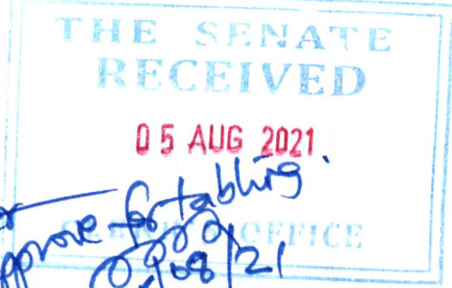


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INTERNAL MEMO



*RT. Hon Speaker
You may approve for tabling
05/08/21*

*This is forwarded & recommended for processing
for approval @ 05/08/2021
For DC-EG.*

*Forwarded & recommended for processing
for approval
04/08/2021*

TO: The Speaker of the Senate

THRO': Clerk of the Senate

THRO': Deputy Clerk (EG)

THRO': Director, Committee Services

FROM: Principal Clerk Assistant 1

DATE: 04th August, 2021

SUBJECT: REPORT OF THE STANDING COMMITTEE ON HEALTH ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

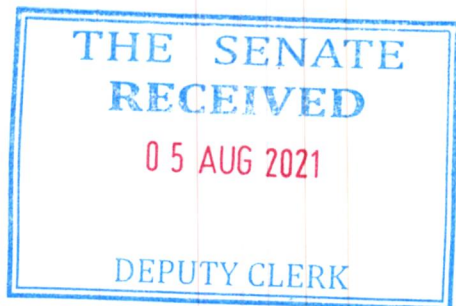
Reference is made to the above subject matter.

Kindly find attached for tabling, the Report of the Standing Committee on Health on the Health (Amendment) Bill, Senate Bills No. 26 of 2020.

Kindly note that this report was Considered and adopted by the Committee on Tuesday, 27th July, 2021.

The purpose of this memo is to seek your approval for the tabling of the report.

EMMY CHEPKWONY



*Approved
[Signature]
05/08/2021*

REPUBLIC OF KENYA



PAPERS LAID	
DATE	29/9/21
TABLED BY	Dr. Maito
COMMITTEE	Health.
CLERK AT THE TABLE	M. Adjibolar

PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT

FIFTH SESSION

THE STANDING COMMITTEE ON HEALTH

THE HEALTH (AMENDMENT) BILL, 2020

SENATE BILLS NO. 26 OF 2020

Approved

05/08/2021

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

Rt. Hon. Speaker
You may approve for tabling.

05/08/21

Forwarded & recommended
for approval for tabling
for DC-EG

05/08/21

JULY, 2021

DC-EG
Forwarded & recommended
for approval

04/08/2021

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PREFACE

Mr. Speaker Sir,

The Senate Standing Committee on Health is established under standing order 218 (3) and the second schedule of the Senate Standing Orders. The Committee is mandated to, “*consider all matters relating to medical services, public health and sanitation.*”

Committee Membership

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Mbito, MP.- Chairman
2. Sen. Mary Seneta, MP.
3. Sen. Beth Mugo, EGH, MP.
4. Sen. Beatrice Kwamboka, MP.
5. Sen. (Prof.) Samson Ongeru, EGH, MP.
6. Sen. (Dr.) Abdullahi Ali Ibrahim, MP.
7. Sen. Fred Outa, MP.
8. Sen. Millicent Omanga, MP.
9. Sen. Ledama Olekina, MP.

Mr. Speaker,

The Health (Amendment) Bill, (Senate Bills No. 26 of 2020) was sponsored by Sen. Abdullahi Ali. It was published on 19th November, 2020 and read a First Time in the Senate on Tuesday, 11th May, 2021. Following this, it was committed to the Standing Committee on Health for consideration and facilitation of public participation in accordance with standing order 140 (1) and (5) of the Senate Standing Orders.

Mr. Speaker,

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee conducted public participation and invited the public and stakeholders to submit memoranda on the Bill.

Mr. Speaker,

Having invited interested members of the public and stakeholders to give their submissions on the Bill via written memoranda, the Committee received memoranda from stakeholders with regard to the Bill.

The Committee successfully concluded the consideration of the submissions by the Public on the Bill on Thursday, 22nd July, 2021 and proposed amendments to the Bill.

Mr. Speaker,

The Committee noted that some of the proposals made by the stakeholders would enrich the Bill and resolved to develop the amendments to the Bill that were beneficial to the object of the Bill.

Mr. Speaker,

With regard to the letter of the Bill and the proposals received from the public, the Committee made the following observations:

- (a) The Constitution, under its Fourth Schedule, delineates the functions of the National Government and the county governments in respect to provision of health care. The national government is mandated to manage national referral facilities and the county governments are mandated to deliver county health services.
- (b) According to the First Schedule of the Health Act, the national referral facilities are managed by the National government. Therefore, the National government through the Public Service Commission is in charge of employment of health workers for the national referral facilities.
- (c) In addition, under the First Schedule of the Health Act, the counties are in charge of health facilities from level 1 to 5 of the tier of classification of the healthcare delivery. As a result, the employment and deployment of human resources for health in the county health facilities is under the ambit of the County Public Service Board established under section 57 of the County Government Act.
- (d) The handling of human resources for health has always been a matter of concern in the country. However, after the delineation of functions between the two levels of government further complications arose, including challenges in the vertical or horizontal transfer of human resources for health; inability to attract specialist human resources for health in remote counties, skewed promotion of health workers, amongst other issues.

- (e) As a result of these complications the human resources for health have been agitating for the creation of the Health Service Commission which would subsume the functions of both the Public Service Commission and the county public service boards in respect to employment and deployment of human resources for health at both levels of government.
- (f) However, such a Commission would be taking over functions that are constitutionally assigned to either the National or county governments. Therefore, the establishment of the Commission may only be actualised through an amendment of the Constitution.
- (g) In the meantime, the expansion of the mandate of the Kenya Health Human Resource Advisory Council as proposed by the Bill is an interim measure meant to ensure that the challenges facing human resources for health are addressed by the Council through its advisory role.
- (h) The Director General of Health and the county directors of health are mandated to advise the national and county governments respectively on all matters related to health. The Committee further noted that human resources for health are a pivotal resource towards ensuring the provision of the highest attainable standard of health and as such the input of the Director General of Health and the county directors of health in the Council will be vital.
- (i) While reviewing submissions from the stakeholders, the Committee noted that the country lacks a framework for indemnity and legal representation of health professionals in the public sector and has commenced research in this area with a view developing the framework.

Based on the foregoing, the Committee resolved that the Bill be amended to ensure that:

- (a) The Director General for Health remains in the Council.
- (b) The Bill articulates that the appointing authority to the Council is the Cabinet Secretary for health.
- (c) The qualifications of the chief executive officer be amended to broaden the applicant pool to persons with health-related degrees instead of just persons with a degree in medicine.

(d) The person applying for the position of Chief Executive Officer should be allowed to disclose any direct or indirect interest in the health sector, since as currently drafted in the Act, the provision may make it impossible to fill the position.

Mr. Speaker,

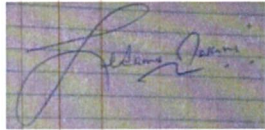
The Committee recommends that the House adopts the proposed amendments to the Bill as contained in *Annex 1*.

Mr. Speaker,

The Committee thanks the Offices of the Speaker and Clerk of the Senate for their support during the process of considering this matter. The Committee also wishes to thank the members of the public, and the various stakeholders who submitted their views.

Mr. Speaker Sir,

It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to standing order 213 as read together with standing order 140 (5) and 143 (1) of the Senate Standing Orders.



SIGNED:

FOR: SEN. MBITO MICHAEL MALING'A, MP



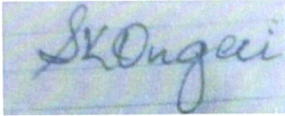
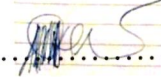
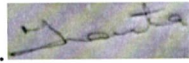
CHAIRPERSON, STANDING COMMITTEE ON HEALTH

DATE:29/7/2021.....

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH OF THE SENATE

We, the undersigned Members of the Standing Committee on Health of the Senate, do hereby append our signatures to adopt the Report-

1. Sen. (Dr.) Michael Mbito, MP

2. Sen. Mary Seneta, MP

3. Sen. Beth Mugo, EGH, MP
4. Sen. Beatrice Kwamboka, MP

5. Sen. (Prof) Samson Ongeri, EGH, MP

6. Sen. (Dr) Abdullahi Ali Ibrahim, MP

7. Sen. Fred Outa, MP

8. Sen. Millicent Omanga, MP

9. Sen. Ledama Olekina, MP


CHAPTER ONE

INTRODUCTION

1. Mandate of the Standing Committee on Health

The Senate Standing Committee on Health is established under standing order 218 (3) of the Senate Standing Orders and is mandated to, “*consider all matters relating to medical services, public health and sanitation.*”

2. Committee Membership

The membership of the Standing Committee on Health is comprised of the following:

- 1) Sen. (Dr.) Michael Mbito, MP - Chairperson
- 2) Sen. Mary Seneta, MP
- 3) Sen. Beth Mugo, EGH, MP
- 4) Sen. Beatrice Kwamboka, MP
- 5) Sen. (Prof.) Samson Ongeru, EGH, MP
- 6) Sen. (Dr.) Abdullahi Ali Ibrahim, MP
- 7) Sen. Ledama Olekina, MP
- 8) Sen. Fred Outa, MP
- 9) Sen. Millicent Omanga, MP

3. Background of the Health (Amendment) Bill, (Senate Bills No. 26 of 2020)

Under the Fourth Schedule to the Constitution, the counties are mandated to provide county health services. Article 43 (1) (a) of the Constitution guarantees every person the right to the highest attainable standard of health. The Health Act mandates the National and county governments to manage the national referral facilities and county referral facilities respectively.

The management of human resources for health has always been a matter of concern in the country. However, after the delineation of functions between the two levels of government further complications arose, including challenges in regard to the vertical or

horizontal transfer of human resources for health; hostile working conditions; health worker shortages; stalled promotions; and failure to absorb newly posted health workers.

According to the Ministry of Health 2015 Devolved HRH Policy Guidelines on Human Resources for Health:

... devolution of health workers to county management occurred under myriad of problems and resistance by the health workers. ... It has also witnessed inequitable distribution of available health workforce due to health workers leaving certain counties in favour of others that have better working conditions. Other challenges include but are not limited to shortage of health care workers, loss of skilled workers to the private sector and other countries that offer better financial packages, lack of career opportunities as well as education opportunities, the lack of clarity in the due process for the transfer of health care workers in between counties, promotion of health workers, devolving of HRH records and administration of the HRH pension among others... Kenya is one of the countries identified by the WHO as having a “critical shortage” of healthcare workers. This shortage is markedly worse in the rural areas where... under-staffing levels of between 50 and 80 percent were documented at the former provincial and rural health facilities

Although the Health Act, 2017 tried to mitigate the challenges facing the human resources for health by establishing the Kenya Health Human Resource Advisory Council, the functions of the Council were severely limited. This Bill was therefore developed to enhance the functions of the Kenya Health Human Resource Advisory Council in order to empower it to advise the National and the respective county governments on recruitment, employment and deployment of health human resources; considering and recommending applications for inter-county and intergovernmental transfers; reviewing and making recommendations on training and remuneration of health human resources

4. Public Participation and Stakeholder Engagement

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, on 11th May, 2021, the Bill was read a first time and referred to the Senate Health Committee. By an advertisement published in two newspapers with national circulation, the parliamentary website and parliamentary social media pages, the Committee invited interested members of the public and stakeholders to give their submissions on the Bill via written memoranda (*see Annex 3*). Notably, in response to this

call for memoranda, the Committee received submissions from various stakeholders with regards to the Bill.

Having scrutinised and considered the submissions from various stakeholders, the Committee successfully concluded its consideration of the submissions from the members of the Public on Thursday, 22nd July, 2021 and proposed amendments to the Bill. (*see Annex 1*).

5. Objectives of the Health (Amendment) Bill (Senate Bills No. 26 of 2020)

The objective of the Bill is to enhance the functions of the Kenya Health Human Resource Advisory Council in order to empower it to advise the National and the respective county governments on health human resources. The mandate of the Council shall include: advising the National government and the respective county governments on recruitment, employment and deployment of health human resources; considering and recommending applications for inter-county and intergovernmental transfers; reviewing and making recommendations on training and remuneration of health human resources.

6. Overview of the Bill

The Bill proposes the following-

Clause 2 of the Bill seeks to remove from the Council the representation of the Director General of Health and the Attorney General. It further seeks to increase the representation of the county public service boards from the current one to three members.

Clause 3 of the Bill amends the functions of the Council and now provides—

The Council shall—

- (a) review and make recommendations to the Cabinet Secretary on policy and uniform norms and standards for the—
 - (i) posting of interns to National Government and County Government health facilities;
 - (ii) inter county transfer of healthcare professionals;
 - (iii) transfer of healthcare professionals from one level of government to another;
 - (iv) welfare and the scheme of service for health professionals;
 - (v) management and rotation of specialists; and

- (vi) maintenance of a master register for all health practitioners in the counties;
- (b) undertake an audit of the health care workers in the national health system and advise the National Government and the respective County Governments of the gaps in recruitment, employment and deployment of registered health care workers;
- (c) advise the National Government and the respective County Governments on promotion of health care workers;
- (d) review and make recommendations for inter- county transfer of healthcare professionals;
- (e) review and make recommendations for inter- governmental transfer of healthcare professionals;
- (f) review and make recommendations for training of healthcare professionals; and
- (g) review and make recommendations on remuneration of healthcare professionals.

CHAPTER TWO

PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT

As indicated in the previous chapter, the Health (Amendment) Bill, 2020 was published on 19th November, 2020, and read a First Time in the Senate on 11th May, 2021. Following this, it was committed to the Standing Committee on Health for facilitation of public participation as per standing order 140 (1) and (5).

Accordingly, pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, by an advertisement published on two newspapers with national circulation, the parliamentary website and parliamentary social media pages, the Committee invited interested members of the public and stakeholders to give their submissions on the Bill via written memoranda (*see Annex 3*). The Committee received submissions from various stakeholders with regards to the Bill. A matrix with a summary of the submissions from the various stakeholders has been attached to this report as *Annex 4*.

The Committee received and considered submissions from the stakeholders below:

1. Kenya Medical Association (KMA)
2. Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU)
3. Cindy Ogumbo
4. Alfred David
5. Richard Nzovo

The minutes of the above meetings have been attached to this report as *Annex 2*.

CHAPTER THREE

COMMITTEE OBSERVATIONS

With regard to the letter of the Bill and the proposals received from the public, the Committee made the following observations:

- (a) The Constitution, under its Fourth Schedule, delineates the functions of the National Government and the county governments in respect to provision of health care. The national government is mandated to manage national referral facilities and the county governments are mandated to deliver county health services.
- (b) According to the First Schedule of the Health Act, the national referral facilities are managed by the National government. Therefore, the National government through the Public Service Commission is in charge of employment of health workers for the national referral facilities.
- (c) In addition, under the First Schedule of the Health Act, the counties are in charge of health facilities from level 1 to 5 of the tier of classification of the healthcare delivery. As a result, the employment and deployment of human resources for health in the county health facilities is under the ambit of the County Public Service Board established under section 57 of the County Government Act.
- (d) The handling of human resources for health has always been a matter of concern in the country. However, after the delineation of functions between the two levels of government further complications arose, including challenges in the vertical or horizontal transfer of human resources for health; inability to attract specialist human resources for health in remote counties, skewed promotion of health workers, amongst other issues.
- (e) As a result of these complications the human resources for health have been agitating for the creation of the Health Service Commission which would subsume the functions of both the Public Service Commission and the county public service boards in respect to employment and deployment of human resources for health at both levels of government.
- (f) However, such a Commission would be taking over functions that are constitutionally assigned to either the National or county governments. Therefore, the establishment of the Commission may only be actualised through an amendment of the Constitution.

- (g) In the meantime, the expansion of the mandate of the Kenya Health Human Resource Advisory Council as proposed by the Bill is an interim measure meant to ensure that the challenges facing human resources for health are addressed by the Council through its advisory role.
- (h) The Director General of Health and the county directors of health are mandated to advise the national and county governments respectively on all matters related to health. The Committee further noted that human resources for health are a pivotal resource towards ensuring the provision of the highest attainable standard of health and as such the input of the Director General of Health and the county directors of health in the Council will be vital.
- (i) While reviewing submissions from the stakeholders, the Committee noted that the country lacks a framework for indemnity and legal representation of health professionals in the public sector and has commenced research in this area with a view developing the framework.

CHAPTER FOUR

COMMITTEE RECOMMENDATIONS & PROPOSED AMENDMENTS

The Committee therefore recommends that the Bill be amended to ensure:

- (a) The Director General for Health is retained as a member of the Council.
- (b) The Bill articulates that the appointing authority to the Council is the Cabinet Secretary for health.
- (c) The qualifications of the chief executive officer be amended to broaden the applicant pool to persons with health-related degrees instead of just persons with a degree in medicine.
- (d) The person applying for the position of Chief Executive Officer should be allowed to disclose any direct or indirect interest in the health sector, since as currently drafted in the Act, the provision may make it impossible to fill the position.

Committee stage amendments proposed by the Committee are attached to this report as *Annex 1*.

28th July, 2021,

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE HEALTH (AMENDMENT) BILL, (SENATE BILLS NO. 26 OF 2020)

NOTICE is given that the Chairperson of the Standing Committee on Health, Senator Michael Mbito intends to move the following amendments to the Health (Amendment) Bill, Senate Bills No. 26 of 2020, at the Committee Stage —

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting paragraph (a);
- (b) by deleting the words “therefore the word three” appearing immediately after the words “and substituting” in paragraph (c) and substituting therefor the words “therefor the word two”;
- (c) by inserting the following new paragraph immediately after paragraph (c) —
 - (d) Inserting the following new subsection immediately after subsection (1) —
 - (1A) The Cabinet Secretary shall appoint the members nominated under subsection (1)(a), (c), (f), (g), (h) and (i) by notice in the *Gazette*.

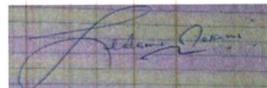
NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 3 —

Amendment
of section 33
of No. 21 of
2017.

4. Section 33 the principal Act be amended —

- (a) in subsection (2) deleting paragraph (a) and substituting therefor the following new paragraphs—
 - (a) holds at least a degree in a health related field from a university recognized in Kenya;
 - (aa) is registered by the relevant health professional regulatory body and is in good standing;
- (b) by deleting subsection (4).



SIGNED:

For: Sen. Michael Mbito,
*Chairperson,
Standing Committee on Health.*

TWELFTH PARLIAMENT |FOURTH SESSION



MINUTES OF THE 3RD SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON THURSDAY, 22ND JULY, 2021, AT 9.00A.M. ON THE ZOOM ONLINE CONSIDERATION OF THE SUBMISIONS FROM PUBLIC ON THE HEALTH (AMENDMENT) BILL, 2020.

PRESENT

- 1) Sen. Beatrice Kwamboka, MP - Chairing
- 2) Sen. Mary Seneta, MP
- 3) Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP
- 4) Sen. Millicent Omanga, MP
- 5) Sen. (Prof) Samson Ongeru, EGH, MP
- 6) Sen. Fred Outa, MP
- 7) Sen. Ledama Olekina, MP

APOLOGY

- 1) Sen. (Dr.) Michael Mbiti, MP- Chairman
- 2) Sen. Beth Mugo, EGH, MP

SECRETARIAT

- 1) Ms. Emmy Chepkwony - Principal Clerk Assistant 1
- 2) Ms. Caroline Njeri - Clerk Assistant III
- 3) Ms. Sombe Toona -Legal Counsel
- 4) Mr. Robert Rop -Audio Officer
- 5) MR. Boniface Mbiti - SAA
- 6) Ms. Lynn Aseka - Parliamentary Intern, Committees

MIN. NO. SCH12/7/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.08 a.m and the meeting commenced with a word of prayer.

MIN. NO. SCH13/7/2021: ADOPTION OF THE AGENDA

The committee adopted the agenda of the sitting, as set out below, having been proposed by **Sen. Beatrice Kwamboka, MP** and seconded by **Sen. Fred Outa, MP**: -

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*
2. Confirmation of Minutes of the Previous Sitings
3. *Consideration of Submissions from public on the Health (Amendment) Bill, 2020*
4. Any other business
5. Date of the Next Meeting
6. Adjournment

MIN. NO. SCH. 14/7/2021: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The Agenda was deferred to a later date.

MIN. NO. SCH. 15/7/2021: CONSIDERATION OF SUBMISSIONS FROM PUBIC AND STAKEHOLDERS TO THE HEALTH (AMENDMENT) BILL, 2020

The Committee considered amendment proposals from the members of public and stakeholders to the Health (Amendment) Bill, 2020 and made determinations as captured in the matrix below-

No.	Clause	Stakeholder	Submission	Observation	Committee Resolution
PART 1- PRELIMINARY					
1.	30 (1) (a)	KMPDU	<p>Proposal There is need to have a clear criteria for the qualification and requirements of the chairperson of the Council. In addition, there is need for harmonious legal position on who the appointing authority should be, is it the President, CS or Public Service Commission</p> <p>Rationale</p>	<p>The Health Act provides that the Chairperson of the Authority shall be nominated the Cabinet Secretary. Since the other representation within the Board is made up by persons from different sectors the nominating authority is also mentioned. However, the appointing authority is not mentioned in the Act.</p> <p>The Committee may consider a subclause (1)(a) that will provide— (1)(a) the cabinet secretary shall through notice in the gazette appoint the persons nominated in paragraph (c);(f); (g); (h);(i).</p> <p>Delete clause 2 (a).</p>	Reinstate the DGH
2.	30 (1) (d)	KMA	<p>Proposal Delete paragraph (d) and replace with one medical practitioner nominated by Kenya Medical Association to represent medical practitioners.</p> <p>Rationale It is important to have the medical practitioners input in matters human resources to protect the practice of the profession.</p>	<p>Paragraph (d) which provided for Attorney General is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority.</p> <p>All the categories are represented by the county public service board and the PSC.</p>	Rejected
3.		KMPDU	<p>Proposal The role of the Attorney General is undefined in the Act.</p> <p>Consider amending the section to include a</p>	<p>Paragraph (d) which provided for Attorney General is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in</p>	Rejected

			<p>representative of the salaries and remuneration commission.</p>	<p>order to increase representation of the counties' employer within the Authority. The Salaries and remuneration Commission is established under Article 230 of the Constitution. One of the functions of the SRC is to advise the National and County governments on the remuneration and benefits of public officer (Article 230 (4) (b)). Under the Bill, the Authority is required to <i>review and make recommendations on remuneration of healthcare professionals.</i> The Committee observes that the SRC is mandated under the constitution to <i>advise the national and county governments on the remuneration and benefits of all other public officers.</i> The Committee therefore opines that it is important to ensure that the SRC is unencumbered in its duty and should therefore remain independent from the Council.</p>	
4.	30(1) (e)	KMA	<p>Proposal Retain paragraph (e)</p> <p>Rationale The Director General for Health or a representative designated by the DG must be in HRAC.</p>	<p>Paragraph (e) which provided for Director General for Health is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority. The DGH is the technical advisor to the government on all matters related to health (section 17 of the Health Act).</p>	Adopted

				<p>The Committee therefore is of the view that the DGH should be reinstated.</p> <p>Delete clause 2 (a) of the Bill.</p> <p>Amend clause 2 (c) the revise the representation of the county public service boards to two.</p>	
5.		KMPDU	<p>Proposal Amend to provide for the PS Finance or a representative</p>	<p>Paragraph (e) which provided for Director General for Health is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority.</p> <p>The Committee observes that the allocations for revenue for national government and counties are made by the National Assembly and the Senate respectively. The Committee I therefore of the view that the PS Finance need not sit in the Council since the Council is purely advisory. In addition, the Committee observes that the Council already has a large membership</p>	Rejected
6.	30 (1) (f)	KMPDU	<p>Proposal Retain the PSC representative</p>	<p>The Bill does not propose the removal of the PSC representative.</p>	Rejected
7.	30 (1) (g)	KMPDU	<p>Proposal Replace the representation of the county director of health with representation by one or more persons from the major healthcare unions representing each of the major healthcare cadres in the country.</p>	<p>The county director of health is the technical advisor in respect to health in the county. (Section 19 (2) of the Health Act). The CDH is therefore essential to advising the Council.</p>	Rejected

				<p>The Committee observed that the right to form, join and participate in a union is enriched in the Constitution. (Article 41 of the Constitution). The Committee further observed that unions are necessary for purposes of negotiating with the employer. As a result the Committee determined that the Unions should not be fettered in its duty by being part of the Council.</p>	
8.	30 (1) (h)	KMPDU	<p>Proposal The role of the county public service boards and the public service commission need to be reconciled because of the varied and non-harmonious decisions coming from these bodies</p>	<p>The Public Service Commission is established under Art. 233 of the Constitution to amongst other things review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service; and hear and determine appeals in respect of county governments' public service.</p> <p>The County Public Service Board is established under s 57 of the County Government Act to amongst other things advise the county government on human resource management and development.</p> <p>The Committee observed the decisions of the CPSB may be challenged through the PSC (Article 233 of the Constitution). The Committee further observed that the Bill in question related to the Council and the roles of the Council. As such the proposal in respect to the working relations between the PSC and the CPSB</p>	Rejected

				would best be handled when discussing amendments to the county government act.	
9.	30 (1) (i)	KMPDU	Proposal Maintain the university representation but on a rotational basis of appointment from public, private and midlevel institutions. In addition, clarify who the appointing authority is.	This will reduce the representation from the learning institutions from the current three to one. The Committee observed that the representation of the tertiary institutions was sufficient.	Rejected
10.	30 (1)	KMPDU	Proposal Consider amending the section to provide for a representative from the Kenya Medical Practitioners and Dentists Council.	The Committee observed that none of the regulatory bodies are represented in the Council. The Committee further noted that the professional regulators should serve their principle role of regulating the profession and not form part of the Council.	Rejected

11.	31	KMPDU	<p>Proposal Consider including the following functions proposed under the health service commission provision under the BBI—</p> <ul style="list-style-type: none"> (a) register trained health workers (b) recruit and employ registered health workers (c) assign health workers employed by the commission for service in any public hospital or health facility (d) promote and transfer health workers according to service need (e) exercise disciplinary control over health workers employed by the commission (f) terminate the employment of health workers in the health service. <p>Also include the following additional functions—</p> <ul style="list-style-type: none"> (a) continuously set and review the standards of education and training for the persons entering the health service; (b) continuously review and demand and supply of health worker; 	<p>The health workers working in the county health system are employed by the county public service board and those working in the national referral hospitals are employed by the Public Service Commission. Both bodies are in charge of deployment, promotion, disciplinary matters of the respective employees.</p> <p>In addition, the Fourth Schedule of the Constitution delineates the responsibility of both the National and county governments. Art 187 of the Constitution and the Intergovernmental Act provide for the procedure to be used if one level of government seeks to transfer constitutionally assigned functions to the other level of government.</p> <p>The Committee observed that the Council cannot take over the functions of the PSC and the CPSB but merely serves an advisory role.</p> <p>The Committee further observed that the proposed Health Service Commission would require a Constitutional amendment since its effect would be to reassign constitutional functions from the national and county governments to it.</p> <p>The Committee noted that in the absence of a Constitutional amendment the Bill was a stop gap measure to ensure that the challenges facing human resources for health are addressed by the Council through its advisory role.</p>	Rejected
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			<p>(c) advise the national and county relating governments on matters relating to the health professions and health service delivery;</p> <p>(d) advise the government on policy and other activities necessary to achieve and maintain constitutional and other legal provisions on health rights.</p> <p>(e) prepare periodic reports on the Commission's activities, as well as progress reports on the attainment of health rights as provided for in the Constitution</p> <p>(f) liaise, where necessary, with other persons or agencies in order to fulfil its mandate.</p>		
12.	33(2)	KMPDU	<p>Proposal Expand the basic minimum qualifications to at least a healthcare related degree. In addition, consider management training as an addition to the 10 years of management experience.</p> <p>Section 5(3) (b) of the Employment Act, 2007 provides for inherent qualification requirements for a job. It is stated that its not discrimination to</p>	<p>The Act currently provides that the applicant hold <i>at least a degree in medicine from a university recognized in Kenya, and is registered by the Medical Practitioners and Dentists Board.</i></p> <p>The Act further provides <i>has at least ten years' experience in the practice of medicine, five of which shall be experience at a senior management level.</i></p>	Adopted

			distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.	The Committee observed that the Council serves all human resources for health and therefore it was prudent to ensure that the position for CEO would be open to persons with degrees in healthcare.	
13.	33(4)		<p>Proposal Consider providing a pre-appointment disclosure of interests</p> <p>Rationale The sections effect is not attainable as all persons likely have direct and indirect interests in healthcare sector.</p>	<p>The section provides (4) <i>A person shall not be appointed as the Chief Executive Officer or an officer of the Council if such person has any direct or indirect interest in the health sector.</i></p> <p>The Committee agrees that the provision as currently drafted is difficult to implement. The Committee therefore recommends that the a provision be made to ensure that the person applying or the position of CEO discloses any interest they may have.</p>	Adopted
14.		KMPDU	<p>Proposal Provide clear appointment criteria for the Board and the PSC engagement. In addition, provide term limits to position to minimise chances of abuse of power and office.</p> <p>Rationale</p>	<p>In the <i>Katiba Institute & another v Attorney General & another [2020] eKLR</i>, the high court held that <i>157. Regarding the post 2010 statutes, we wish to state without equivocation, that even though the statutes may not expressly state that appointments be made in an open, transparent, and based on fair competition and merit, the institutions and authorised officers responsible for making the appointments, have no excuse for not complying with the Constitution and the law.</i></p> <p>The Committee observed that an appeal had been lodged in respect to the case and recommended</p>	Rejected

				<p>that it was best to allow the court process to determine before changing the drafting style.</p> <p>Section 36 of the Health Act provides for term limits. It provides</p> <p><i>(1) The chairperson and the members of the Council, other than the ex-officio members, shall hold office for a term of five years and shall be eligible for re-appointment for one further term.</i></p> <p><i>(2) The members of the Council shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.</i></p>	
15.		<p>KMA Cindy Ogumbo Alfred David</p>	<p>Proposal The Senate push for the formation of a Health Service Commission as a statutory body.</p> <p>Rationale</p>	<p>The Fourth Schedule of the Constitution delineates functions between the National and County governments. According to the Schedule, the Counties manage health services at the County Level. According to the First Schedule of the Health Act, the Counties are in charge of health facilities from level 1 to 5 of the tier of classification of the healthcare delivery. As a result the employment and deployment of health workers in the county health facilities is a matter governed by the counties through the County Public Service Board established under section 57 of the County Government Act.</p> <p>The Committee observed that a Health Services Commission may only be established under the Constitution through a Constitutional amendment since the establishment of</p>	<p>Rejected</p>

				the Commission will reassign constitutional functions of the national and county governments.	
16.		Richard Nzovo	<p>Proposal</p> <p>There are has been biasness, in the past of who should head hospitals, mostly favoured been Doctors and Clinical officers.</p> <p>The principles of management remain the same regardless of the course you have undertaken.</p> <p>This has brought some superiority complex bringing down quality of services and patients care compromised.</p> <p>Hence the academic qualifications, should be used together with years of experience and the mostly qualified be awarded leadership, not using departments.</p> <p>To achieve health for all by the year 2030. Nurses need to be allowed to open private clinics, after attaining 10 years of service. Nurses are in all Corners of the country.</p> <p>We now have Nurses who have attained Doctors academic levels.</p> <p>For sustainability and adding value to health services offered. There needs to be cost sharing at all levels of health facilities.</p> <p>In conclusion, the academic achievements should be valuable to the holders and the community. The value of the service is measured by what you pay. Sorry for my late submission.</p>	<p>The qualifications of an incharge of a public health facility are prescribed under the Health Act. The committee further observed that the change of person of incahrge is best managed under policy.</p> <p>In respect to the private practice, the Committee observed that section 17 of the Nurses Act provides for the procedure for opening a private clinic and one of the requirements is for a nurse to have served for 3 years under the supervision of a senior nurse of not less than 7 years.</p>	Rejected

17.		Alfred David	Proposals <ol style="list-style-type: none"> 1. Health personnel to be under national government. 2. County to manage dispensaries and health centers. 3. Cancer management to be devolved upto ward level and to have organogram for the same to ease cancer burden. 	<ol style="list-style-type: none"> 1. The Constitution provides for the transfer of functions between the two levels of government under Article 187. The two level of government can transfer the function of public service resource management through that provision of the law. 2. The Fourth Schedule of the Constitution is clear that National government only retains management of National referral facilities. According to the First Schedule of the Health Act, National Referral facilities are categorised as Level 6 facilities therefore to increase the ambit of health facilities managed by National government may require an amendment of the Constitution. 3. In regard to cancer management, the Senate is processing the Cancer Prevention and Control (Amendment) Bill, 2021(Senate Bills No. 11 of 2021). The Bill seeks to deepen the involvement of counties in the diagnosis and treatment of cancer. 	Rejected
18.		Cindy Ogumbo	Proposal Even though the spirit of the Kenya health human	The Fourth Schedule of the Constitution is clear that National government only	Rejected

			<p>resource advisory council is commendable- to achieve universal health coverage and to meet the requirement of the constitution to highest attainable health, a health commission with the power to hire and deploy health personnel would be more efficient and efficacious.</p> <p>The Kenya health professions oversight authority is a necessary body. It duplicates the functions of the various regulatory bodies and adds no practical value to the provision and monitoring of health services. A more useful body would be a body providing indemnity and legal representation for health professionals in the public sector, such as that provided by the NHS for its employees.</p>	<p>retains management of National referral facilities. According to the First Schedule of the Health Act, National Referral facilities are categorised as Level 6 facilities whereas counties retain management of all other health facilities. A centralised body that employs and deploys health personnel would be to dispose both the national and county governments of constitutional functions related to management of health facilities under their respective jurisdictions. Such a provision may only be achieved through a constitutional amendment.</p> <p>The Committee will interrogate the proposal on providing indemnity and legal representation for health professionals in the public sector further and make its recommendations.</p>	
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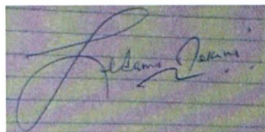
MIN. NO. SCH.16/7/2021: ANY OTHER BUSINESS

1. Committee Participation On The 2021 Devolution Conference

- a) The Committee heard that it was scheduled to participate in the side events of the Devolution Conference scheduled for 23rd to 26th August, 2021.
- b) The Committee was informed that participations who will participate physically should have at least had a Covid-19 Vaccination prior to the event.

MIN. NO. SCH17/7/2021: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business, the meeting adjourned at 10.10 am.



SIGNED:

For: CHAIRPERSON

DATE:29/7/2021.....

TWELFTH PARLIAMENT |FOURTH SESSION



MINUTES OF THE 4TH SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON TUESDAY, 27TH JULY, 2021, AT 9.00A.M. ON THE ZOOM ONLINE CONSIDERATION OF THE COMMITTEE REPORT AND AMENDMENTS TO THE HEALTH (AMENDMENT) BILL, 2020.

PRESENT

- 1) Sen. Mary Seneta, MP - Chairing
- 2) Sen. Beatrice Kwamboka, MP
- 3) Sen. Beth Mugo, EGH, MP
- 4) Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP
- 5) Sen. Millicent Omanga, MP
- 6) Sen. (Prof) Samson Ongeru, EGH, MP
- 7) Sen. Fred Outa, MP
- 8) Sen. Ledama Olekina, MP

APOLOGY

- 1) Sen. (Dr.) Michael Mbiti, MP

SECRETARIAT

- 1) Ms. Emmy Chepkwony - Principal Clerk Assistant 1
- 2) Ms. Caroline Njeri - Clerk Assistant III
- 3) Ms. Sombe Toona -Legal Counsel
- 4) Mr. Robert Rop -Audio Officer
- 5) Mr. Boniface Mbiti -SAA
- 6) Ms. Lynn Aseka - Parliamentary Intern, Committees

MIN. NO. SCH. 18/7/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.16 a.m and the meeting commenced with a word of prayer.

MIN. NO. SCH. 19/7/2021: ADOPTION OF THE AGENDA

The committee adopted the agenda of the sitting, as set out below, having been proposed by **Sen. Dr. Abdullahi Ali, MP** and seconded by **Sen. Beatrice Kwamboka, MP**: -

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*
2. Confirmation of Minutes of the Previous Sittings
3. ***Consideration and adoption of the Committee Report on the Health (Amendment) Bill, 2020***
4. ***Consideration of Pending Legislative Business Before the Committee***
5. ***Date of the Committee 2nd Retreat to Write Reports on the Utilization of Covid-19 Funds by County Governments***
6. Any other business.
7. Date of the Next Meeting.
8. Adjournment

MIN. NO. SCH. 20/7/2021: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The Agenda was deferred to a later date.

MIN. NO. SCH. 21/7/2021: CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE HEALTH (AMENDMENT) BILL, 2020

The Committee considered and adopted its report on the Health (Amendment) Bill, 2020 with the following Observations, Recommendations and amendments having been proposed by Sen. (Dr.) Sam Ongeri EGH, MP and Seconded by Sen. Beth Mugo as follows-

COMMITTEE OBSERVATIONS

With regard to the letter of the Bill and the proposals received from the public, the Committee made the following observations:

- (a) The Constitution, under its Fourth Schedule, delineates the functions of the National Government and the county governments in respect to provision of health care. The national government is mandated to manage national referral facilities and the county governments are mandated to deliver county health services.
- (b) According to the First Schedule of the Health Act, the national referral facilities are managed by the National government. Therefore, the National government through the Public Service Commission is in charge of employment of health workers for the national referral facilities.
- (c) In addition, under the First Schedule of the Health Act, the counties are in charge of health facilities from level 1 to 5 of the tier of classification of the healthcare delivery. As a result, the employment and deployment of human resources for health in the county health facilities is under the ambit of the County Public Service Board established under section 57 of the County Government Act.
- (d) The handling of human resources for health has always been a matter of concern in the country. However, after the delineation of functions between the two levels of government

further complications arose, including challenges in the vertical or horizontal transfer of human resources for health; inability to attract specialist human resources for health in remote counties, skewed promotion of health workers, amongst other issues.

- (e) As a result of these complications the human resources for health have been agitating for the creation of the Health Service Commission which would subsume the functions of both the Public Service Commission and the county public service boards in respect to employment and deployment of human resources for health at both levels of government.
- (f) However, such a Commission would be taking over functions that are constitutionally assigned to either the National or county governments. Therefore, the establishment of the Commission may only be actualised through an amendment of the Constitution.
- (g) In the meantime, the expansion of the mandate of the Kenya Health Human Resource Advisory Council as proposed by the Bill is an interim measure meant to ensure that the challenges facing human resources for health are addressed by the Council through its advisory role.
- (h) The Director General of Health and the county directors of health are mandated to advise the national and county governments respectively on all matters related to health. The Committee further noted that human resources for health are a pivotal resource towards ensuring the provision of the highest attainable standard of health and as such the input of the Director General of Health and the county directors of health in the Council will be vital.
- (i) While reviewing submissions from the stakeholders, the Committee noted that the country lacks a framework for indemnity and legal representation of health professionals in the public sector and has commenced research in this area with a view developing the framework.

COMMITTEE RECOMMENDATIONS & PROPOSED AMENDMENTS

The Committee therefore recommends that the Bill be amended to ensure:

- (a) The Director General for Health is retained as a member of the Council.
- (b) The Bill articulates the appointing authority to the Council.
- (c) The qualifications of the chief executive officer be amended to broaden the applicant pool to persons with health-related degrees instead of just persons with a degree in medicine.
- (d) The person applying for the position of Chief Executive Officer should be allowed to disclose any direct or indirect interest in the health sector, since as currently drafted in the Act, the provision may make it impossible to fill the position.

Committee stage amendments proposed by the Committee are attached to this report as *Annex 3*.

MIN. NO. SCH 22/07/2021: CONSIDERATION OF PENDING LEGISLATIVE BUSINESS BEFORE THE COMMITTEE

There Committee considered pending Legislative Business as follows-

- 1) **Bills**

The Committee resolved to consider and adopt its amendments to the Health Amendment Bill, 2021 on Thursday, 29th July, 2021 at 9.00am.

2) Statements

The Committee considered its Statement Tracker and resolved to process pending statements in the order of referral to the Committee by prioritizing the older Statements.

3) Petitions

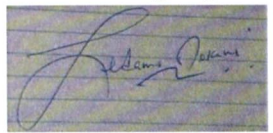
The Committee considered its Petition Tracker and resolved to process pending Petitions in the order of referral to the Committee by prioritizing the older Petitions.

MIN. NO. SHC 23/07/2021: COMMITTEE RETREAT TO CONSIDER AND WRITE REPORTS ON THE UTILIZATION OF COVID-19 FUNDS.

The Committee considered its calendar of activities and resolved to take a retreat in the 1st week of September, 2021 to consider and write its reports on the utilization of Covid-19 Funds by County Governments.

MIN. NO. SCH24/7/2021: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business, the meeting adjourned at 12.15pm.



SIGNED:

For: CHAIRPERSON

DATE:29/7/2021.....

TWELFTH PARLIAMENT |FOURTH SESSION



MINUTES OF THE 5TH SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON THURSDAY, 29TH JULY, 2021, AT 9.00A.M. ON THE ZOOM ONLINE CONSIDERATION OF THE COMMITTEE REPORT AND AMENDMENTS TO THE HEALTH (AMENDMENT) BILL, 2020.

PRESENT

- 1) Sen. Ledama Olekina, MP- Chairing
- 2) Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP
- 3) Sen. Beatrice Kwamboka, MP
- 4) Sen. Beth Mugo, EGH, MP
- 5) Sen. Millicent Omanga, MP

APOLOGY

- 1) Sen. (Dr.) Michael Mbito, MP
- 2) Sen. Mary Seneta, MP
- 3) Sen. (Prof) Samson Ongeru, EGH, MP
- 4) Sen. Fred Outa, MP

SECRETARIAT

- | | | |
|----|--------------------|------------------------------------|
| 1) | Ms. Emmy Chepkwony | - Principal Clerk Assistant 1 |
| 2) | Ms. Caroline Njeri | - Clerk Assistant III |
| 3) | Ms. Sombe Toona | -Legal Counsel |
| 4) | Mr. Robert Rop | -Audio Officer |
| 5) | Mr. Boniface Mbiti | -SAA |
| 6) | Ms. Lynn Aseka | - Parliamentary Intern, Committees |

MIN. NO. SCH. 25/7/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.24 a.m and the meeting commenced with a word of prayer.

MIN. NO. SCH. 26/7/2021: ADOPTION OF THE AGENDA

The committee adopted the agenda of the sitting, as set out below, having been proposed by **Sen. Dr. Abdullahi Ali, MP** and seconded by **Sen. Millicent Omanga, MP**: -

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*
2. Confirmation of Minutes of the Previous Sittings
3. ***Consideration and approval of the proposed amendments to the Health (Amendment) Bill, 2020***
4. Any other business.
5. Date of the Next Meeting.
6. Adjournment

MIN. NO. SCH. 27/7/2021: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The Committee confirmed the minutes of the Previous sittings as follows-

1. Minutes of the Tuesday, 6th July, 2021 were read and confirmed as a true record of the proceedings after they were proposed by Sen. Millicent Omanga, MP and Seconded by Sen. Beatrice Kwamboka, MP. The Minutes were signed by the Chairman.
2. Minutes of the Wednesday, 21st July, 2021 were read and confirmed as a true record of the proceedings after they were proposed by Sen. Beatrice Kwamboa, MP and Seconded by Sen. Beth Mugo, MP. The Minutes were signed by the Chairman.
3. Minutes of the Thursday, 23rd July, 2021 were read and confirmed as a true record of the proceedings after they were proposed by Sen. Millicent Omanga and Seconded by Sen. Dr. Abdullahi Ali, MP. The Minutes were signed by the Chairman.
4. Minutes of the Tuesday, 27th July, 2021 were read and confirmed as a true record of the proceedings after they were proposed by Sen. Beatrice Kwamboka, MP and Seconded by Sen. Beth Mugo, MP. The Minutes were signed by the Chairman.
5. Minutes of the Tuesday, 29th July, 2021 were read and confirmed as a true record of the proceedings after they were proposed by Sen. Dr. Abdullahi Ali, MP and Seconded by Sen. Beth Mugo, MP. The Minutes were signed by the Chairman.

MIN. NO. SCH. 28/7/2021: CONSIDERATION AND ADOPTION OF THE PROPOSED AMENDMENTS TO THE HEALTH (AMENDMENT) BILL, 2020

The Committee considered and approved the amendments to the Health (Amendment) Bill, 2020 as follows-

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting paragraph (a);
- (b) by deleting the words “therefore the word three” appearing immediately after the words “and substituting” in paragraph (c) and substituting therefor the words “therefor the word two”;
- (c) by inserting the following new paragraph immediately after paragraph (c) —
 - (d) Inserting the following new subsection immediately after subsection (1) —

(1A) The Cabinet Secretary shall appoint the members nominated under subsection (1)(a), (c), (f), (g), (h) and (i) by notice in the *Gazette*.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 3 —

Amendment
of section 33
of No. 21 of
2017.

4. Section 33 the principal Act be amended —

(a) in subsection (2) deleting paragraph (a) and substituting therefor the following new paragraphs—

(a) holds at least a degree in a health related field from a university recognized in Kenya;

(aa) is registered by the relevant health professional regulatory body and is in good standing;

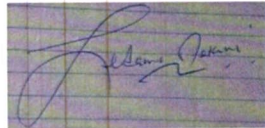
(b) by deleting subsection (4).

MIN. NO. SCH29/7/2021: ANY OTHER BUSINESS

1. The Committee approved that the Chairman of the Committee issue NOTICE of intention to move the following amendments to the Health (Amendment) Bill, Senate Bills No. 26 of 2020, at the Committee Stage.
2. The Committee members who were absent in the sitting of Tuesday, 27th July, 2021 gave their approval to the report and requested to append their signature to the adoption list.
3. The Committee resolved to conduct county visits and resolved that a schedule be prepared by the Secretariat for approval.

MIN. NO. SCH30/7/2021: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business, the meeting adjourned at 9.45am to Tuesday, 3rd August, 2021 at 9.00am.



SIGNED:

For: CHAIRPERSON

DATE:29/7/2021.....

REPUBLIC OF KENYA


**TWELFTH PARLIAMENT | FIFTH SESSION
THE SENATE**
**INVITATION FOR PUBLIC PARTICIPATION AND
SUBMISSION OF MEMORANDA**

At the sitting of the Senate held on Tuesday, 11th May, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written Memoranda.

The Memoranda may be sent **by email** on the address: csenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Friday, 28th May, 2021 at 5.00pm.**

	Bill	Committee Referred To	Email Address
1.	The Coffee Bill (Senate Bills No. 22 of 2020)	Standing Committee on Agriculture, Livestock and Fisheries	senatescaif@parliament.go.ke
2.	The Natural Resources (Benefit Sharing) Bill (Senate Bills No. 25 of 2020)	Standing Committee on Land, Environment and Natural Resources	senlandenviron@gmail.com
3.	The Health (Amendment) Bill (Senate Bills No. 26 of 2020)	Standing Committee on Health	senatekehealth@gmail.com
4.	The Basic Education (Amendment) Bill (Senate Bills No. 4 of 2021)	Standing Committee on Education	senateeducom@gmail.com
5.	The Kenyan Sign Language Bill (Senate Bills No. 5 of 2011)	Standing Committee on Education	senateeducom@gmail.com
6.	The County Vocational Education and Training Bill (Senate Bills No. 6 of 2021)	Standing Committee on Education	senateeducom@gmail.com
7.	The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 7 of 2021)	Standing Committee on Tourism, Trade and Industrialization	senatetourismandtrade@gmail.com
8.	The County Hall of Fame Bill (Senate Bills No. 9 of 2021)	Standing Committee on Labour and Social Welfare	senatecommittee.labour@parliament.go.ke
9.	The Office of The County Printer Bill (Senate Bills No. 13 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlhrc@gmail.com
10.	The Disaster Risk Management Bill (Senate Bills No. 14 of 2021)	Standing Committee on National Security, Defence and Foreign Relations	snsdfr@gmail.com
11.	The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlhrc@gmail.com
12.	The Prompt Payment Bill (Senate Bills No. 16 of 2021)	Standing Committee on Finance and Budget	scfinanceandbudget@gmail.com

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

STANDING COMMITTEE ON HEALTH

STAKEHOLDER VIEWS ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

No.	Clause	Stakeholder	Submission	Observation	Committee Resolution
PART 1- PRELIMINARY					
1.	30 (1) (a)	KMPDU	<p>Proposal There is need to have a clear criteria for the qualification and requirements of the chairperson of the Council. In addition, there is need for harmonious legal position on who the appointing authority should be, is it the President, CS or Public Service Commission</p> <p>Rationale</p>	<p>The Health Act provides that the Chairperson of the Authority shall be nominated the Cabinet Secretary. Since the other representation within the Board is made up by persons from different sectors the nominating authority is also mentioned. However, the appointing authority is not mentioned in the Act.</p> <p>The Committee may consider a subclause (1)(a) that will provide— (1)(a) the cabinet secretary shall through notice in the gazette appoint the persons nominated in paragraph (c);(f); (g); (h);(i).</p> <p>Delete clause 2 (a).</p>	Reinstate the DGH
2.	30 (1) (d)	KMA	<p>Proposal Delete paragraph (d) and replace with one medical practitioner nominated by Kenya Medical Association to represent medical practitioners.</p> <p>Rationale It is important to have the medical practitioners input in matters human</p>	<p>Paragraph (d) which provided for Attorney General is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority.</p> <p>All the categories are represented by the county public service board and the PSC.</p>	Rejected

STANDING COMMITTEE ON HEALTH

STAKEHOLDER VIEWS ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

			resources to protect the practice of the profession.		
3.		KMPDU	<p>Proposal The role of the Attorney General is undefined in the Act.</p> <p>Consider amending the section to include a representative of the salaries and remuneration commission.</p>	<p>Paragraph (d) which provided for Attorney General is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority.</p> <p>The Salaries and remuneration Commission is established under Article 230 of the Constitution. One of the functions of the SRC is to advise the National and County governments on the remuneration and benefits of public officer (Article 230 (4) (b).</p> <p>Under the Bill, the Authority is required to <i>review and make recommendations on remuneration of healthcare professionals.</i></p> <p>The Committee observes that the SRC is mandated under the constitution to <i>advise the national and county governments on the remuneration and benefits of all other public officers.</i> The Committee therefore opines that it is important to ensure that the SRC is unencumbered in its duty and should therefore remain independent from the Council.</p>	Rejected

STANDING COMMITTEE ON HEALTH

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4.	30(1) (e)	KMA	<p>Proposal Retain paragraph (e)</p> <p>Rationale The Director General for Health or a representative designated by the DG must be in HRAC.</p>	<p>Paragraph (e) which provided for Director General for Health is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority. The DGH is the technical advisor to the government on all matters related to health (section 17 of the Health Act). The Committee therefore is of the view that the DGH should be reinstated.</p> <p>Delete clause 2 (a) of the Bill. Amend clause 2 (c) the revise the representation of the county public service boards to two.</p>	Adopted
5.		KMPDU	<p>Proposal Amend to provide for the PS Finance or a representative</p>	<p>Paragraph (e) which provided for Director General for Health is proposed to be deleted. The Bill proposes that the slot be occupied by a nominee of the county public service boards in order to increase representation of the counties' employer within the Authority. The Committee observes that the allocations for revenue for national government and counties are made by the National Assembly and the Senate respectively. The Committee I therefore of the view that the PS Finance need not sit in the</p>	Rejected

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				Council since the Council is purely advisory. In addition, the Committee observes that the Council already has a large membership	
6.	30 (1) (f)	KMPDU	Proposal Retain the PSC representative	The Bill does not propose the removal of the PSC representative.	Rejected
7.	30 (1) (g)	KMPDU	Proposal Replace the representation of the county director of health with representation by one or more persons from the major healthcare unions representing each of the major healthcare cadres in the country.	<p>The county director of health is the technical advisor in respect to health in the county. (Section 19 (2) of the Health Act). The CDH is therefore essential to advising the Council.</p> <p>The Committee observed that the right to form, join and participate in a union is enriched in the Constitution. (Article 41 of the Constitution). The Committee further observed that unions are necessary for purposes of negotiating with the employer. As a result the Committee determined that the Unions should not be fettered in its duty by being part of the Council.</p>	Rejected
8.	30 (1) (h)	KMPDU	Proposal The role of the county public service boards and the public service commission need to be reconciled because of the	The Public Service Commission is established under Art. 233 of the Constitution to amongst other things review and make recommendations to the national government in respect of	Rejected

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			<p>varied and non-harmonious decisions coming from these bodies</p>	<p>conditions of service, code of conduct and qualifications of officers in the public service; and hear and determine appeals in respect of county governments' public service.</p> <p>The County Public Service Board is established under s 57 of the County Government Act to amongst other things advise the county government on human resource management and development.</p> <p>The Committee observed the decisions of the CPSB may be challenged through the PSC (Article 233 of the Constitution). The Committee further observed that the Bill in question related to the Council and the roles of the Council. As such the proposal in respect to the working relations between the PSC and the CPSB would best be handled when discussing amendments to the county government act.</p>	
9.	30 (1) (i)	KMPDU	<p>Proposal Maintain the university representation but on a rotational basis of appointment from public, private and midlevel institutions. In addition, clarify who the appointing authority is.</p>	<p>This will reduce the representation from the learning institutions from the current three to one. The Committee observed that the representation of the tertiary institutions was sufficient.</p>	Rejected

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10.	30 (1)	KMPDU	Proposal Consider amending the section to provide for a representative from the Kenya Medical Practitioners and Dentists Council.	The Committee observed that none of the regulatory bodies are represented in the Council. The Committee further noted that the professional regulators should serve their principle role of regulating the profession and not form part of the Council.	Rejected
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STANDING COMMITTEE ON HEALTH

STAKEHOLDER VIEWS ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

11.	31	KMPDU	<p>Proposal Consider including the following functions proposed under the health service commission provision under the BBI—</p> <ul style="list-style-type: none"> (a) register trained health workers (b) recruit and employ registered health workers (c) assign health workers employed by the commission for service in any public hospital or health facility (d) promote and transfer health workers according to service need (e) exercise disciplinary control over health workers employed by the commission (f) terminate the employment of health workers in the health service. <p>Also include the following additional functions—</p> <ul style="list-style-type: none"> (a) continuously set and review the standards of education and training for the persons entering the health service; (b) continuously review and demand and supply of health worker; 	<p>The health workers working in the county health system are employed by the county public service board and those working in the national referral hospitals are employed by the Public Service Commission. Both bodies are in charge of deployment, promotion, disciplinary matters of the respective employees.</p> <p>In addition, the Fourth Schedule of the Constitution delineates the responsibility of both the National and county governments. Art 187 of the Constitution and the Intergovernmental Act provide for the procedure to be used if one level of government seeks to transfer constitutionally assigned functions to the other level of government.</p> <p>The Committee observed that the Council cannot take over the functions of the PSC and the CPSB but merely serves an advisory role.</p> <p>The Committee further observed that the proposed Health Service Commission would require a Constitutional amendment since its effect would be to reassign constitutional functions from the national and county governments to it.</p> <p>The Committee noted that in the absence of a Constitutional amendment the Bill was a stop gap measure to ensure that the challenges facing</p>	Rejected
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STANDING COMMITTEE ON HEALTH

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			<ul style="list-style-type: none">(c) advise the national and county relating governments on matters relating to the health professions and health service delivery;(d) advise the government on policy and other activities necessary to achieve and maintain constitutional and other legal provisions on health rights.(e) prepare periodic reports on the Commission's activities, as well as progress reports on the attainment of health rights as provided for in the Constitution(f) liaise, where necessary, with other persons or agencies in order to fulfil its mandate.	human resources for health are addressed by the Council through its advisory role.	
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STANDING COMMITTEE ON HEALTH

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12.	33(2)	KMPDU	<p>Proposal Expand the basic minimum qualifications to at least a healthcare related degree. In addition, consider management training as an addition to the 10 years of management experience.</p> <p>Section 5(3) (b) of the Employment Act, 2007 provides for inherent qualification requirements for a job. It is stated that its not discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.</p>	<p>The Act currently provides that the applicant hold <i>at least a degree in medicine from a university recognized in Kenya, and is registered by the Medical Practitioners and Dentists Board.</i></p> <p>The Act further provides <i>has at least ten years' experience in the practice of medicine, five of which shall be experience at a senior management level.</i></p> <p>The Committee observed that the Council serves all human resources for health and therefore it was prudent to ensure that the position for CEO would be open to persons with degrees in healthcare.</p>	Adopted
13.	33(4)		<p>Proposal Consider providing a pre-appointment disclosure of interests</p> <p>Rationale The sections effect is not attainable as all persons likely have direct and indirect interests in healthcare sector.</p>	<p>The section provides <i>(4) A person shall not be appointed as the Chief Executive Officer or an officer of the Council if such person has any direct or indirect interest in the health sector.</i></p> <p>The Committee agrees that the provision as currently drafted is difficult to implement. The Committee therefore recommends that the a provision be made to ensure that the person applying or the position of CEO discloses any interest they may have.</p>	Adopted

STANDING COMMITTEE ON HEALTH

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14.		KMPDU	<p>Proposal Provide clear appointment criteria for the Board and the PSC engagement. In addition, provide term limits to position to minimise chances of abuse of power and office.</p> <p>Rationale</p>	<p>In the <i>Katiba Institute & another v Attorney General & another</i> [2020] eKLR, the high court held that <i>157. Regarding the post 2010 statutes, we wish to state without equivocation, that even though the statutes may not expressly state that appointments be made in an open, transparent, and based on fair competition and merit, the institutions and authorised officers responsible for making the appointments, have no excuse for not complying with the Constitution and the law.</i></p> <p>The Committee observed that an appeal had been lodged in respect to the case and recommended that it was best to allow the court process to determine before changing the drafting style.</p> <p>Section 36 of the Health Act provides for term limits. It provides <i>(1) The chairperson and the members of the Council, other than the ex-officio members, shall hold office for a term of five years and shall be eligible for re- appointment for one further term. (2) The members of the Council shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.</i></p>	Rejected
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STANDING COMMITTEE ON HEALTH

STAKEHOLDER VIEWS ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

15.		<p>KMA Cindy Ogumbo Alfred David</p>	<p>Proposal The Senate push for the formation of a Health Service Commission as a statutory body.</p> <p>Rationale</p>	<p>The Fourth Schedule of the Constitution delineates functions between the National and County governments. According to the Schedule, the Counties manage health services at the County Level. According to the First Schedule of the Health Act, the Counties are in charge of health facilities from level 1 to 5 of the tier of classification of the healthcare delivery. As a result the employment and deployment of health workers in the county health facilities is a matter governed by the counties through the County Public Service Board established under section 57 of the County Government Act.</p> <p>The Committee observed that a Health Services Commission may only be established under the Constitution through a Constitutional amendment since the establishment of the Commission will reassign constitutional functions of the national and county governments.</p>	Rejected
16.		<p>Richard Nzovo</p>	<p>Proposal There are has been biasness, in the past of who should head hospitals, mostly favoured been Doctors and Clinical officers.</p>	<p>The qualifications of an incharge of a public health facility are prescribed under the Health Act. The committee further observed that the change of person of incharge is best managed under policy.</p>	Rejected

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			<p>The principles of management remain the same regardless of the course you have undertaken.</p> <p>This has brought some superiority complex bringing down quality of services and patients care compromised. Hence the academic qualifications, should be used together with years of experience and the mostly qualified be awarded leadership, not using departments.</p> <p>To achieve health for all by the year 2030. Nurses need to be allowed to open private clinics, after attaining 10 years of service. Nurses are in all Corners of the country. We now have Nurses who have attained Doctors academic levels.</p> <p>For sustainability and adding value to health services offered. There needs to be cost sharing at all levels of health facilities.</p> <p>In conclusion, the academic achievements should be valuable to the holders and the community. The value of the service is measured by what you pay. Sorry for my late submission.</p>	<p>In respect to the private practice, the Committee observed that section 17 of the Nurses Act provides for the procedure for opening a private clinic and one of the requirements is for a nurse to have served for 3 years under the supervision of a senior nurse of not less than 7 years.</p>	
17.		Alfred David	Proposals	1. The Constitution provides for the transfer of functions between the two levels of	Rejected

STANDING COMMITTEE ON HEALTH

STAKEHOLDER VIEWS ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

			<ol style="list-style-type: none"> 1. Health personnel to be under national government. 2. County to manage dispensaries and health centers. 3. Cancer management to be devolved upto ward level and to have organogram for the same to ease cancer burden. 	<p>government under Article 187. The two level of government can transfer the function of public service resource management through that provision of the law.</p> <ol style="list-style-type: none"> 2. The Fourth Schedule of the Constitution is clear that National government only retains management of National referral facilities. According to the First Schedule of the Health Act, National Referral facilities are categorised as Level 6 facilities therefore to increase the ambit of health facilities managed by National government may require an amendment of the Constitution. 3. In regard to cancer management, the Senate is processing the Cancer Prevention and Control (Amendment) Bill, 2021(Senate Bills No. 11 of 2021). The Bill seeks to deepen the involvement of counties in the diagnosis and treatment of cancer. 	
18.		Cindy Ogumbo	<p>Proposal</p> <p>Even though the spirit of the Kenya health human resource advisory council is commendable- to achieve universal health coverage and to meet the requirement of the constitution to highest attainable health, a health commission with the</p>	<p>The Fourth Schedule of the Constitution is clear that National government only retains management of National referral facilities. According to the First Schedule of the Health Act, National Referral facilities are categorised as Level 6 facilities whereas counties retain management of all other health facilities.</p>	Rejected

STANDING COMMITTEE ON HEALTH

STAKEHOLDER VIEWS ON THE HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 26 OF 2020)

		<p>power to hire and deploy health personnel would be more efficient and efficacious.</p> <p>The Kenya health professions oversight authority is a necessary body. It duplicates the functions of the various regulatory bodies and adds no practical value to the provision and monitoring of health services. A more useful body would be a body providing indemnity and legal representation for health professionals in the public sector, such as that provided by the NHS for its employees.</p>	<p>A centralised body that employs and deploys health personnel would be to dispose both the national and county governments of constitutional functions related to management of health facilities under their respective jurisdictions. Such a provision may only be achieved through a constitutional amendment.</p> <p>The Committee will interrogate the proposal on providing indemnity and legal representation for health professionals in the public sector further and make its recommendations.</p>	
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Stakeholders

1. Kenya Medical Association (KMA)
2. Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU)
3. Cindy Ogumbo
4. Alfred David
5. Richard Nzovo

THE HEALTH (AMENDMENT) BILL, 2020

A Bill for

An ACT of Parliament to amend the Health Act, to enhance the functions of the Kenya Health Human Resource Advisory Council; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title

1. This Act may be cited as the Health (Amendment) Act, 2020.

Amendment of section 30 of 21 of 2017.

2. Section 30 of the Health Act, hereinafter referred to as the principal Act, is amended in subsection (1) by —

- (a) deleting paragraph (e);
- (b) deleting paragraph (d); and
- (c) deleting the word “one” appearing immediately before the words “person nominated” in paragraph (h) and substituting therefore the word “three”.

Amendment of section 31 of No. 21 of 2017.

3. The principal Act is amended by deleting section 31 and substituting therefor the following new section—

Functions of the Council.

31. (1) The Council shall—

- (a) review and make recommendations to the Cabinet Secretary on policy and uniform norms and standards for the—
 - (i) posting of interns to National Government and County Government health facilities;
 - (ii) inter county transfer of healthcare professionals;
 - (iii) transfer of healthcare professionals from one level of

government to another;

(iv) welfare and the scheme of service for health professionals;

(v) management and rotation of specialists; and

(vi) maintenance of a master register for all health practitioners in the counties;

(b) undertake an audit of the health care workers in the national health system and advise the National Government and the respective County Governments of the gaps in recruitment, employment and deployment of registered health care workers;

(c) advise the National Government and the respective County Governments on promotion of health care workers;

(d) review and make recommendations for inter-county transfer of healthcare professionals;

(e) review and make recommendations for inter-governmental transfer of healthcare professionals;

(f) review and make recommendations for training of healthcare professionals; and

(g) review and make recommendations on remuneration of healthcare professionals.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to enhance the functions of the Kenya Health Human Resource Advisory Council in order to empower it to advise the National and the respective county governments on health human resources. The mandate of the Council shall include: advising the National government and the respective county governments on recruitment, employment and deployment of health human resources; considering and recommending applications for inter-county and intergovernmental transfers; reviewing and making recommendations on training and remuneration of health human resources.

Due to the enhanced responsibilities of the Council, the Bill also proposes to increase the representation of the County Public Service Boards in the Council. This is because the counties are expected to employ the bulk of the health human resources and decisions of the Board are likely to greatly influence the functions of county governments in regard to employment of health human resources.

The Council's enhanced mandate is expected to improve health service delivery in devolved units through the promotion of cooperation between the two levels of government in the critical area of Human Resources for Health.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Health services are a devolved under Part 2 of the Fourth Schedule to the Constitution. The counties are mandated to manage health services from Level 1 to Level 5 of the tier of healthcare and employ health human resources to facilitate access to health in those health facilities.

This Bill seeks to enhance the scope of the functions of the Council. The proposed enhanced functions of the Council will affect the dual functions of the counties to manage health facilities and hire human resources for health.

The Bill concerns counties in terms of Article 110 (1) (a) of the Constitution since it relates to provision of health services by the county governments.

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