costs are largely borne out-of-pocket.

(iii) Parliament should consider developing a separate Bill, the Emergency Medical Care Services Act, to provide for standardized, unified, and quality-accessible emergency medical care, and for connected purposes. Such a framework law would ensure proper regulation, coordination, and resourcing of emergency medical services across the country. Currently, Kenya's legislative framework does not comprehensively recognize or regulate these components of pre-hospital care. This constitutes a significant gap in the health sector's legal and policy environment.

(iv) In Kenya, media investigations continue to expose cases of patients denied discharge or bodies withheld as collateral for unpaid fees. Government responses have been mostly informal and reactive, often urging amicable resolutions between hospitals and families without addressing the systemic and socio-economic factors that perpetuate the practice. The absence of a clear legislative framework has allowed HDP to persist, undermining public trust in the health system.

(v) HDP raises grave human rights concerns, contravening the prohibition of torture and cruel, inhuman, or degrading treatment as set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights. It undermines patient autonomy, entrenches discrimination against economically disadvantaged

populations, and deepens social and economic inequalities, disproportionately affecting women, children, and the rural and urban poor.

(vi) Kenya requires a clear legislative prohibition of HDP, combined with reforms to strengthen health financing and social protection to reduce out-of-pocket expenditure. The proposed amendments to the Health Act represent a critical step toward upholding constitutional rights, protecting human dignity, and building a fairer health system

Committee Resolution: The Committee noted the general comments during the consideration of the Bill.

16. The **National Gender and Equality Commission (NGEC)** submitted as follows:

a) Amend Clause 3 (f) (4), by inserting the phrase "and Private" after the phrase "public". The provision will be discriminatory in its application as the Health Act interprets "Facility" to include private institutions.

The Memorandum of Objects and Reasons states that the objective is to resolve the problem of patients or their relatives/kin having to pay medical fees and/or admission fees prior to their admission and treatment.

Committee Resolution: Adopted. The provision extended to private health facilities so as to guarantee access to emergency treatment.

b) Amend Clause 3(f) (5), by inserting the phrase "and private" after the phrase "public"; and inserting the phrase "a patient and or" before the phrase "the body" to read as follows: "A person in charge of a public and private health facility commits an offence, if the person detains or permits the detention of a discharged patient or the body of a deceased person...."

The amendment will ensure that both private and public facilities do not detain patients who were admitted under emergency conditions, and not only bodies of the deceased. There are several cases where patients have been detained for non-settlement of bills as the amount continues escalating to unmanageable levels. The Memorandum of Objects states that the Bill further seeks to amend the Act to make it an offence for only public healthcare facilities and healthcare providers in charge of healthcare facilities to detain the body of a deceased person, only as a means of enforcing settlement of outstanding medical bills and not for discharged patients.

Committee Resolution: Adopted. The provision extended to private health facilities so as to ensure that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights.

c) In Clause 4 (2A), insert the phrase "and private" after the phrase "public". The amendment seeks to exempt private health facilities while the Act in section 12(2) provides that "all healthcare providers, whether in the public or private sector, shall have the duty to provide emergency medical treatment as provided under section 7."

Committee Resolution: Adopted with amendments. The provision extended to private health facilities so as to guarantee access to emergency treatment.

d) In clause 4, insert a new clause 3A as follows:

"The settlement of medical bills incurred following an emergency treatment

3A. the settlement of outstanding medical bills incurred following an emergency treatment shall be under Regulations 27(4) and (5) and 29 of the Social Health Insurance Regulations, refer to the Provisions of Regulation 27(2), (4) and (5) and Regulation 29 (1), (2) and (3) on payments out of the Emergency, Chronic and Critical Illness Fund."

Committee Resolution: Not adopted. There is no need to cross reference Regulations 27(4) and (5) and 29 of the Social Health Insurance Regulations as the laws are read together.

e) The NGEC made the following general comments on the Bill:
   (i) The Commission fully supports the proposal to streamline the process of emergency treatment by facilities in Kenya. However, there are a few observations by the Commission regarding the targeting of public facilities only and the limitation on detention by the facilities, hence its proposals for amendment.
   (ii) The proposed amendments ensure dignity and respect to all persons who, at one time or another, may require emergency quality care treatment and discharge thereafter.

Committee Resolution: The Committee noted the general comments during the consideration of the Bill.

17. The **Pharmaceutical Society of Kenya (PSK) Nairobi Branch** submitted as follows:

a) In clause 2, in the definition of the term "health facility", proposes a new insertion after the place to include mobile and digital care in both public care and private care and air rescue, marine rescue services by the public institution. More than 50% of emergency events take place at the ambulatory level.

   Committee Resolution: Not Adopted. Section 7 of the Health Act, Cap. 241 provides that emergency medical treatment includes pre-hospital care which includes care in an ambulance.

b) In clause 3, delete the words "any medical institution" and insert "health facilities" in section 7(3) of the Health Act. This is in line with the Health Act and Quality Care and Patient Safety Bill.

   Committee Resolution: Not Adopted. Subsection (3) was not proposed for amendment.

c) In clause 3, in the proposed new subsection (4) and (5), delete the words "public health facility" and insert "healthy facility". Health facilities shall include all facilities.

   Committee Resolution: Adopted with amendments. The provision extended to private health facilities so as to guarantee access to emergency treatment and to ensure that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights.

d) In clause 3, proposed the insertion of new subsection (6) after subsection (5) as follows: "(6) A person in charge of a health facility commits an offence if the person enforces settlement of a pending bill if a patient or representative of a patient launches a medical

complaint to the relevant authority in regards to treatment of an individual, is liable on conviction to a fine not exceeding two million shillings."

This is in line with the Health Act and Quality Care and Patient Safety Bill.

Committee Resolution: Not Adopted. The Clause as, proposed for amendment to extend its application to private health facilities, is sufficient and applies to all persons irrespective of their age or disability status.

e) In clause 3, propose the insertion of a new subsection (7) after subsection (6):

"A person in charge of a health facility commits an offence if the person enforces settlement of a pending bill if a patient is a person is registered with Disability according to Disability Act, Number 8 2025 and is liable on conviction to a fine not exceeding two million shillings.

A person in charge of a health facility commits an offence if the person enforces settlement of a pending bill if a patient is a child less than 5 years and is liable on conviction to a fine not exceeding two million shillings."

Committee Resolution: Not Adopted. Health facilities are required to provide the highest attainable standard of healthcare services. The Clause as, proposed for amendment to extend its application to private health facilities, is sufficient and applies to all persons irrespective of their age or disability status.

18. The **Hon. Jane Njeri Maina, MP**, the sponsor of the Bill vide a letter dated 5th October 2025 made the following submissions to the Committee:

Background and Rationale of the Bill

a) The Bill is a product of wide consultations and a response to extensive pro-bono legal representation for families whose loved ones have been detained in hospitals and mortuaries due to unpaid medical bills; a persistent humanitarian and ethical concern affecting countless Kenyan families.

b) The Health (Amendment) Bill, 2024 seeks to amend the Health Act, 2017 to expressly prohibit the detention of bodies by health facilities due to unpaid medical bills. This practice, though common, offends the spirit of the Constitution and undermines the dignity of the human person. Under Article 28 of the Constitution, every person has an inherent right to dignity and to have that dignity respected and protected. Further, Article 43(1) (a) guarantees the right to the highest attainable standard of health, including access to emergency medical treatment.

c) The Bill, therefore, seeks to reaffirm these rights by ensuring that no family is denied the remains of their loved one because of financial incapacity. Families deserve compassion, closure, and the opportunity to mourn and bury their loved ones in peace, without the added burden of humiliation and delay. Further, Kenyan's deserve access to emergency medical attention, irrespective of their financial capacity.

Judicial Compliance and Global Best Practice

d) This Bill seeks to codify the legal protection established by the courts. The High Court of Kenya, in several instances, has declared that it is unconstitutional to detain patients and

or dead bodies in hospital facilities. It has clarified that hospitals may pursue payment through standard civil legal channels. Most recently, in a ruling delivered on 23rd September, 2025, by Justice Nixon Sifuna declared detainment of a dead body for failure to pay medical bills as unlawful, unconstitutional and contrary to public policy.

e) Further, this legislative proposal is anchored in comparative experience, the Philippines (Anti-Hospital Deposit Law), Uganda's Patients' Rights and Responsibilities Charter, and Canada's Canada Health Act et. al. This global, rights-based approach, balances hospital operations with the primacy of human dignity and emergency care.

Objectives of the Bill

f) The primary objectives of the Health (Amendment) Bill, 2024 are:

   (i) To criminalize the detention of human bodies by health facilities over unpaid bills
   (ii) To safeguard human dignity and compassion in the delivery of health services
   (iii) To strengthen the legal framework that protects the rights of patients and their families
   (iv) To ensure harmony between medical practice, constitutional values and ethical obligations
   (v) To safeguard the constitutional right to emergency care.

g) While the Bill addresses a moral and constitutional imperative, it also recognizes the need for a balanced and sustainable framework that protects both patients and health facilities. Accordingly, the Hon. Member proposed that the Committee and the House consider the following measures during implementation:

   (i) Strengthened Oversight and Accountability: To ensure compliance, the Bill should empower the Ministry of Health, working with county governments, to develop a policy framework to monitor implementation and provide clear procedures for reporting, redress, and enforcement.
   (ii) Public Awareness and Education: The success of the law will depend on citizen awareness. The Bill, therefore, calls for adequate public awareness and professional sensitization campaigns to ensure that all parties understand their roles, rights, and obligations.
   (iii) Protection for Healthcare Providers: To prevent undue hardship on health facilities, the law should promote a policy framework that provides amicable debt management, payment plans, and insurance coverage mechanisms to ensure financial sustainability within the sector
   (iv) A Bipartisan Moral Imperative: The Health (Amendment) Bill, 2024 is not merely a legislative proposal — it is a moral and social duty to restore compassion, fairness, and justice to our health system. By ending the inhumane practice of detaining bodies, Parliament will be affirming Kenya's constitutional commitment to human dignity, equity, and social justice.

h) The Hon. Member therefore urged the Committee to give favorable consideration to the Bill and to facilitate its timely passage for the benefit of all Kenyans.

Committee Resolution: The Committee took note of the Member's views during the consideration of the Bill.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

19. The Committee observes that:

a) The intention of the Bill is to improve access to emergency treatment and health care services prior to the payment of prospective medical costs by patients. In this regard, the Bill is aligned to Article 43(1) (a) of the Constitution on the right to the highest attainable standard of health, which includes the right to health care services. The Bill is also aligned to Article 43(2) of the Constitution which provides that a person shall not be denied emergency medical treatment.

b) Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected. This right extends posthumously.

c) The Bill was informed by the fact that health facilities and healthcare providers generally have been detaining the bodies of persons who died while receiving medical treatment as a means of enforcing settlement of outstanding hospital bills and medical expenses. The Bill therefore seeks to remedy this situation by prohibiting the detention patients including deceased patients and requiring that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights.

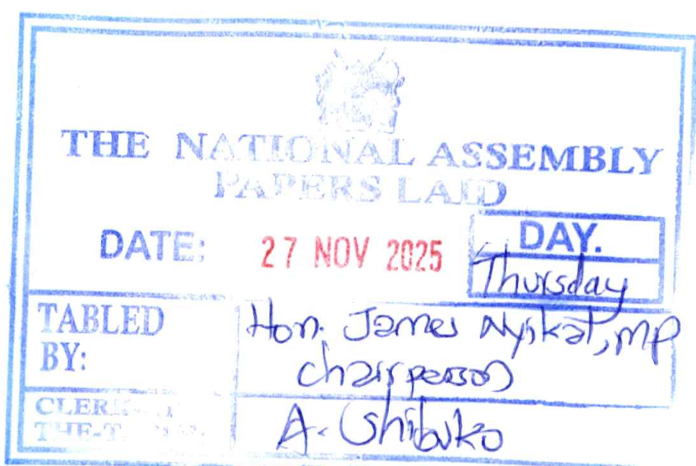
d) The High Court in *Mutua v Mater Misericordiae Hospital [2025] KEHC 13266 (KLR)* held that there is no law in Kenya that makes provision for a hospital's right of lien over patients or over their remains should they die while hospitalized or while undergoing treatment. There is also no property in a dead body and hence no right of lien on a dead body. Debts related to treatment and mortuary charges are recoverable as civil debts and should be pursued as such, through demand and litigation if need be.

e) Health facilities and healthcare providers should employ other legal mechanisms of recovering outstanding medical bills including executing promissory notes as recognized under the Bills of Exchange Act, Cap. 27 instead of detaining the bodies of deceased persons.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

20. The Committee recommends that the House considers and passes the **Health (Amendment) Bill, 2024 (National Assembly Bill No. 56 of 2024)** with amendments. The amendments are set out in Chapter Six of this report.



CHAPTER SIX

6.0 SCHEDULE OF AMENDMENTS

21. Upon considering the **Health (Amendment) Bill, 2024 (National Assembly Bill No. 56 of 2024)** and submissions from stakeholders, the Committee proposes the following amendments:

CLAUSE 2

THAT, the Bill be amended by deleting Clause 2.

Justification: The proposed definition of the term "emergency medical treatment" is complicated and may lead to operational and legal uncertainty. The current definition, as provided in section 2 of the Health Act, Cap. 241 provides a holistic interpretation of the term "emergency treatment" and covers all aspects of emergency situations.

CLAUSE 3

THAT, Clause 3 of the Bill be amended —

(a) by deleting paragraph (a);

Justification: The right to emergency medical treatment as drafted in section 7(1) of the Health Act, Cap. 241 is sufficiently guaranteed.

(b) by deleting paragraph (b);

Justification: The term "pre-hospital care" includes medical care provided at the scene of injury to the point where comprehensive healthcare is provided at a health facility.

(c) in paragraph (c) by deleting the words "prior to transportation to a definitive healthcare facility" appearing immediately after the word "patient";

Justification: Stabilization of a patient is not solely for purposes of transportation to a definitive health facility.

(d) by deleting paragraph (e); and

Justification: A new paragraph is not proposed for insertion under section 7(2) of the Health Act, Cap. 241.

(e) in paragraph (f)—

(i) in the proposed new subsection (4), by deleting the word "public" and inserting the word "medical" immediately after the word "emergency".

Justification: To align with Article 43(2) of the Constitution which states that a person shall not be denied emergency medical treatment by a health facility, whether public or private.

(ii) By deleting the proposed new subsection (5).

Justification: The proposed amendment is outside the scope of section 7 of the Health Act, Cap. 241 which relates to emergency medical treatment. The amendment proposed to be introduced as a new subsection 12(A).

CLAUSE 4

THAT, the Bill be amended by deleting Clause 4 and substituting therefor the following new Clause 4—

Amendment of section 12 of Cap. 241.

4. Section 12 of the principal Act is amended in subsection (2) by inserting the words "of this Act without demanding the prepayment of prospective medical costs from a user" immediately after the expression "section 7(2)" appearing in paragraph (b).

Justification: To align with Article 43(2) of the Constitution which states that a person shall not be denied emergency medical treatment by a health facility, whether public or private.

NEW CLAUSE 4A

4A. the principal Act is amended by inserting the following new section immediately after section 12—

Insertion of a new section 12A in Cap. 241.

Non-detention of patients by health facilities.

12A. (1) A person in charge of a health facility shall not detain, permit or cause the detention of a patient who has been discharged or the body of a deceased patient on grounds of non-payment, whether in part or in full, of hospital bills or medical expenses.

(2) Subject to subsection (1), a person in charge of a health facility shall discharge a patient or release the body of deceased patient from the health facility upon the execution of a promissory note to the health facility to secure the payment of the unpaid hospital bills or medical expenses.

(3) The provisions of this section shall not apply to a patient who is admitted in a private or semi-private room.

(4) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding two million shillings.

Cap. 27.

(5) In this section, "promissory note" has the meaning assigned to it under section 84 of the Bills of Exchange Act.

Justification: The proposed amendment seeks to ensure that health facilities are able to recover unpaid hospital bills through lawful debt recovery means without infringing on patients' rights. Health facilities will be able to execute promissory notes as payment guarantees instead of resorting to illegal detention practices.

SIGNED.................................... **DATE**....26/11/2025....

HON. DR. JAMES NYIKAL WAMBURA, CBS, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF THE 82ND SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN FOUR POINTS SHERATON HOTEL ON SATURDAY, 22ND NOVEMBER 2025, AT 9.00 AM

PRESENT

1.	The. Hon. Dr. Nyikal James Wambura, MP	**-Chairperson**
2.	The Hon. Dr. Pukose Robert, MP	-Member
3.	The Hon. Prof. Jaldesa Guyo Waqo, MP	-Member
4.	The Hon. Lenguris Pauline, MP	-Member
5.	The Hon. Oron Joshua Odongo, MP	-Member
6.	The Hon. Titus Khamala, MP	-Member
7.	The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, MP	-Member
8.	The Hon. Kipngor Reuben Kiborek, MP	-Member

ABSENT WITH APOLOGY

1.	The Hon. Ntwiga Patrick Munene, MP	**-Vice Chairperson**
2.	The Hon Wanyonyi Martin Pepela, MP	-Member
3.	The Hon. Owino Martin Peters, MP	-Member
4.	The Hon. Cynthia Muge, MP	-Member
5.	The Hon. Mathenge Duncan Maina, MP	- Member
6.	The Hon. Mary Maingi, MP	-Member
7.	Hon Kibagendi Antoney, MP	-Member

COMMITTEE SECRETARIAT

1.	Mr. Hassan A. Arale	- Clerk Assistant I
2.	Ms. Gladys Kiprotich	- Clerk Assistant I
3.	Mr. Timothy Kimathi	- Clerk Assistant I
4.	Mr. Faith Chepkemoi	- Legal Counsel II
5.	Ms. Angela Musau	- Legal Counsel II
6.	Ms. Abigael Muinde	- Research Officer III
7.	Ms. Fatma Mohamed	- Intern

IN ATTENDANCE-THE LIST ATTACHED

AGENDA

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda;
4. Confirmation of Previous Minutes;
5. Matters arising;

6. **CONSIDERATION AND ADOPTION OF REPORTS**
7. Pending Business (enclosed)
8. Any Other Business; and
9. Adjournment

NO. NA/DC-H/2025/551: PRELIMINARIES/INTRODUCTION

The Chairperson called the meeting to order at twenty minutes past twelve o'clock, followed by the Prayer and self-introductions.

MIN. NO. NA/DC-H/2025/552: ADOPTION OF AGENDA

The agenda of the meeting was adopted, having been proposed by the Hon. Pauline Lenguris, MP, and seconded by the Hon Prof. Guyo Jaldesa, MP.

MIN. NO. NA/DC-H/2025/553: CONFIRMATION OF PREVIOUS MINUTES.
This Agenda item was deferred to a later date for consideration.

MIN. NO. NA/DC-H/2025/554: MATTERS ARISING

There were no matters arising.

MIN. NO. NA/DC-H/2025/555: CONSIDERATION AND ADOPTION OF THE REPORT OF THE HEALTH (AMENDMENT) BILL (NATIONAL ASSEMBLY) BILL BY HON. JANE NJERI MAINA, MP

Adoption of the report of the Health (Amendment) Bill (National Assembly) Bill by Hon. Jane Njeri, MP as the true reflection of the Committee deliberation which was proposed by Hon. Pauline Lenguris, MP, and seconded by Hon. Dr. Robert Pukose, CBS, MP as the true reflection of the Committee deliberations.

MIN. NO. NA/DC-H/2025/556: CONSIDERATION AND ADOPTION OF THE REPORT ON THE ASSESEMENT OF THE HEALTH AUTHORITY (SHA) UTILIZATION OF FUNDS DISBURSED SINCE INCEPTION AND CHALLENGES FACED BY FACILITIES

Adoption of the report on the assessment of the Social Health Authority (Sha) Utilization of Funds disbursed since inception and challenges faced by facilities which was proposed by Hon. Pauline Lenguris, MP, and seconded by Hon. Prof. Jaldesa Guyo Waqo, MP as the true reflection of the Committee deliberations.

MIN. NO. NA/DC-H/2025/557: ANY OTHER BUSINESS

There was no any other business.

MIN. NO. NA/DC-H/2025/558: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.15 p.m. The next meeting will be held on notice.

Sign.. **Date**..........28/11/2025..

HON. DR. NYIKAL JAMES WAMBURA, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

THE NATIONAL ASSEMBLY
13TH PARLIAMENT – FOURTH SESSION (2025)
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE CONSIERATION OF THE HEALTH (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2024) BY HON. JANE NJERI MAINA, MP

We, the undersigned Members of the Departmental Committee on Health do hereby append our signatures to adopt this Report

Date: 22/11/2025 VENUE: Four Points Sheraton Hotel

NO	NAME	SIGNATURE
1.	The Hon. Dr. Nyikal James Wambura, M.P, CBS - **Chairperson**	[signature]
2.	The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson**.	[signature]
3.	The Hon. Dr. Pukose Robert,**CBS**, M.P	[signature]
4.	The Hon. Titus Khamala, M.P	[signature]
5.	The Hon. Sunkuli Julius Lekakeny Ole, **EGH, EBS**, M.P.	[signature]
6.	The Hon. Prof. Jaldesa Guyo Waqo, M.P.	[signature]
7.	The Hon. Owino Martin Peters, M.P.	[signature]
8.	The Hon. Wanyonyi Martin Pepela, M.P	[signature]
9.	The Hon. Lenguris Pauline, M.P	[signature]
10.	The Hon. Mary Maingi, MP	[signature]
11.	The Hon. Muge Cynthia Jepkosgei, M.P	[signature]
12.	The Hon. Oron Joshua Odongo, M.P.	[signature]
13.	The Hon. Kibagendi Antony, M.P.	[signature]
14.	The Hon. Mathenge Duncan Maina, M.P	[signature]
15.	The Hon. Kipngor Reuben Kiborek, M.P	[signature]

Death in police hands Kenyans marching in the streets of Nairobi sought to interrupt the reading of the budget

Return of demos: City centre shut down as

Police use tear gas, water canons and bullets to thwart protesters' attempts to reach Parliament and Mr Lagat's office

BY STEVE OTIENO AND DANIEL OGETTA

Growing calls to apprehend the killers of a teacher murdered in police custody snowballed into a national security crisis yesterday that plunged Nairobi city centre into hours of chaos.

The violent protests that saw two vehicles torched as tensions following the killing of Albert Ojwang boiled over, coincided with the morning appearance in Parliament of security chiefs for the second day over the murder.

Clashes between protesters and police also overshadowed the reading of the budget in Parliament in the afternoon by National Treasury Cabinet Secretary John Mbadi—his debut presentation since his appointment to Cabinet last year.

Bursts of gunfire echoed across the city with clouds of tear gas rising towards the cloudy skyline as Mr Mbadi read his speech to a House that had many empty seats, perhaps the violence forcing most MPs to stay away given their horror experience last June when riots forced them to scamper to safety through an underground tunnel.

Mr Mbadi was among five opposition figures appointed to Cabinet last year following a deal between President William Ruto and then opposition leader Raila Odinga after his administration was shaken to the core by youth protests that culminated in the invasion of Parliament.

And a fortnight to the first anniversary of the invasion following days of protests that forced the government to withdraw the Finance Bill 2025, protesters were back in the streets yesterday, engaging police in running battles to demand justice for Ojwang.

The morning began with a strange stillness. A murdered teacher—young, gentle, a nurturer of children's minds— had become the face of national grief. His story had lit a firestorm online. Then that fire burst from screens into the city's streets, consuming everything in its path, even the long-standing reverence for the annual budget ritual.

At 12.20pm, a handful of protesters started gathering along Haile Selassie Avenue and engaged police officers as they attempted to march into government square. Ten minutes later, as their numbers swelled, they began marching towards the Treasury building aiming to block Mr Mbadi from leaving for Parliament.

This strategy was however thwarted by police officers who lobbed several tear gas cannisters at them forcing them back towards Moi Avenue as some cut through Aga Khan walk to towards Kencom on City Hall Way.

At 1.30pm, Mr Mbadi, amidst tear gas fumes, left his office and together with a music band and his entourage, began his walk to Parliament. Television stations interrupted the coverage to capture glimpses of the swelling unrest. Split screens showed the scripted, neat language of fiscal policy on one side, and the fraying order of Nairobi on the other.

Then came the attempt to reach Jogoo House—the symbolic heart of police authority, where Deputy Inspector-General of Police Eliud Lagat, now synonymous with this public anger, keeps his office. The protests turned volatile. Lines of riot police held their ground. Sirens wailed. Tear gas canisters hissed through the air. The tension, until then tightly held, finally snapped.

With their initial strategy to barricade the Treasury CS from leaving his office thwarted, the angry protesters marched towards Kenyatta Avenue. They sought to storm Parliament, and if possible, disrupt the budget reading.

Towards 2pm, chaos ruled the city, especially around the National Archives, Moi Avenue, Tom Mboya Street and Ronald Ngala Street. Water cannons roared. The acrid sting of tear gas hung low, burning eyes and throats.

Just behind the Kenya Cinema, two vehicles with registration numbers KAR 936D and KBR 954G were torched. The Nation Re-

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK
THIRTEENTH PARLIAMENT- FOURTH SESSION (2025)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE HEALTH (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL No. 56 OF 2024)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Health (Amendment) Bill (National Assembly Bill No. 56 of 2024) was read a First Time and referred to the Departmental Committee on Health for consideration and reporting back to the House;

IT IS NOTIFIED that the **Health (Amendment) Bill (National Assembly Bill No. 56 of 2024)** is a Bill sponsored by the **Hon. Jane Njeri Maina, MP** that seeks to amend the Health Act, Cp. 241 to provide for access to emergency treatment and healthcare services before the payment of prospective medical costs by users. Additionally, the Bill makes it an offence for a public healthcare facility and a healthcare provider in charge of a healthcare facility to detain the body of a deceased person as a means of enforcing settlement of outstanding medical bills.

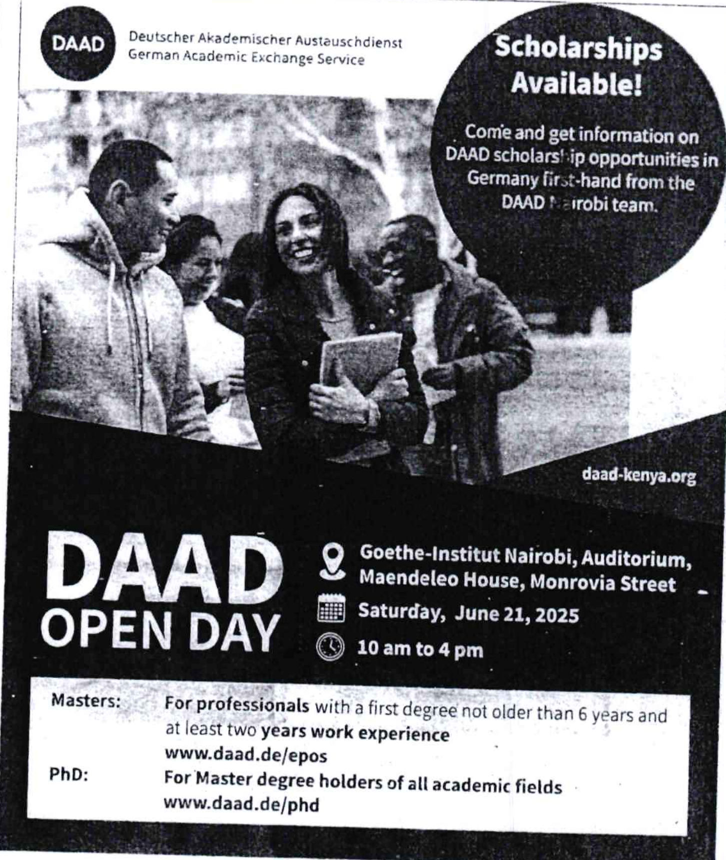
NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and the National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the Departmental Committee on Health.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building, and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Thursday, 26th June, 2025 at 5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
13th June, 2025

"For the Welfare of Society and the Just Government of the People"



Masters:	For professionals with a first degree not older than 6 years and at least two years work experience www.daad.de/epos
PhD:	For Master degree holders of all academic fields www.daad.de/phd

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
Ref: NA/DDC/DC-H/2025/66

25th July, 2025

Hon. Aden Barre Duale, EGH
Cabinet Secretary
Ministry of Health
Afya House
NAIROBI

Dr. Oluga Fredrick Ouma, OGW
Principal Secretary
State Department for Medical Services
Ministry of Health
Afya House
NAIROBI.

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

Hon. Shadrack J. Mose
Solicitor General of the Republic of Kenya
Sheria House, Harambee Avenue
P.O. Box 40112- 00100, Nairobi, Kenya
NAIROBI
Email: communications@ag.go.ke

Mr. Peter Musyimi, HSC
Ag. Chief Executive Officer/ Commission Secretary
Kenya Law Reform Commission (K.L.R.C)
Reinsurance Plaza, 3rd Floor
Taifa road
P.O BOX 34999-00100.
NAIROBI
info@klrc.go.ke

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

Mr. Ibrahim Wako
Chief Executive Officer
Kenya Clinical Officers Council,
P O Box 19795
Blueviolet Plaza along Kidaruma road
Tel. 0725705144
NAIROBI
info@clinicalofficerscouncil.org

Dr. Brenda Obondo
Chief Executive Officer
Kenya Medical Association
KMA Centre, 4th Floor, Chyulu Road-Upper Hill
P.O. Box 48502-00100
NAIROBI
Tel: 0722275695
info@kma.co.ke

Dear D Oluga

RE: CONSIDERATION OF THE HEALTH (AMENDMENT) BILL, 2024

The Departmental Committee on Health is established pursuant to Standing Order 216 and is mandated *inter alia 'to study and review all legislation referred to it'*.

Pursuant to the cited mandate, the Committee is in the process of considering the Health (Amendment) Bill, 2024, Sponsored by Hon. Jane Njeri Maina, MP, which seeks to amend the Health Act, Cap 241 of the Laws of Kenya, to provide for access to emergency treatment and healthcare services prior to the payment of prospective medical cost by users.

The Bill further seeks to amend the principal Act to make it an offence for public healthcare facilities to detain the body of a deceased person as a means of enforcing settlement of outstanding medical bills. Copies of the Bill are available at the **National Assembly Table Office, Main Parliament Buildings** and on www.parliament.go.ke/the-national-assembly/house-business/bills.

In compliance with Article 118(1)(b) of the Constitution, and Standing Order 127(3), the Committee is required to facilitate public participation in the consideration of the Bill

Accordingly, the Committee hereby invites you to submit your views and comments on the Bill by **4th August 2025**. Kindly provide a physical copy of your submission and send an electronic copy to the Office of the Clerk via email: cna@parliament.go.ke

Our Liaison Officers on this subject are **Mr. Hassan A. Arale,** who may be contacted on **Tel No. 0721480578** or email: hassan.arale@parliament.go.ke , and Mr. **Timothy Kimathi**, **Tel No. 0725650878** or email: timothy.kimathi@parliament.go.ke

Yours

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

Copy to:

Hon. Dorcas A. Oduor, SC, OGW, EBS
Attorney General of the Republic of Kenya
Office of the Attorney General and Department of Justice
Sheria house
Harambee Avenue
NAIROBI
communications@ag.go.ke

Hon. Jane Njeri Maina, MP.
Kirinyaga Constituency
Parliament Buildings
NAIROBI

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote
Ref. NA/DDC/DC-H/2025/87

25th September, 2025

Hon. Aden Barre Duale, EGH
Cabinet Secretary
Ministry of Health
Afya House
NAIROBI

Dr. Oluga Fredrick Ouma, OGW
Principal Secretary
State Department for Medical Services
Ministry of Health
Afya House
NAIROBI.

Ms. Mary Muthoni Muriuki, CBS
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KMP&DC House, Woodlands Rd, Off Lenana Road
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NAIROBI

Hon. Shadrack J. Mose, CBS
Solicitor General
Office of the Attorney General &
Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Mr. Peter Musyimi
Ag. Commission Secretary
Kenya Law Reform Commission
3rd Floor, Reinsurance Plaza, Taifa Road,
NAIROBI

Dear

RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON HEALTH ON THE CONSIDERATION OF BILLS

The Departmental Committee on Health is established pursuant to Standing Order No. 216 of the National Assembly and mandated to, among other things, ***study and review all legislation referred to it.***

In line with the provisions of Standing Order 127(1), the following two Bills and one legislative proposal has been committed to the Committee for consideration:

1) **The Quality Healthcare and Patient Safety Bill (National Assembly Bill No. 41 of 2025),** sponsored by the Leader of the Majority Party **Hon. Kimani Ichung'wah, EGH, MP.** The Bill seeks to give effect to Article 43(1) (a) of the Constitution on access to healthcare.

2) **The Health (Amendment) Bill, 2024,** sponsored by the **Hon. Jane Njeri Maina, MP.** This Bill seeks to amend the Health Act to provide for access to emergency treatment and healthcare services prior to the payment of prospective medical cost by users.

3) **The Medical Practitioners and Dentists (Amendment) Bill, 2024,** sponsored by the **Hon. Duncan Maina Mathenge, M.P.** The legislative proposal seeks amendments to the Medical Practitioners and Dentists Act (Cap. 253).

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly, the Committee resolved to invite you to submit views and comments on the said Bills.

Accordingly, you are kindly requested to submit written comments on the Bills. In view of the strict timelines within which the Committee must complete its scrutiny, **the Committee would be obliged if your comments are received on or before Monday, 6th October, 2025.**

Further, you are invited to appear before the Committee to present your views and comments in a meeting scheduled for **Tuesday, 7th October, 2025, at 10:00 a.m., in Committee Room 12, Parliament Buildings.**

Our Liaison Officer on this subject are **Mr. Hassan A. Arale, Committee Clerk,** who may be contacted on **Tel. No. 0721480578** or email: **ddc@parliament.go.ke.**

Yours Sincerely,

PETER K CHEMWENO
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: Hon. Dorcas Oduor, OGW, EBS
Attorney General
Office of the Attorney General &
Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Hon. Kimani Ichung'wah, EGH, MP
Kikuyu Constituency
Parliament Buildings
NAIROBI

Hon. Jane Njeri Maina, MP.
Kirinyaga Constituency
Parliament Buildings
NAIROBI

(2) Adan Gindicha, HoD
To place before the Dept. Committee on Health. DM 05/08/25

(1) DDC
5/8/25

MINISTRY OF HEALTH
OFFICE OF THE CABINET SECRETARY

Telephone: Nairobi 254-020-2717077
Email: cs@health.go.ke

AFYA HOUSE
CATHEDRAL ROAD
P. O. Box 30016 - 00100
NAIROBI

When replying please quote:

REF: MOH/LEGAL/267 Vol. III (46)

4th August, 2025

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

Mr Arale
PS TNA.
5/8/25

Dear Clerk,

RE: CONSIDERATION OF THE HEALTH (AMENDMENT) BILL, 2024

We refer to the above subject matter and your letter **Ref: NA/DDC/DC-H/2025/66** and dated **25th July, 2025** inviting the Ministry to submit views and comments on the Health (Amendment) Bill, 2024 sponsored by Hon. Jane Njeri Maina, MP.

Kindly find attached the Ministry's comments on the proposed Bill for your review and consideration.

Yours Sincerely

HON. ADEN DUALE, EGH
CABINET SECRETARY

Encl.

RECEIVED
05 AUG 2025

NATIONAL ASSEMBLY
RECEIVED
05 AUG 2025
DEPUTY CLERK
J.W.N
P. O. Box 41842 - 00100, NAIROBI

COMMENTS BY THE MINISTRY OF HEALTH ON THE HEALTH (AMENDMENT) BIL, 2024

S/No.	Bill	Proposed amendment	Justification
1.	**Clause 2.** Section 2 of the Health Act, Cap 241 (in this Act referred to as the "Principal Act"), is amended by deleting the definition of "emergency treatment" and substituting therefor the following new definition - "emergency medical treatment" means the necessary initial or immediate medical care that is administered to a critically ill or injured person to avert or prevent death, disability, unnecessary morbidity or worsening of a medical situation;"	Delete	The removal of the word *"must"* from the original definition substantially broadens the scope of what may be classified as an emergency medical condition. The term *"must"* typically serves to anchor emergency care within established protocols and objective clinical criteria. Its absence introduces ambiguity, potentially allowing subjective interpretation of what constitutes an emergency, thereby diluting the precision required in emergency medical responses. Furthermore, the inclusion of the term *"injured person"* without qualifying the *degree or severity* of injury is problematic. Emergency care frameworks are typically structured around the **urgency and seriousness** of a condition. Failure to define the threshold of injury may lead to operational and legal uncertainty, as minor injuries could be mischaracterized as emergencies.

			The addition of terms such as *"disability"* and *"unnecessary morbidity"* may expose healthcare providers and facilities to **increased legal liability**, particularly in contexts where outcomes are difficult to predict or where resource constraints affect care. These terms are inherently broad and subjective, and without clear clinical parameters, they risk being interpreted expansively in litigation or complaint processes. The definition, as provided in Section 2 of the Health Act, provides a holistic interpretation of the term "emergency treatment" and covers all aspects of emergency situations.
2.	**Clause 3**. Section 7 of the Principal Act is amended- a) in subsection (1), by inserting the words "prior to the prepayment of prospective medical costs." immediately after the words "medical treatment".	Delete	Primarily, the proposed amendment is a direct affront to the principle of Article 43(2) of the Constitution of Kenya, which recognizes every person's right to receive emergency treatment. The amendment will, in no doubt, result in loss of life, permanent disability and irreversible harm for persons seeking emergency treatment. The amendment, further, fundamentally undermines the principle of non-discrimination in access to healthcare and will result in the erosion of public trust in the health system.

			The amendment also grossly contravenes the principle of the Government's Bottom-Up Economic Transformation Agenda (BETA) that has prioritized the delivery of Universal Health Coverage, by introducing financial barriers in the access to essential healthcare services. Further, the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cater for any medical costs related to the provision of emergency medical treatment.
	b) in subsection (2)(a), by inserting the words "including the appropriate or recommended medical care provided at the scene of injury or illness, during transportation to a health facility, and through to a department responsible for emergency treatment and early in-patient care" immediately after the word "care"	Delete	The term 'pre-hospital care" as used in Section 7(2)(a) of the Health Act, reflects the globally-recognized term as provided by the World Health Organization (WHO) i.e., the provision of emergency medical services (EMS) for resuscitative, preventative, analytical, and stabilizing purposes, both at the scene of an emergency and during transportation to a hospital or other emergency medical facility. Further, Regulation 28(2)(j) of the Social Health Insurance Regulations, 2024 recognizes emergency services to include ambulance and evacuation services.

	c) in subsection (2)(b), by deleting the words "the individual" and substituting therefore the following words- "a critically ill or injured patient prior to transportation to a definitive healthcare facility;"	Delete	The proposed amendment, as underpinned hereinabove, is too prescriptive and will result in exclusion of legitimate persons in need of emergency treatment Notwithstanding this, the definition of the term "medical emergency" as provided in Section 2 of the Health Act, already recognizes that a person in an emergency situation is one facing an acute situation of injury or illness that poses an immediate risk to life or health or has potential for deterioration in the health of the person or if not managed timely would lead to adverse consequences in the well-being.
	d) in subsection 2(c), by deleting the words "the victim "and substituting therefore the words "a patient who is critically ill or injured."	Delete	Section 7(2)(c) of the Health Act already adequately provides for the stabilization of the *victim, patient, or person* within the context of medical emergency treatment. The current phrasing captures the core objective of emergency care—*stabilization*—and aligns with internationally accepted emergency care principles. The proposed insertions or modifications to this subsection do not add substantive value and may instead introduce redundancy or ambiguity. Given that the section specifically pertains to emergency medical treatment, any further elaboration may be unnecessary and could

			complicate interpretation without improving clarity or effectiveness.
	e) by inserting a new paragraph immediately after subsection (2)- f) by inserting the following new subsections immediately after subsection (3)- (4). A person in charge of a public health facility commits an offence, if the person demands or permits the demand of payment of prospective medical fees or admission fees prior to providing emergency treatment, and is liable on conviction to a fine not exceeding three million shillings.	Delete	The proposed amendment contradicts the proposed amendment by Hon. Njeri Maina as highlighted hereinabove under the proposed amendment to Section 7(1). Nonetheless, the constitutional guarantee for every person to access emergency medical treatment bars any health facilities from requiring payment of prospective medical fees or admission fees prior to providing emergency treatment. Further, the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cater for any medical costs related to the provision of emergency treatment.
	(5). A person in charge of a public health facility commits an offence, if the person detains or permits the detention of the body of a deceased person for purposes of enforcing settlement of pending bills, and is liable on	Delete	Fundamentally, mortuary services are categorized as billable services, and are therefore subject to applicable fees and charges as per the institution's approved rates. The charging of such services cannot, therefore, be criminalized as proposed.

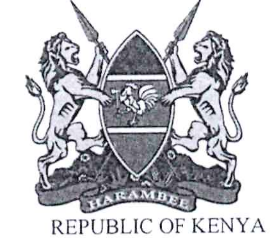
	conviction to a fine not exceeding two million shillings."		Further, these services are already provided for under the tariffs for health care services under the social health insurance scheme so as to alleviate any financial burdens that may be experienced. Any issues relating to the same can therefore be handled administratively.
	4. Section 12 of the principal Act is amended by inserting the following new subsection immediately after section 12(2)- "2A. All healthcare providers in the public sector shall not demand for prepayment of prospective medical costs as a condition for the provision of emergency treatment to a user.	Delete	The proposed amendment contradicts the amendment proposed by Hon. Njeri Maina, as outlined above under the proposed changes to Section 7(1). Nonetheless, the constitutional guarantee for every person to access emergency medical treatment bars any health facilities from requiring payment of prospective medical fees or admission fees prior to providing emergency treatment. Further, the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cater for any medical costs related to the provision of emergency medical treatment.

Dated ...4th........this ...August... 2025

....

HON. ADEN DUALE, EGH

Cabinet Secretary for Health



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

DDC
please deal.
25/09/25

Our Ref: AG/LDD/119/1/106

22nd September, 2025

Mr. Samuel Njoroge, MBS
The Clerk of the National Assembly
Clerk's Chambers, Parliament Buildings
P. O. Box 41842-00100
NAIROBI

Adan Gindicha
pls deal
25/9/25

Mr Arale
pls TNA
Awasa
25/9/25

RE: CONSIDERATION OF THE HEALTH (AMENDMENT) BILL, 2024

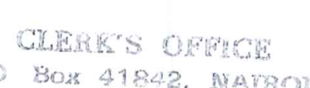
We refer to the above captioned subject-matter and your letter under Ref. No. NA/DDC/DC-H/2025/66 and dated 25th July, 2025, through which the Departmental Committee on Health forwarded the proposed Health (Amendment) Bill, 2024 for our review and comments.

Having reviewed the proposed Bill, we wish to point out the following issues for consideration—

1. Clause 2 proposes to amend section 2 of the Act by deleting the words "emergency treatment" and substituting therefor the words "emergency medical treatment". As a consequence of the proposal, the following amendments should be made in the Act for consistency in the use of terms—
   (a) in section 7, the marginal note should be amended by deleting the words "emergency treatment" and substituting therefor the words "emergency medical treatment"; and
   (b) in section 15(1)——
      (i) in paragraph (a), by deleting the words "emergency treatment" and substituting therefor the words "emergency medical treatment"; and
      (ii) in paragraph (c), by deleting the words "emergency treatment" and substituting therefor the words "emergency medical treatment".

2. Clause 3(c) proposes to amend section 7(2)(b) of the Act by deleting the word "individual" and substituting therefor "a critically ill or injured patient prior to transportation to a definitive health care facility". We propose that the definition of the phrase "definitive healthcare facility" be provided.

NATIONAL ASSEMBLY RECEIVED 24 SEP 2025
25 SEP 2025



3. Clause 3(f) proposes to amend section 7 of the Act to introduce a new subsection (4) to create and offence and prescribe penalty for an officer in charge of a public health facility who demands payment prior to providing emergency medical treatment. The proposal applies to public health facilities only. Section 12 of the Health Act imposes a duty upon all healthcare providers, whether in public or private, to provide emergency medical treatment. Therefore, the proposal should be amended to apply to both public and private health facilities. To protect the healthcare providers, section 28 of the Social Health Insurance Act establishes the Emergency, Chronic and Critical Illness Fund to cover the cost of emergency treatment. Therefore, all health care providers, whether in public or private, should be able provide emergency medical treatment and recover the cost from the Fund.

4. Further, clause 3(f) proposes to amend section 7 of the Act by adding a new subsection (5) to create an offence and to prescribe penalty in relation to detention of bodies of deceased persons by public health facilities. The proposal is outside the scope of section 7, which deals with provision of emergency medical treatment. We recommend that this proposal be provided as a separate provision and amended to apply to both public and private health facilities.

We propose that the Bill be amended to address the issues highlighted. Kindly note that the policy informing this Bill lies with the Ministry of Interior and National Administration which we have sought their guidance on the matter.

We trust this is in order.

Hon. Shadrack J. Mose, CBS
SOLICITOR GENERAL

KENYA LAW REFORM COMMISSION

"A Vibrant Agency for Responsive Law Reform"

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Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

Mr Arale
pls TNA
Awarice
25/8/25

DDC
&
25/08/25

When replying please quote
Ref. No. KLRC/8/64 VOL.V/(23)
and Date

20th August, 2025

The Clerk,
Clerk's Chambers
National Assembly,
Parliament Building,
P. O. Box 41842-00100,
NAIROBI

(Attn: Mr. Jeremiah Ndombi, MBS)

RE: CONSIDERATION OF THE HEALTH (AMENDMENT) BILL, 2024

Please refer to the above subject and your Letter Ref: NA/DDC/DC-H/2025/66) dated 25th July, 2025.

Enclosed herewith, please find the Commission's Comments to the Health (Amendment) Bill, 2024 for further action.

We thank you for your cooperation and support.

NATIONAL ASSEMBLY
RECEIVED
22 AUG 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

Peter Musyimi, HSC
Ag. SECRETARY/ CEO

Encl.

Copy to:

Hon. Dorcas Agik Oduor, SC, OGW, EBS
The Attorney-General
Office of the Attorney-General &
Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Hon. Jane Njeri Maina, MP
Kirinyanga Constituency
Parliament Buildings
NAIROBI

KLRC COMMENTS TO THE HEALTH (AMENDMENT) BILL, 2024

1. LEGISLATIVE PROPOSAL

Hon. Njeri Maina, MP, has proposed an amendment to the Health Act (Cap. 241) to guarantee access to emergency treatment and other health services without requiring upfront payment of prospective medical costs. The proposal also seeks to criminalise the detention of a deceased person's body by public healthcare facilities as a means of enforcing settlement of outstanding medical bills.

2. KLRC SUPPORT FOR THE PROPOSAL

The Kenya Law Reform Commission supports the proposal as a timely and necessary reform that aligns with the Constitution, particularly Articles 26 (Right to Life), 28 (Human Dignity), and 43(1)(a) (Right to the Highest Attainable Standard of Health).

Hospital detention practices (HDP) — the unlawful detention of patients who are medically cleared for discharge or the withholding of deceased bodies due to unpaid bills — have been documented in both public and private facilities in Kenya. The practice has attracted condemnation for violating fundamental human rights, including the rights to health, dignity, and freedom of movement. The World Health Organization recognises HDP as a serious but underreported global health and human rights concern, especially prevalent in low- and middle-income countries where healthcare costs are largely borne out-of-pocket.

In Kenya, media investigations continue to expose cases of patients denied discharge or bodies withheld as collateral for unpaid fees. Government responses have been mostly informal and reactive, often urging amicable resolutions between hospitals and families without addressing the systemic and socio-economic factors that perpetuate the

practice. The absence of a clear legislative framework has allowed HDP to persist, undermining public trust in the health system.

HDP raises grave human rights concerns, contravening the prohibition of torture and cruel, inhuman, or degrading treatment as set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights. It undermines patient autonomy, entrenches discrimination against economically disadvantaged populations, and deepens social and economic inequalities, disproportionately affecting women, children, and the rural and urban poor.

Kenya requires a clear legislative prohibition of HDP, combined with reforms to strengthen health financing and social protection to reduce out-of-pocket expenditure. The proposed amendments to the Health Act represent a critical step toward upholding constitutional rights, protecting human dignity, and building a fairer health system.

No	Provision in the Legislative Proposal	KLRC Comments to the Proposed Provision	Justification
1	Amendment of Section 2 of Cap 241 – Definition of "emergency medical treatment" "emergency medical treatment" means the necessary initial or immediate medical care that is administered to a critically ill or injured person to avert or prevent death, disability, unnecessary morbidity or worsening of a medical situation.	We agree with the proposal.	To align the definition of "emergency medical treatment" with Article 43(2) of the Constitution, ensuring it covers immediate, necessary, and life-saving interventions without prior conditions such as payment guarantees, thereby safeguarding the right to health and life.
2	Amendment of Section 2 of Cap 241 – Inclusion of new definition	KLRC proposes that the Hon. Member considers including the following definition: "detention" means any act of restraining a person from leaving hospital premises, or withholding the	To clarify and standardise the scope of "detention" in the context of medical facilities, ensuring alignment with constitutional protections against unlawful deprivation of liberty.

		body of a deceased person, for non-payment of hospital bills or medical expenses in whole or in part.	
3	Amendment of Section 2 of Cap 241 – Inclusion of new definition Definition of "guarantee"	"guarantee" means an expressed assurance by a person to a health facility that certain facts or conditions are true or will happen, to pay the unpaid hospital bills or medical expenses of a patient.	To clearly define the legal obligation undertaken by a guarantor to prevent disputes and improve enforcement.
4	Amendment of Section 2 of Cap 241 – Inclusion of new definition Definition of "health care guarantor"	"health care guarantor" means a person, natural or juridical, who binds himself jointly and severally to pay the unpaid hospital bills or medical/hospitalisation expenses of the patient.	To ensure accountability by defining the party responsible for fulfilling the guarantee and to protect health facilities from non-payment risks.
5.	Amendment of Section 2 of Cap 241 – Inclusion of the following new definitions- Definition of the term "hospital bills" Definition of the term "medical expenses"	"hospital bill" means the amount owing for clinical and ancillary services rendered, charges for room, meals, medical supplies, drugs and medicines, and payments for use of equipment. "medical expenses "means any costs incurred in the prevention or treatment of injury or disease.	To clarify the scope of recoverable costs by health facilities, preventing ambiguity or disputes about what constitutes hospital or medical expenses.
5.	Amendment of Section 2 of Cap 241 – Inclusion of the following new definition- "pre-hospital care" can be defined as the care received by a patient from an emergency medical service before arriving at a hospital	"pre-hospital care" means any medical care received by a patient from an emergency medical service before arriving at a hospital, including any medical care provided at the scene of an injury or illness or during transportation to a health facility.	The definition is introduced to provide clarity on the scope of services considered as pre-hospital care. It ensures that both on-scene emergency interventions and medical assistance provided during transport to a health facility are expressly covered. This promotes consistency in interpretation and aligns the provision with recognized emergency medical service practices.
6.	Amendment of Section 2 of Cap 241 – Inclusion of new definition	Define as: an unconditional promise made in writing by a patient or the patient's next of kin to the hospital or medical	To provide a clear legal framework for payment commitments to health facilities,

	Definition of "promissory note"	clinic, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money for any hospital bill or medical expenses in the course of medical treatment.	facilitating debt recovery while protecting patient rights.
7.	Amendment of Section 7 of Cap 241- (a) in sub-section(1),by inserting the words,"prior to the payment of prospective medical costs" immediately after the words "medical treatment"	Kindly consider the amendment as follows- Delete the words "prior to the payment of prospective medical costs" and instead use the following phrase- (a) in sub-section (1),by inserting the words,"prior to the payment of any hospital bill or medical expenses" immediately after the words "medical treatment".	The amendment is intended to enhance clarity and precision in the provision. The phrase "prospective medical costs" may be ambiguous and open to varying interpretations, particularly regarding whether it applies to anticipated, estimated, or actual medical expenses. By replacing it with the words "any hospital bill or medical expenses", the provision is aligned with common usage in medical and legal contexts, ensuring certainty and ease of implementation. This also harmonizes the terminology with existing statutory and regulatory language governing medical treatment and related financial obligations.
8.	Amendment of Section 7 of Cap 241- (b) in subsection(2)(a) ,by inserting the words, "including the appropriate or recommended medical care provided at the scene of the injury or illness during transportation to a health facility ,and through to a department responsible for emergency	i. Retention of Original Section 7(2)(a)- It is proposed that the original phrase in section 7(2)(a) be retained as follows— "(2) For the purposes of this section, emergency medical treatment shall include— (a) pre-hospital care; ii. Insertion of Definition "pre-hospital care" To enhance clarity, it is further proposed that a definition of "pre-hospital care" be included in the Act as follows— "pre-hospital care" means any medical care received by a patient from an emergency medical service before arriving at	The retention of the phrase "pre-hospital care" acknowledges the critical role of emergency medical services in saving lives before hospital admission. Including a statutory definition of pre-hospital care ensures uniform understanding and application of the term. Deletion of the phrase "through to a department responsible for emergency treatment" prevents an unduly restrictive interpretation that might exclude other valid forms of emergency medical treatment. Further, the proposal for a dedicated Emergency Medical Care Services Act is informed by the need for a holistic and coordinated legal

	treatment and early patient care" immediately after the word care.	a hospital, including any medical care provided at the scene of an injury or illness or during transportation to a health facility. iii. Deletion of Words in the proposed amendment- It is proposed that the words "through to a department responsible for emergency treatment" be deleted. The deletion is necessary to remove redundancy and avoid limiting the scope of emergency care to hospital-based departments only. Pre-hospital care is an entire framework that goes beyond hospital settings. It encompasses ambulance services and management, regulation and deployment of emergency medical technicians, the role of emergency medical personnel, and overall emergency care management—including the critical role played by bystanders and members of the public in providing first response. Currently, Kenya's legislative framework does not comprehensively recognize or regulate these components of pre-hospital care. This constitutes a significant gap in the health sector's legal and policy environment. Addressing this gap through statutory recognition will ensure that the continuum of emergency care, from the scene of an incident to hospital admission, is clearly provided for in law. Adding this word doesn't sufficiently address this legislative gap.	framework to guarantee timely, equitable, and standardized emergency care services in line with international best practices. Recommendation for Comprehensive Legislation Parliament should consider developing a separate Bill, the Emergency Medical Care Services Act, to provide for standardized, unified, and quality-accessible emergency medical care, and for connected purposes. Such a framework law would ensure proper regulation, coordination, and resourcing of emergency medical services across the country.

9.	Amendment of Section 7 of Cap 241- (c) in subsection (2)(b) by deleting the words "the individual and substituting therefor with the following words- "a critically ill or injured patient prior to transportation to a definitive health facility"	Consider adding another amendment to the proposal by inserting the following words – (d) in sub-section (2)(b) by deleting the words "the individual and substituting therefor with the following words " "a critically ill or injured patient including the appropriate medical care provided at the scene of injury or illness during transportation to a health facility, a department responsible for emergency and early patient care."	The amendment seeks to broaden the scope of emergency medical treatment under sub-section (2)(b) by expressly recognizing the continuum of care provided to an individual at different stages of an emergency. By inserting the words "including the appropriate medical care provided at the scene of injury or illness during transportation to a health facility, a department responsible for emergency and early patient care", the provision ensures clarity that emergency treatment is not confined to hospital-based interventions alone but extends to pre-hospital and early hospital-based care. This clarification is necessary to align the law with practical realities of emergency medical services, which involve immediate response at the scene, care during transportation, and prompt attention at the receiving facility. It further promotes comprehensive protection of the constitutional right to emergency medical treatment under Article 43 of the Constitution of Kenya by guaranteeing access to timely, coordinated, and life-saving interventions at every stage of the emergency care chain.
10.	Amendment of Section 7 of Cap 241- (e) in subsection(2)(c) ,by deleting the words "the victim and substituting therefor with the words "a patient who is	We agree with this amendment. The use of the word "victim" is ambiguous and is already defined in another statute, the Victim Protection Act. This proposed amendment will bring statutory harmony with section 9 of the Act which provides as follows— 9. No specified health service may be provided to a patient	The amendment seeks to replace the term "victim" with the more accurate and medically appropriate expression "a patient who is critically ill or injured". The word "victim" is contextually linked to criminal law and justice processes, and its continued use in a health statute creates ambiguity and inconsistency with existing laws such as the Victim Protection Act.

	critically ill or injured"	without the patient's informed consent unless— (d) the patient is being treated in an emergency situation.	The proposed wording reflects the medical nature of emergency treatment, ensures statutory harmony within the Act, and aligns with Section 9 on informed consent in emergency situations. By adopting this language, the provision clearly centers on the patient's health condition rather than their legal or social status, thereby promoting clarity, precision, and uniformity in interpretation.
11.	Amendment of Section 7 of Cap 241- (f) by inserting the following new subsection immediately after subsection(3)- "(4) A person in charge of a public health facility commits an offence ,if the person demands or permits the demand of payment of prospective medical fees or admission fees prior to providing emergency treatment ,and is liable on conviction to a fine not exceeding three million shillings.	The current proposal introduces a new subsection criminalizing demands for upfront medical or admission fees in public health facilities before providing emergency treatment. While this is a positive step, the provision fails to address hospital detention and discriminates against patients in private facilities, where violations are equally prevalent. This proposal must consider the following constitutional contexts, **Article 43(1)(a)** which guarantees that every person the right to the highest attainable standard of health, applicable in both public and private facilities. and **Article 29** which protects individuals from arbitrary detention, including wrongful confinement for unpaid medical bills. Kenyan courts have repeatedly affirmed that hospital detention, *whether in public or private facilities,* is unconstitutional: Gideon Kilundo & Daniel Mwenga v Nairobi Women's Hospital [2018] – Detaining	The proposed amendment limits protection to public hospitals, leaving patients in private facilities vulnerable to unlawful detention and denial of emergency care. KLRC'S proposal "(4) A health facility that refuses to discharge a patient after medical discharge has been indicated, for reasons of non-payment in part or in full of hospital bills or medical expenses, commits an offence and is liable on conviction to a fine not exceeding three million shillings." Proposes to :- (1) Ensures equal protection of patients' rights across all facilities. (2) Aligns legislation with constitutional provisions and judicial precedents. (3) Encourages lawful debt recovery mechanisms without compromising patient dignity.

		patients for unpaid bills violates the right to freedom. Christine Kidha v Nairobi Women's Hospital [2016] – Detention to compel payment of a contractual obligation undermines liberty. Tryphosa Jebet Koskey v Elgon View Hospital [2016] – Hospitals must pursue debt recovery through lawful civil processes. Tryphosa Jebet Koskey v Elgon View Hospital[2016]elk where it was held that the hospital could have released the petitioner and recovered the outstanding debt as provided by law. The Key issue we have with this proposal id that the proposed amendment limits protection to public hospitals, leaving patients in private facilities vulnerable to unlawful detention and denial of emergency care. <u>Proposed Wording</u> "(4) A health facility that refuses to discharge a patient after medical discharge has been indicated, for reasons of non-payment in part or in full of hospital bills or medical expenses, commits an offence and is liable on conviction to a fine not exceeding three million shillings."	
12.	Amendment of Section 7 of Cap 241- (f) by inserting the following new	Section 7 of the Public Health Act (Cap 241) currently lacks a clear prohibition against the detention of deceased bodies by hospitals due to unsettled	parliament should adopt the KLRC-proposed wording to ensure a uniform and comprehensive legal framework prohibiting the detention of

	subsection immediately after subsection(3)- (5) A person in charge of a public health facility commits an offence ,if the person detains or permits the detention of a body of a person for purposes of enforcing settlement of pending bills, and is liable on conviction to a fine not exceeding two million shillings.	medical bills. The proposed amendment seeks to address this gap by criminalizing such practices and ensuring that the dignity of the deceased and their families is protected. *Judicial Precedent* In the case of *Mary Nyang'anyi Nyaigero & Another v Karen Hospital Ltd & Another [2016] eKLR,* the High Court ordered the immediate release of a dead body that had been withheld by the hospital over pending bills. The court held that detaining a body as security for payment is unlawful and violates the dignity of the deceased and the rights of surviving family members. he Kenya Law Reform Commission (KLRC) recommends strengthening the provision to cover all health facilities, not just public ones, and to impose a higher penalty: "A health facility that refuses to release the body or bodies of deceased patients for reasons of non-payment in full or in part of hospital bills or medical expenses commits an offence and is liable on conviction to a fine not exceeding five million shillings."	deceased bodies, strengthen patient and family rights, and uphold constitutional and human dignity standards.This will- (1) Upholds human dignity by preventing the commodification of deceased bodies. (2) Extends protection to both public and private facilities to eliminate discrimination. (3) Aligns statutory law with constitutional rights under Articles 28 (human dignity) and 29 (freedom and security of the person). (4) Reinforces judicial pronouncements that hospitals must pursue lawful civil debt recovery mechanisms rather than detaining bodies.
13.	Section 12 of the Principal Act is amended by inserting the following subsections immediately after Section 12(2)- 2A. All healthcare providers in the public sector shall not demand for prepayment of	Section 12 of the Principal Act currently regulates the provision of healthcare services but does not comprehensively prohibit demanding prepayment for emergency medical treatment. The proposed amendment seeks to address this gap by protecting patients in life-threatening situations from denial of urgent care due to financial constraints.	Parliament should adopt the KLRC-proposed wording to guarantee equal and timely access to emergency medical treatment in both public and private healthcare facilities, ensuring that no life is put at risk due to inability to prepay. The proposed change will- 1. Promote access to healthcare services without

	prospective medical costs as a condition for the provision of emergency treatment to a user.	The Kenya Law Reform Commission (KLRC) recommends broadening this protection to include all healthcare providers, both public and private, to ensure non-discriminatory access to emergency care: **"(2A) A healthcare provider shall not demand prepayment of prospective medical costs as a condition for the provision of emergency treatment to a user."**	discrimination based on the type of facility. II. Ensure equality and non discrimination of public facilities. Limiting protection to public facilities undermines constitutional principles of equality under Article 27. III. Promote the realization of the right to health .Requiring upfront payment during emergencies can lead to preventable deaths and violates the duty of care owed by healthcare providers.
14.	New provision **Recommendation for the Deletion of Section 12(3)(a) of the Health Act as follows-** "Section 12 of the Principal Act is amended by deleting subsection (3)"	Section 12(3) of the Health Act, which currently grants the head of a health facility discretionary power to impose conditions on the services provided by healthcare professionals based on their own personal judgement as opposed to the law. The provision has been prone to arbitrary interpretation and application, resulting in the denial or limitation of patients' constitutional right to health.While the provision was intended to ensure patient safety and maintain professional standards, in practice, it has: (a)Granted unchecked legislative power to facility heads, enabling them to unilaterally impose restrictions without clear legal or medical guidelines. (b)Created inconsistent application across facilities, leading to unequal access to healthcare services. (c)Been used, at times, to discriminate against healthcare providers, especially those living	If Section 12(3)(a) remains, the following risks persist: Arbitrary restriction of healthcare services — Facility heads can limit or deny services without justification, disproportionately affecting marginalized populations. Workforce demotivation — Healthcare providers subjected to unwarranted conditions face stigma, reduced morale, and potential attrition. Exacerbation of inequities in health access — Patients, particularly in rural and underserved areas, are most affected when qualified providers are restricted. t is recommended that Section 12(3)(a) be deleted in its entirety to safeguard patients' constitutional right to health and prevent arbitrary administrative actions. The deletion will:

		with chronic conditions or disabilities. (d)Indirectly denied patients' right to access essential health services by reducing available providers or limiting the scope of services offered.	i. Ensure uniform access to healthcare services nationwide. ii. Protect healthcare providers from unjustified restrictions based on their health status. iii. Promote fair, transparent, and rights-based health governance. Should patient safety considerations require assessment of a healthcare provider's health status, this should be addressed through separate regulations developed by the Ministry of Health in consultation with professional bodies, ensuring due process and adherence to human rights standards.

RECOMMENDATION FOR TO AMEND SECTION 12 IS BY INSERTING A NEW SECTION 12A.

One of the key challenges facing healthcare facilities is recovering unpaid hospital bills without infringing on patients' rights. While detaining patients for non-payment has been declared unconstitutional by Kenyan courts, there is currently no clear legal framework providing hospitals with lawful avenues for debt recovery.

The proposed insertion of Section 12A seeks to address this gap by allowing health facilities to request payment guarantees rather than resorting to illegal detention practices.

Amendment to Section 12 of the Principal Act.	1. The principal Act is amended in Section 12 by inserting a new Section 12A as follows –	
	Health facility Payment Guarantee	12A. (1) A health facility may demand a payment guarantee from a patient after medical discharge has been indicated, where there is non-payment in part or in full of hospital bills or medical expenses.
		(2) The payment guarantees under subsection (1) shall be in the form of a promissory note issued to the health facility to facilitate lawful debt recovery.
		(3)A health facility shall ensure that the payment guarantee upholds the patient's rights and dignity.
		(4) The Cabinet Secretary may prescribe in regulations the manner in which payment guarantees to health facilities shall be enforced

JUSTIFICATION FOR THE PROPOSED AMENDMENT TO INTRODUCE PAYMENT GUARANTEES

The proposed insertion of Section 12A provides a structured and lawful framework through which health facilities may recover unpaid medical bills without infringing on patients' constitutional rights. At present, many hospitals resort to detaining patients as a means of compelling payment, a practice that has repeatedly been declared unconstitutional by Kenyan courts.

This amendment introduces a balanced approach. By allowing health facilities to request a payment guarantee — in the form of a promissory note — after medical discharge is indicated, the law provides hospitals with a legitimate mechanism to facilitate debt recovery while ensuring that patients are not unlawfully detained. It safeguards the dignity of patients as protected under Article 28 of the Constitution by ensuring that financial inability does not result in deprivation of liberty or degrading treatment.

Moreover, the amendment strikes a fair balance between the financial sustainability of healthcare providers and the protection of patient rights. Hospitals require practical solutions to recover costs and remain operational, but these solutions must comply with the Constitution and existing jurisprudence. By formalizing the use of payment guarantees, the proposed Section 12A replaces coercive practices with a rights-based, lawful, and enforceable alternative that benefits both patients and health facilities.

In essence, this amendment promotes a patient-centered approach that respects fundamental freedoms while providing hospitals with a transparent and legally compliant framework for managing unpaid bills.

It represents an important step toward harmonizing healthcare financing, constitutional rights, and judicial directives.

Lastly, this provision empowers the Cabinet Secretary responsible for health to develop regulations detailing how payment guarantees will be enforced within the health sector.

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Adan Gindicha
pls process
26/6/25

ODC
25/06/25

NGEC/CS/LEGAL/VOL. II (11)

24th June 2025

Mr. Samuel Njoroge
The Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI

Email: cna@parliament.go.ke

Mr. Arale
deal
26/06/25

Dear Mr Njoroge,

COMMENTS ON THE HEALTH (AMENDMENT) BILL NO. 56 OF 2024

Reference is made to your call for the submission of memoranda on The Health (Amendment) Bill, 2024.

Section 8 (b) of the National Gender and Equality Commission Act, CAP7K, mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

In line with its mandate, the Commission presents to you a memoranda analyzing the proposed bill and making proposals where necessary.

Yours

NATIONAL ASSEMBLY
RECEIVED
24 JUN 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

Purity Ngina, **PhD, MBS**
COMMISSION SECRETARY/ CEO

NATIONAL GENDER AND EQUALITY COMMISSION

"Gender Equality and Non-Discrimination"

MEMORANDA: HEALTH (AMENDMENT) BILL No 56 OF 2024

S/NO	CLAUSE	PROPOSALS	JUSTIFICATION/COMMENTS
1.	**Clause 3** Section 7 of the principal Act is amended— (f) by inserting the following new subsections immediately after subsection (3)— "(4) A person in charge of a public health facility commits an offence, if the person demands or permits the demand of payment of prospective medical fees or admission fees prior to providing emergency treatment, and is liable on conviction to a fine not exceeding three million shillings.	Propose to amend Clause 3(f)(4) as follows-; Amend clause 3 (4) by inserting the phrase "and Private" after the phrase "public"	The Health Act interprets "Facility" to include private institutions, and so, as proposed, the provision will be discriminatory in its application. The Memorandum of objects and reasons states that the objective is to resolve the problem of patients or their relatives/kin having to pay medical fees and/or admission fees prior to their admission and treatment.
2.	(5) A person in charge of a public health facility commits an offence if the person detains or permits the detention of the body of a deceased	Amend clause 3(5) by inserting the phrase "and private" after the phrase "public" and amend further by inserting the phrase "a	The amendment will ensure that both private and public facilities do not detain patients who were admitted

	person for purposes of enforcing settlement of pending bills, and is liable on conviction to a fine not exceeding two million shillings. "	patient and or" before the phrase "the body" to read as follows-; "A person in charge of a public **and private** health facility commits an offence, if the person detains or permits the detention of **a discharged patient** or the body of a deceased person ...."	under emergency conditions, and not only the bodies of the deceased. There are several cases where patients have been detained for non-settlement of bills as the amount continues escalating to unmanageable levels. The memorandum of objects states that the Bill further seeks to amend the principal Act to make it an offence for **only** public healthcare facilities and healthcare providers in charge of healthcare facilities to detain the body of a deceased person, **only** as a means of enforcing settlement of outstanding medical bills and not for discharged patients.
3.	**Clause 4** Section 12 of the principal Act is amended by inserting the following new subsection immediately after section 12(2)— "2A. All healthcare providers in the public sector shall not demand for prepayment of prospective medical costs as a condition for the provision of emergency treatment to a user	Propose to amend by inserting after the phrase "public "the following: "and private"	The amendment seeks to exempt Private Health Facilities, while the principal Act provides as follows: 12 (2) All healthcare providers, whether in the public or private sector, shall have the duty to (b) to provide emergency medical treatment as provided under section 7

4.	**Proposed new Sub Clause** **The settlement of medical bills incurred following an emergency treatment**	The Commission proposes an amendment by inserting a new Clause 3A as follows **The settlement of medical bills incurred following an emergency treatment** 3A. The settlement of outstanding medical bills incurred following an emergency treatment shall be under Regulations 27(4) and (5) and 29 of the Social Health Insurance Regulations	**Regulation 27- Transition to the Emergency, Chronic and critical Illness Fund provides as follows-;** (2) For purposes of benefitting under the Emergency, Chronic and Critical Illness Fund, the beneficiary referred to under sub-regulation (1), shall transition from the Social Health Insurance Fund to the Emergency, Chronic and Critical Illness Fund after depletion of his or her benefits in the benefits package under the Social Health Insurance Fund. (4) Despite the provisions of sub-regulation (2), every person shall be entitled to access emergency treatment in accordance with the benefits package set out in the Fourth Schedule to these Regulations. (5) For the purposes of this regulation, emergency medical treatment shall include— (a)pre-hospital care; (b)stabilization of the health status of the individual; or

			(c)arranging for referral in cases where the healthcare provider or health facility of first call does not have facilities or capability to stabilize the health status of the victim. **Regulation 29- Payments out of the Emergency, Chronic and Critical Illness Fund** (1) For purposes of expenditure out of the Emergency, Chronic and Critical Illness Fund, a healthcare provider or health facility shall lodge a claim with the Claims Management Office for the payment — (a)of healthcare services provided in the treatment and management of chronic and critical illnesses provided to the beneficiaries of the Social Health Insurance Fund; or (b)for the provision of emergency services in accordance with the benefits package. (2)The Authority shall pay the claims lodged based on the tariffs prescribed pursuant to section 32(2) of the Act: Provided that the payments by the Authority for the provision of

			emergency services shall be made to a licensed and certified healthcare provider or health facility in accordance with the benefits package. (3)The claim lodged under this regulation shall be processed in the manner set out in Part VIII of these Regulations.

General Comments

The Commission fully supports the proposal to streamline the process of emergency treatments by facilities in Kenya.

The proposed amendments ensure dignity and respect to all persons who, at one time or another, may require emergency quality care treatment and discharge thereafter.

However, there are a few observations by the Commission regarding the targeting of public facilities only and the limitation on detention by the facilities, hence our proposals for amendment

(1) DDC 8/11/25

MEMORANDUM OF OBJECTS AND REASONS FOR AMENDMENT OF HEALTH ACT, 2024

(2) Hassan Aale
To inform the Dept. Comm. on Health. 10/11/25

PRESENTED TO

THE NATIONAL ASSEMBLY

SUBMITTED TO
CLERK OF THE NATIONAL ASSEMBLY
PO BOX 41842-00100, NAIROBI

IN THE MATTER OF CONSIDERATION OF THE AMENDMENT HEALTH ACT , 2024

From 1 to 2

05th NOVEMBER 2025

SUBMITTED BY:
DR. JAMES WATHIGO
MPSK, MBA
CHAIRMAN
PHARMACEUTICAL SOCIETY OF KENYA
NAIROBI BRANCH
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NATIONAL ASSEMBLY
RECEIVED
06 NOV 2025
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

NO	CLAUSE	PROPOSAL	JUSTIFICATION
Health Act 2017			
2. Interpretation	Interpretation of Health Facility: "health facility" means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designed to provide inpatient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;	New Insertion after the place to include mobile and digital care in both public and private care, and air rescue and marine rescue services by the public institution.	More than 50% of emergency events take place at the ambulatory level.
7. Emergency treatment Subsection 3	Proposes Any medical institution that fails to provide emergency medical treatment while having the ability to do so commits an offence and is liable upon conviction to a fine not exceeding three million shillings.	Delete the words "any medical institution" and insert "Health facilities"	
Health Act Amendment Bill 2024			
Section 7	Proposes insert of new subsection 4 after subsection 3 - A person in charge of a public health facility commits an offence, the person demands or permits the demand of payment of prospective medical fees or admission fees before providing emergency health treatment and is liable for conviction to a fine not exceeding two million shillings.	Delete the words "public health facility" and insert "healthy facility"	Health facilities shall include all facilities.
Section 7	Proposes insert of a new subsection (5) after subsection (4) a person in charge of a public health facility commits an offence, if the person detains or permits the detention of the body of a deceased person for the purpose of enforcing settlement of pending bills and is liable on conviction to a fine not exceeding two million shillings.	Delete the words "public health facility" and insert "healthy facility"	Health facilities shall include all facilities.
Section 7	Propose the insertion of new subsection 6 after subsection 5	Subsection 6 A person in charge of a health facility commits an offence if the person enforces settlement of a pending bill if a patient or representative of a patient launches a medical complaint to the relevant authority in regards to treatment of an individual. The person is liable on conviction to a fine not exceeding two million shillings.	

If there is any aspect of our proposal which needs further information or clarity, please do not hesitate to contact Richard Barasa on email richard.barasa@amsco-africa.com or call +254 715 112790 .

REPUBLIC OF KENYA

PARLIAMENT

Hon. Jane Njeri Maina, MP.
Member of Parliament, Kirinyaga County
Member- Justice & Legal Affairs Committee
Member-National Government Constituency Development Fund Committee

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Our Ref:*CNA/CWMNA/001/SC.* Your Ref: ***NA/DDCIDC-H/2025/87*** 5th October, 2025

The Clerk of the National Assembly
Main Parliament Buildings
P.O. Box 41842–00100
NAIROBI.

Dear Sir,

RE: SEEKING PRIORITIZATION AND SUPPORT FOR THE HEALTH (AMENDMENT) BILL, 2024

I acknowledge receipt of your letter Ref. **NA/DDCIDC-H/2025/87** dated 25th September, 2025, inviting written submissions to the Departmental Committee on Health regarding the consideration of Bills committed to it.

I wish to respond with reference to The Health (Amendment) Bill, 2024, which I have the honour of sponsoring.

1. Background and Rationale of the Bill

This Bill is a product of wide consultations and a response to extensive pro-bono legal representation for families whose loved ones have been detained in hospitals and mortuaries due to unpaid medical bills; a persistent humanitarian and ethical concern affecting countless Kenyan families.

The Health (Amendment) Bill, 2024 seeks to amend the Health Act, 2017 to expressly prohibit the detention of bodies by health facilities due to unpaid medical bills. This practice, though common, offends the spirit of the Constitution and undermines the dignity of the human person. Under Article 28 of the Constitution, every person has an inherent right to dignity and to have that dignity respected and protected.

Further, Article 43(1)(a) guarantees the right to the highest attainable standard of health, including access to emergency medical treatment.

The Bill, therefore, seeks to reaffirm these rights by ensuring that no family is denied the remains of their loved one because of financial incapacity. Families deserve compassion, closure, and the opportunity to mourn and bury their loved ones in peace, without the added burden of humiliation and delay. Further, Kenyan's deserve access to emergency medical attention, irrespective of their financial capacity.

2. Judicial Compliance and Global Best Practice

This Bill seeks to codify the legal protection established by the courts. The High Court of Kenya, in several instances, has declared that it is unconstitutional to detain patients and or dead bodies in hospital facilities. It has clarified that hospitals may pursue payment through standard civil legal channels. Most recently, in a ruling delivered on 23rd September, 2025, by Justice Nixon Sifuna declared detainment of a dead body for failure to pay medical bills as unlawful, unconstitutional and contrary to public policy.

Further, this legislative proposal is anchored in comparative experience, the Philippines (Anti-Hospital Deposit Law), Uganda's Patients' Rights and Responsibilities Charter, and Canada's Canada Health Act et. al. This global, rights-based approach, balances hospital operations with the primacy of human dignity and emergency care.

3. Objectives of the Bill

The primary objectives of the Health (Amendment) Bill, 2024 are:

1. To criminalize the detention of human bodies by health facilities over unpaid bills
2. To safeguard human dignity and compassion in the delivery of health services
3. To strengthen the legal framework that protects the rights of patients and their families
4. To ensure harmony between medical practice, constitutional values, and ethical obligations
5. To safeguard constitutional right to emergency care

While the Bill addresses a moral and constitutional imperative, it also recognizes the need for a balanced and sustainable framework that protects both patients and health facilities. Accordingly, I propose that the Committee and the House consider the following measures during implementation:

a) Strengthened Oversight and Accountability:

To ensure compliance, the Bill should empower the Ministry of Health, working with county governments, to develop a policy framework to monitor implementation and provide clear procedures for reporting, redress, and enforcement.

b) Public Awareness and Education:

The success of the law will depend on citizen awareness. The Bill, therefore, calls for adequate public awareness and professional sensitization campaigns to ensure that all parties understand their roles, rights, and obligations.

c) Protection for Healthcare Providers:

To prevent undue hardship on health facilities, the law should promote a policy framework that provides amicable debt management, payment plans, and insurance coverage mechanisms to ensure financial sustainability within the sector

4. A Bipartisan Moral Imperative

The Health (Amendment) Bill, 2024 is not merely a legislative proposal — it is a moral and social duty to restore compassion, fairness, and justice to our health system. By ending the inhumane practice of detaining bodies, Parliament will be affirming Kenya's constitutional commitment to human dignity, equity, and social justice.

I therefore urge the Departmental Committee on Health to give favorable consideration to this Bill and to facilitate its timely passage for the benefit of all Kenyans.

Yours sincerely,

HON. JANE NJERI MAINA, MP
COUNTY WOMAN MP, KIRINYAGA

SPONSOR- HEALTH AMMENDMENT BILL, 2024