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THIRTEENTH PARLIAMENT | SECOND SESSION

THE STANDING COMMITTEE ON HEALTH

REPORT ON THE SOCIAL HEALTH INSURANCE BILL, 2023  
(NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)

PAPERS LAID	
DATE	11/10/2023
TABLED BY	Sen. Esther Okenyuni, MP
COMMITTEE	Health
CLERK AT THE TABLE	Abdirahman

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

OCTOBER, 2023

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## **ABBREVIATIONS AND ACRONYMS**

<b>AKI</b>	-	Association of Kenya Insurers
<b>CHAK</b>	-	Christian Health Association of Kenya
<b>CoG</b>	-	Council of Governors
<b>COTU</b>	-	Central Organization of Trade Unions
<b>FKE</b>	-	Federation of Kenya Employers
<b>IRA</b>	-	Insurance Regulatory Authority
<b>KHF</b>	-	Kenya Healthcare Federation
<b>MOH</b>	-	Ministry of Health
<b>NHIF</b>	-	National Hospital Insurance Fund
<b>RUPHA</b>	-	Rural Private Hospitals Association
<b>SHA</b>	-	Social Health Authority

## PRELIMINARIES

### A. Establishment and Mandate of the Standing Committee on Health

The Standing Committee on Health is established pursuant to standing order 228 (3) and the Fourth Schedule of the Senate Standing Orders and is mandated to *consider all matters relating to medical services, public health and sanitation.*

### B. Membership of the Committee

The Committee is comprised of the following Members:

- |    |   |   |                    |
|----|---|---|--------------------|
| 1. | <b>Sen. Jackson Kiplagat Mandago, EGH, MP</b> | - | <b>Chairperson</b> |
| 2. | <b>Sen. Mariam Sheikh Omar, MP</b>            | - | <b>Vice</b>        |
|    | <b>Chairperson</b>                            |   |                    |
| 3. | Sen. Erick Okong'o Mogeni, SC, M              |   |                    |
| 4. | Sen. Ledama Olekina, MP                       |   |                    |
| 5. | Sen. Abdul Mohammed Haji, MP                  |   |                    |
| 6. | Sen. Hamida Kibwana, MP                       |   |                    |
| 7. | Sen. Joseph Nyutu Ngugi, MP                   |   |                    |
| 8. | Sen. Raphael Chimera Mwinzagu, MP             |   |                    |
| 9. | Sen. Esther Anyieni Okenyuri, MP              |   |                    |

### C. Functions of the Committee

Pursuant to Standing Order 228(3), the Committee functions to –

1. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of its assigned ministries and departments;
2. Study the programme and policy objectives of its assigned ministries and departments, and the effectiveness of the implementation thereof;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the success of the ministries and departments assigned to it as measured by the results obtained as compared with their stated objectives;
5. Consider the Budget Policy Statement in line with Committee's mandate;
6. Report on all appointments where the Constitution or any law requires the Senate to approve;
7. Make reports and recommendations to the Senate as often as possible, including recommendations of proposed legislation;
8. Consider reports of Commissions and Independent Offices submitted to the Senate pursuant to the provisions of Article 254 of the Constitution;

9. Examine any statements raised by Senators on a matter within its mandate; and
10. Follow up and report on the status of implementation of resolution within their mandate.

**D. Government Agencies and Departments**

In exercising its mandate, the Committee oversees the County Governments, the Ministry of Health and its various Semi-Autonomous Government Agencies (SAGAs).

## FOREWORD BY THE CHAIRPERSON

### Hon. Speaker,

The Social Health Insurance Bill (National Assembly Bills No. 58 of 2023) was published *vide* Kenya Gazette Supplement No. 164 of 11<sup>th</sup> September, 2023. The Bill seeks to repeal the National Health Insurance Act, No. 9 of 1998, and to put in place a legislative framework to: regulate the provision of social health insurance; promote the implementation of Universal Health Coverage; and, ensure that every Kenyan has access to affordable and comprehensive quality health services.

It was introduced in the National Assembly by way of First Reading on Thursday, 14<sup>th</sup> September, 2023. The Bill was considered by the National Assembly and passed with amendments on Thursday, 27<sup>th</sup> September, 2023.

Pursuant to Article 110(4) of the Constitution, the Bill was referred to the Senate where it was introduced by way of First Reading on Tuesday, 3<sup>rd</sup> October, 2023. It thereafter stood committed to the Standing Committee on Health pursuant to standing order 145.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill.

In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Wednesday, 4<sup>th</sup> October, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill.

Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill as follows -

- a) Government Departments/Agencies
  - Ministry of Health (MoH)
  - Council of Governors (COG)
  - National Health Insurance Fund (NHIF)
  - Insurance Regulatory Authority (IRA)
- b) Trade Unions
  - Central Organisation of Trade Unions (COTU)
- c) Private Sector
  - Federation of Kenya Employers (FKE)
  - Kenya Healthcare Federation (KHF)
  - Christian Health Association of Kenya (CHAK)
  - Rural Private Health Association (RUPHA)
  - Association of Kenya Insurers (AKI)

Further, following the call for submissions, the Committee received written memoranda from various stakeholders, namely: Ministry of Health (MoH); Council of Governors (COG); National Health Insurance Fund (NHIF); Insurance Regulatory Authority (IRA); Central Organisation of Trade Unions (COTU); Federation of Kenya Employers (FKE); Kenya Healthcare Federation (KHF); Christian Health Association of Kenya (CHAK); Rural Private Health Association (RUPHA); Association of Kenya Insurers (AKI); Kenya Union of Clinical Officers (KUCO); Former Parliamentarians Association (FOPA); Pharmaceutical Society of Kenya (PSK); Moi University; Kenya Association of Retired Officers (KARO); Confraternity of Patients Kenya; International Budget Partnership - Kenya (IBP-Kenya); Kenya Faith-Based Health Services Consortium; The Actuarial Society of Kenya (TASK); Association of Kenya Medical Laboratory Scientific Officers (AKMLSO); Health NGOs Network (HENNET); International Commission of Jurists (ICJ); Kenya Dental Association (KDA); Civil Society Organisations (comprising of Kenya AIDS NGOs Consortium (KANCO), Amnesty International Kenya, People's Health Movement (PHM), Institute of Public Finance (IPF), Transparency International Kenya (TI Kenya), Scaling Up Nutrition Civil Society Alliance, Kenya Human Rights Commission (KHRC), Remusi Housing Cooperative Society Ltd, Young Professionals for Development, International Commission of Jurists, Kenya (ICJ Kenya) and Organizations of African Youth – Kenya), Helium Kenya and Kenya Union of Nutritionists and Dietitians (KUNAD).

The Committee proceeded to consider the Bill at the length and held extensive discussions thereon including consultations with key stakeholders. This Report is therefore the product of extensive consultations that have taken place to ensure that we have a good law in place that will stand the test of time.

**Hon. Speaker,**

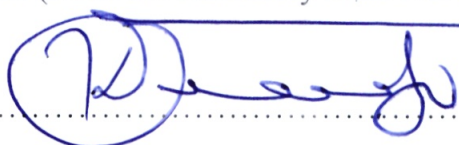
May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

Lastly, I wish to thank the stakeholders who submitted written memoranda which greatly aided the Committee in considering the Bill.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Health on The Social Health Insurance Bill (National Assembly Bills No. 58 of 2023)






Signed .....  ..... Date..... 11/10/2023

**SEN. JACKSON MANDAGO, EGH, M.P.**

**CHAIRPERSON, STANDING COMMITTEE ON HEALTH**

**ADOPTIO OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH ON THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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

	Name	Designation	Signature
1.	Sen. Jackson Kiplagat Mandago, EGH, MP	Chairperson	
2.	Sen. Mariam Sheikh Omar, MP	Vice-Chairperson	
3.	Sen. Erick Okong'o Mogeni, SC, M	Member	
4.	Sen. Ledama Olekina, MP	Member	
5.	Sen. Abdul Mohammed Haji, MP	Member	
6.	Sen. Hamida Kibwana, MP	Member	
7.	Sen. Joseph Nyutu Ngugi, MP	Member	
8.	Sen. Raphael Chimera Mwinzagu, MP	Member	
9.	Sen. Esther Anyieni Okenyuri, MP	Member	

## CHAPTER ONE

### INTRODUCTION

#### A. Introduction

- 1) The Social Health Insurance Bill (National Assembly Bills No. 58 of 2023) was published *vide* Kenya Gazette Supplement No. 164 of 11<sup>th</sup> September, 2023. The Bill seeks to repeal the National Health Insurance Act, No. 9 of 1998, and to put in place a legislative framework to: regulate the provision of social health insurance; promote the implementation of Universal Health Coverage; and, ensure that every Kenyan has access to affordable and comprehensive quality health services.
- 2) The Bill was introduced in the National Assembly by way of First Reading on Thursday, 14<sup>th</sup> September, 2023. The Bill was considered by the National Assembly and passed with amendments on Thursday, 27<sup>th</sup> September, 2023. A copy of the Bill as passed by the National Assembly and referred to the Senate has been attached to this report as *Annex 2*.
- 3) Pursuant to Article 110(4) of the Constitution, the Bill was referred to the Senate where it was introduced by way of First Reading on Tuesday, 19<sup>th</sup> September, 2023, and thereafter stood committed to the Standing Committee on Health pursuant to standing order 145.
- 4) In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill.
- 5) In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Wednesday, 4<sup>th</sup> October, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advert as published has been attached to this report as *Annex 3*.
- 6) In addition, the Committee sent invitations to targeted stakeholders including government departments and agencies, private sector, Non-Governmental Organizations/development partners and faith-based organizations. Copies of the letters of invitation to the various stakeholders have been attached to this report under *Annex 4*.

#### B. Background

- 7) Article 43 of the Constitution of Kenya guarantees all citizens the right to the highest attainable standard of health. This includes access to reproductive health care, and emergency medical treatment.
- 8) The Government of Kenya has committed to accelerating the attainment of Universal Health Coverage (UHC) as a key agenda for enhancing socio-economic development.

- 9) UHC aims at ensuring that all Kenyans access and receive essential quality health services without suffering financial hardship. These services include promotive, preventive, curative, rehabilitative and palliative health services.
- 10) Progress towards the attainment of UHC is crucial to addressing the high burden of communicable conditions, a rising burden of non-communicable conditions, and cushioning the health system from emerging and re-emerging disease outbreaks and changing demographic patterns.
- 11) Out-of-pocket payments (OOP) for health services remain a major financial barrier to accessing health services in Kenya, with many households suffering catastrophic health expenditure.
- 12) Progress towards UHC will enable Kenya to protect the poor and vulnerable, invest in its human capital and make progress in its overall goal of inclusive human development.
- 13) The Social Health Insurance Bill seeks to put in place a legislative framework to regulate the provision of social health insurance with a view to promoting the implementation of UHC, and ensuring that all Kenyans have access to affordable and comprehensive quality health services.

### **C. Objects of the Bill**

- 14) The objects of the Bill are to -
  - a) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;
  - b) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;
  - c) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and
  - d) promote strategic purchasing of healthcare services.

### **D. Consequences of the Bill**

- 15) The Bill will have the consequence of: establishing a framework for the management of Social Health Insurance; providing for the establishment of the Social Health Authority; and, giving effect to Article 43(1)(a) of the Constitution which grants every Kenyan the right to the highest attainable standard of health. It further repeals the National Hospital Insurance Act, No. 9 of 1998.

### **E. Overview of the Bill**

- 16) **PART I** of the Bill contains preliminary provisions that include: the short title; interpretation; and objects of the act.

17) **Part II (Clauses 4-19)** of the Bill establishes the Social Health Authority and provides the Board, its functions, powers, qualification of members and appointment of the Chief Executive Officer among others.

**a) Functions of the Social Health Authority**

18) The functions of the Social Health Authority shall be to: Social Health Authority Board

- a) register the beneficiaries in accordance with this Act;
- b) manage the Funds established under this Act;
- c) receive all contributions and other payments required by this Act to be made to the Funds;
- d) contract health care providers and healthcare facilities upon successful certification by the relevant body;
- e) consider and make payments to contracted health care providers and healthcare facilities out of the Funds in accordance to the provisions of this Act;
- f) develop guidelines for the operations and implementation of the Funds established under this Act;
- g) establish sectoral linkages for effective management and growth of the Funds;
- h) monitor and evaluate programs and activities under the Funds;
- i) receive and address complaints that may arise from the implementation of this Act;
- j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;
- k) implement all government policies on social health insurance and related functions; and
- l) perform any other function conferred on it by this Act or any other written law.

**b) Composition of the Board of the Social Health Authority**

19) The Board of the Social Health Authority with a term of three years comprises of twelve members as follows:

- a) a non-executive Chairperson, appointed by the President;
- b) the Principal Secretary in the ministry of Health;
- c) the Principal Secretary in the ministry of Finance;
- d) the Director-General for Health;

- e) the Attorney-General or a designated representative;
- f) a representative of the Council of County Governors;
- g) a person, not a public officer, appointed by the Cabinet Secretary;
- h) 4 representatives of the Kenya Medical Association, the informal sector association, health care providers and the Central Organization of Trade Unions-Kenya, appointed by the Cabinet Secretary; and
- i) the Chief Executive Officer of the Authority, who shall be an *ex-officio* member of the Board.

20) The Chairperson and Members of the Board shall serve for a term of three years and shall be eligible for reappointment for one further term of three years. The appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups and ensure regional balance.

21) The Bill further sets out the eligibility requirements for appointment as CEO and membership of the Board: The Chairperson and the Members of the Board must be Kenyan Citizens, hold a minimum of a bachelor's degree and have knowledge and experience of not less than ten years in data science, information technology, health governance, health administration, health policy, finance or economics, five of which shall be at managerial level and meets the requirements of Chapter six of the Constitution.

22) It is important to note that a person shall not be eligible for appointment as a member of the Board if they are a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry.

23) The Chairperson and members of the Board shall be paid such remuneration fees, allowances and such other reimbursements as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

24) The Chief Executive Officer of the Authority shall be competitively recruited and appointed by the Board. The Chief Executive Officer shall hold office on such terms as the Board may, on the advice of the Salaries and Remuneration Commission determine.

25) The Bill sets out that the Chief Executive Officer must have a minimum of a master's degree from a university recognized in Kenya and at least ten years' experience in health insurance, health financing, health economics, healthcare administration or any other relevant field and must have served in a management level for a period of at least five years.

26) The CEO shall be responsible for the day to day management of the affairs of the board subject to the board's directions. The CEO shall also be responsible for the administration of the fund and shall—

27) The Bill also provides for a Corporation Secretary to the Authority, who shall be recruited through a competitive process and appointed by the Board, with terms determined by the Board, based on advice from the Salaries and Remuneration Commission.

28) The qualifications for the Corporation Secretary will include:

- a) Holding a bachelor's degree in law from a recognized Kenyan university.
- b) Being an Advocate of the High Court of Kenya.
- c) Having at least five years of experience in a corporation secretary or similar governance role.
- d) Being a member in good standing of the Institute of Certified Public Secretaries of Kenya.
- e) Meeting the requirements of Chapter Six of the Constitution of Kenya, which likely refers to ethical and integrity standards.

29) The Corporation Secretary's responsibilities shall include:

- a) Serving as the Secretary to the Board.
- b) Issuing notices for Board meetings in consultation with the Board Chairperson.
- c) Keeping custody of records related to the Board's deliberations, decisions, and resolutions.
- d) Transmitting the Board's decisions and resolutions to the Chief Executive Officer for execution and implementation.
- e) Providing guidance to the Board on matters related to governance and their responsibilities.

**c) Powers of the Authority**

30) Part II of the Bill also sets out that the Authority shall have all the powers necessary for the performance of its function including—

- a) Manage, control and administer the assets of the Authority pursuant to the provisions of the Public Finance Management Act, 2015. The Authority can however not dispose of any immovable property without the prior approval of the National Assembly;
- b) Receive any gifts, grants, donations or endowments made to the fund and make disbursements in accordance with the Act;
- c) Open a banking Account or banking accounts for the fund with Authorisation from the national treasury; and

- d) Enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purpose for which the fund is established.

31) **Part III (Clauses 20-24)** of the Bill provides for **establishment of the Primary Healthcare Fund** and the attendant sources of its funds. The purpose of the Primary Healthcare Fund established in clause 20 is to purchase primary health care services from health facilities. The sources of monies for this Fund include—

- a) monies appropriated by the National Assembly;
- b) any grants, gifts, donations or bequests;
- c) monies allocated for that purposes from fees or levies administered; and
- d) monies accruing to or received by the Fund from any other source.

32) The Fund is to be used for expenses related to its established objectives, and its expenditures are limited to the annual budget estimates prepared by the Authority at the start of the financial year. Any revisions to the budget estimates by the Board must be approved by the National Assembly in supplementary budget estimates.

33) The capital of the fund will be sourced from appropriations by the National Assembly or from other sources as provided by the Act.

34) Lastly, regulations for the implementation of the Primary Healthcare Fund will be developed by the Cabinet Secretary in consultation with the Board.

35) **Part IV (Clauses 25-27)** of the Bill provides for **establishment of the Social Health Insurance Fund** and the attendant sources of its funds, registration and membership to the fund and contributions.

36) The purpose of the Social Health Insurance Fund established in clause 25 is to purchase primary health care services from health facilities. The sources of monies for the Fund include—

- a) contributions under the Act;
- b) monies appropriated by the National Assembly for indigent and vulnerable persons;
- c) gifts, grants, innovative financing mechanisms or donations;
- d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme; and
- e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits.

- 37) Registration to the Fund will be mandatory for all Kenyans. This will be enforced by requiring the proof of registration with the Fund as a precondition of dealing with or accessing public services from the national government, county government or national or county government entities.
- 38) Non-Kenyan residents who are ordinarily resident in Kenya will also be eligible for registration. Children born after the Act's commencement will be automatically registered as members.
- 39) Access to healthcare services under Part IV will be contingent on up-to-date and active contributions. Premium financing options will also be provided for non-salaried individuals.
- 40) Contributions to the fund will also be required from Kenyan households, non-Kenyan residents, national and county governments, and other employers. Contribution methods will vary based on income sources and means testing, including deductions from salaried employment, annual contributions based on household income, and government assistance for those in need.
- 41) Contributions must be paid at the time of registration. Non-salaried persons will pay contributions annually.
- 42) Failure to pay contributions on time will result in a penalty of two percent of the overdue amount. The bill further sets out that outstanding contributions and penalties must be settled before resuming access to healthcare services provided under the Act.
- 43) **Part V (Clauses 28-30)** of the Bill provides for the establishment of the **Emergency, Chronic and Critical Illness Fund** that will defray the costs of management of chronic illness after the depletion of the social health insurance cover, and will cover the costs of emergency treatment. The sources of monies for the Fund includes—
- a) monies appropriated by the National Assembly;
  - b) gifts, grants, donations or endowments; and
  - c) such monies from any other lawful source.
- 44) **Part VI (Clauses 31-36)** of the Bill provides for **claims, benefits and empanelment and contracting of health service providers and health facilities and the establishment of the Claims Management Office** within the Authority to review and process the claims.
- 45) Every beneficiary shall be entitled to an essential healthcare benefits package which shall be prescribed by the Cabinet Secretary in consultation with the Social Health Authority Board.

- 46) Beneficiaries will not be prohibited from obtaining private health insurance in addition to the benefits provided under the Act.
- 47) The benefits payable under the Bill shall be based on a tariff as prescribed by the Cabinet Secretary.
- 48) The Social Health Authority will only make payments out of the Funds to health care providers or health care facilities that are empaneled by the relevant body and contracted by the Authority.
- 49) Healthcare providers or facilities seeking empanelment will be required to apply to the body responsible for accreditation, with the list of empanelled providers published publicly. The body responsible for accreditation may revoke accreditation, and healthcare providers or facilities can appeal this decision to the Dispute Resolution Tribunal.
- 50) The Authority will have the mandate to negotiate and enter into contracts with healthcare service providers and facilities that meet the prescribed criteria. Contracted providers and facilities will be required to meet quality standards and display prescribed identification. Contracts will be terminated if providers or facilities fail to meet the criteria.
- 51) Clause 35 establishes a Claims Management Office whose responsibilities will include -
- a) reviewing, processing and validating medical claims from healthcare providers and healthcare facilities;
  - b) appraising medical claims based on the benefit package;
  - c) issuing pre-authorizations for access to healthcare services based on the benefit package;
  - d) developing an e-claims management system;
  - e) undertaking quality assurance surveillance in respect of claims;
  - f) establishing systems and controls for detecting and identifying fraud appropriate to the Fund's exposure and vulnerability;
  - g) sensitizing claimants on the consequences of submitting false and fraudulent claims;
  - h) collecting and analyzing data for purposes of claim management;
  - i) preparing quarterly reports on claims for submission to the to the Board and the Cabinet Secretary; and
  - j) performing any other functions as may be necessary for the better carrying out of its functions under this Act

- 52) The functions of the Claims Management Office may be delegated to a suitable entity or entities such as a medical insurance provider and/or claim settling agent as defined and licensed by the Insurance Regulatory Authority under the Insurance Act.
- 53) Payments to contracted healthcare providers or facilities will be made upon the submission of a claim to the Claims Management Office. The Cabinet Secretary is required to make regulations to further specify the implementation of these provisions.
- 54) **Part VII (Clauses 37-43)** of the Bill provides for **financial provisions** including reporting mechanism, audits and accounts, investment and management of funds by the Board.
- 55) The financial year of the Authority will be for a period of twelve months, ending on June 30 each year. All funds received by the Authority during the financial year, including earnings and accruals, will be retained by the Authority for the Fund's purposes.
- 56) The Authority will be required to prepare annual estimates of its revenue and expenditure within three months after the end of each financial year. These estimates will cover expenses such as medical and healthcare claims, staff salaries, retirement benefits, maintenance of buildings and equipment, and the creation of reserve funds for future liabilities.
- 57) It will be mandatory for the annual estimates to be approved by the Board before the start of the financial year, and any increase in these estimates will require the Board's prior consent. No expenditure will be incurred by the Authority except in accordance with the approved annual estimates.
- 58) The Authority may use a portion of its finances to cover administrative expenses related to its powers and functions. However, these administrative expenses should not exceed five percent of the annual expenditure of the Fund.
- 59) The Board will be responsible for maintaining proper books and records of the Authority's income, expenditure, assets, and liabilities. Within three months after the end of each financial year, the Board will submit the accounts, income and expenditure statements, and assets and liabilities statements to the Auditor-General for auditing.
- 60) The accounts of the Authority will be audited in accordance with the provisions of the Public Finance Management Act, 2012, and the Public Audit Act, 2015. The Board will be required to prepare an annual report detailing the Authority's operations for the previous year within three months after the end of each financial year.
- 61) The Cabinet Secretary will be responsible for transmitting the annual report to Parliament within three months of receiving it.

- 62) **PART VIII (Clause 44-46)** of the Bill provides for the establishment of the **dispute resolution tribunal** to hear, and determine complaints, disputes and appeals arising from decisions made under this Act.
- 63) Individuals who are aggrieved by a decision made under the Act can appeal to the Dispute Resolution Tribunal within one month of the decision. The Tribunal will have the authority to uphold, reverse, revoke, or modify the Board's decision. Further, should a person be dissatisfied with the Tribunal's order, they can further appeal to the High Court within 21 days.
- 64) The Tribunal consists of a Chairperson appointed by the President (qualified to be a High Court judge) and four other members appointed by the Judicial Service Commission with expertise in various fields. Members of the Tribunal will serve for a period of three years and can be reappointed for an additional three-year term. A meeting of the Tribunal will require the Chairperson and at least two other members to be present.
- 65) Tribunal members will receive allowances determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission. The Procedures for the functioning of the Tribunal will be prescribed by the Cabinet Secretary.
- 66) A member's office in the Tribunal will become vacant for reasons including death, resignation, mental or physical incapacity, conviction leading to a six-month or longer prison term, failure to attend three consecutive meetings, and removal due to gross violation of the Constitution or other laws or gross misconduct.
- 67) **Part IX (Clauses 47-55)** of the Bill sets out the **miscellaneous provisions** and contains provisions for stakeholder engagement in the carrying out of the functions of the Bill.
- 68) It also provides for the mandatory requirement of digitization of all processes and services under this Act, including: registration of members, identification, contributions to the Fund, empanelment of facilities, execution of contracts, notification and preauthorization; claims management and settlement of claims.
- 69) Every Kenyan will be required to have a unique identifier for purposes of accessing the provision of services under the act.
- 70) Failure to pay contributions, misappropriation of funds, making false statements, and impersonation will be offenses under the Act with penalties including fines and imprisonment.
- 71) Courts can order individuals convicted of offenses under the Act to repay contributions unlawfully obtained, along with any penalties. Debts to the Authority will be recoverable as civil debts.
- 72) The Cabinet Secretary, in consultation with the Board, will make regulations on contributions, healthcare benefits, claims and provider enrolment.

73) This Act will prevail in case of inconsistency with other legislation related to social health insurance. Provisions of the Insurance Act will also apply to the Authority for claims administration services.

74) The Act repeals the National Health Insurance Fund Act, 1998. In case of the winding up of the Funds established under this Act, cash balances go to the Exchequer, while other assets transfer to the National Treasury.

75) The **First Schedule** to the Bill details the **transitional provisions** that will take effect on the date that the Social Health Insurance Act, 2023, is enacted -

- a) All funds, assets, and property held by the National Health Insurance Fund Board on behalf of the Fund will automatically transfer to the Authority.
- b) Relevant public officers will assist in transferring property titles to the Authority without charge.
- c) All rights, powers, liabilities, and duties previously held by or against the Government on behalf of the Fund will transfer to the Authority.
- d) Any ongoing legal actions involving the Government on behalf of the Fund will continue under the Authority.
- e) The National Health Insurance Fund will no longer provide enhanced benefits schemes and packages after the appointed day.
- f) Existing enhanced benefits schemes and packages will transfer to the Authority until the expiration of existing contracts.
- g) The National Health Insurance Fund Board is required to wind up the Fund within one year of the appointed day, transferring cash and assets to the Authority.
- h) The Authority will recruit its staff under specified conditions.
- i) Staff of the Fund can apply for positions with the Authority and may be considered if qualified.
- j) The Authority will prioritize qualified staff of the Fund in appointments.
- k) Un-appointed Fund staff may choose to retire or be redeployed within the public service
- l) The annual estimates for the Fund's financial year when the appointed day occurs will become the annual estimates for the Authority for the rest of that year, with possible variations approved by the Cabinet Secretary.

76) The **Second Schedule** to the Bill details the provisions relating to the conduct of business and the affairs of the Board.

## CHAPTER TWO

### PUBLIC PARTICIPATION ON THE BILL

- 77) Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Standing Committee on Health invited interested members of the public to submit submissions on the Bills.
- 78) An advertisement requesting for submission of memoranda from members of the public was made in the Daily Nation and Standard Newspapers on Wednesday, 4<sup>th</sup> October, 2023. Receipt of memoranda on the Bill was closed on Saturday, 7<sup>th</sup> September, 2023.
- 79) Further to the above, correspondence was dispatched to targeted stakeholders requesting for submission of memoranda and inviting them to appear before the Committee as indicated below -
- a) Government Departments/Agencies
    - Ministry of Health (MoH)
    - Council of Governors (COG)
    - National Health Insurance Fund (NHIF)
    - Insurance Regulatory Authority (IRA)
  - b) Trade Unions
    - Central Organisation of Trade Unions (COTU)
  - c) Private Sector
    - Federation of Kenya Employers (FKE)
    - Kenya Healthcare Federation (KHF)
    - Christian Health Association of Kenya (CHAK)
    - Rural Private Health Association (RUPHA)
    - Association of Kenya Insurers (AKI)
- 80) Further, following the call for submissions, the Committee received written memoranda from various stakeholders, namely: Ministry of Health (MoH); Council of Governors (COG); National Health Insurance Fund (NHIF); Insurance Regulatory Authority (IRA); Central Organisation of Trade Unions (COTU); Federation of Kenya Employers (FKE); Kenya Healthcare Federation (KHF); Christian Health Association of Kenya (CHAK); Rural Private Health Association (RUPHA); Association of Kenya Insurers (AKI); Kenya Union of Clinical Officers (KUCO); Former Parliamentarians Association (FOPA); Pharmaceutical Society of Kenya (PSK); Moi University; Kenya Association of Retired Officers (KARO); Confraternity of Patients Kenya; International Budget Partnership - Kenya (IBP-Kenya); Kenya Faith-Based Health Services Consortium; The Actuarial Society of Kenya (TASK); Association of Kenya Medical Laboratory Scientific Officers (AKMLSO); Health NGOs Network (HENNET); International Commission of Jurists (ICJ); Kenya Dental Association (KDA); Civil Society Organisations

(comprising of Kenya AIDS NGOs Consortium (KANCO), Amnesty International Kenya, People's Health Movement (PHM), Institute of Public Finance (IPF), Transparency International Kenya (TI Kenya), Scaling Up Nutrition Civil Society Alliance, Kenya Human Rights Commission (KHRC), Remusi Housing Cooperative Society Ltd, Young Professionals for Development, International Commission of Jurists, Kenya (ICJ Kenya) and Organizations of African Youth – Kenya), Helium Kenya and Kenya Union of Nutritionists and Dietitians (KUNAD).

- 81) A matrix with a summary of the submissions from the various stakeholders has been attached to this report as *Annex 6*.
- 82) Further to the above, on Friday, 6<sup>th</sup> October, 2023, the Committee held a stakeholder engagement meeting with various government departments and agencies, private sector groups and faith-based organizations as indicated above (see paragraph '79').
- 83) The **Ministry of Health** submitted that it supported the Bill in its entirety, and that most areas of contention with the Bill as raised by various stakeholders had been addressed by the amendments passed by the National Assembly.
- 84) The **Council of Governors** made the following submissions -
  - a) The Bill failed to legislate on principles such as acceptability, affordability, accessibility, equity, transparency, accountability, efficiency and sustainability that underscored it. These principles were vital for establishing the foundation of the law and institutional framework.
  - b) That Clause 26 failed to cover all demographics, necessitating reconsideration of the definition of contributor, household, indigent, and vulnerable persons to allow for populations like children in childcare facilities, and old people in homes.
  - c) The Bill failed to specify in Clauses 20, 23, and 25 how the three Funds would interact and provide for separation of premium collection and funds vis-a-vis reimbursement and payment.
  - d) While the Bill sought to reform the health financing framework, it failed to comprehensively address other key components in health such as leadership, governance, service delivery, health information systems, health workers, and medical products.
  - e) The provision of the Primary Healthcare Fund from Section 20 to 24 was inadequate and left many questions unanswered, including the pathways of accessing resources in the fund.
  - f) The Bill lacked a specified timeframe for the development of Regulations, posing implementation challenges. Additionally, it was unclear if existing regulations would be preserved.

- g) Clause 44 of the Bill lacks clarity on whether the Dispute Resolution Committee was executive or non-executive and whether it was established as a quasi-judicial structure.
- h) The First Schedule did not provide clarity on whether the transition of NHIF and its assets would be to all three Funds or just one of them.
- i) The Bill needed to address key concerns relating to NHIF, including its officers, assets, liabilities, the NHIF Board, and the protection of NHIF staff, particularly their pension.
- j) It was unclear which jurisdiction with a similar social, economic, and political environment had informed the policy and institutional proposals in the Bill.
- k) The Bill needed to be cognizant of how Public Funds are established, as its provisions may conflict with the Public Finance Management Act (No. 18 of 2012). They noted that a Fund created under the Social Assistance Act, 2013, faced implementation issues due to its establishment method.
- l) Amend the Bill to include County Governments as key stakeholders in health financing.

85) The **National Health Insurance Fund** submitted that they fully supported the Bill, and proposed the following amendments -

- a) Amend the definition of "household" in Section 2 to clarify it as a nuclear unit comprising a contributor, their declared spouse and children. A misinterpretation of this unit would impact resources allocated or generated by the contributor.
- b) Amend Section 5(a) to read "register contributors and beneficiaries in the accordance with the Act". The registration was necessary to enable the Authority to track contributions.
- c) Revise clause 8(1)(c) on employment requirements to include a wide range of expertise other than health and ICT, as such clauses limit the appointing authorities' discretion.
- d) Delete clause 8(2)(e) as its provisions overlapped with clause 8(2)(a), which addressed violations of Chapter six of the Constitution through criminal convictions.
- e) Amend Clause 12 to stipulate that the quorum for Board meetings should be two-thirds of the total membership, aligning with best governance practices.
- f) Amend Clause 25 to include 'investment income, including but not limited to rental income,' to exempt the Authority's income from taxes, as it would be used to pay benefits.

- g) Specify that the Cabinet Secretary must consult the Board of the Social Health Authority in matters of registration, regulations for the Emergency, Chronic, and Critical Illness Fund, claim settlement, and stakeholder engagement as outlined in clause 26(4), clause 30, clause 36, and clause 47(2), and to consider the Board's Day to day operational needs in these areas.
- h) Amend Clause 28 to establish the eligibility criteria for accessing the Emergency, Chronic, and Critical Illness fund, with detailed modalities to be addressed in the regulations. This would help prevent misuse of the funds, as Clause 28 failed to provide the eligible criteria for access to the Fund.
- i) Delete Clauses 33(2) and 34(4) to make the Board responsible for the enrolment of providers into the panel and contracting of the services.
- j) Include a provision in Clause 34(6) that allows the Authority to publish termination of contract terminations on their website to inform the public, which aligns with the provision for gazettelement upon empanelment.
- k) Amend Clause 35(1) to clarify that the Claims Management Office operates under the Authority's direction and the functions of the Claims management are under the Authority's purview. Additionally, ensure that regulations under Clause 35 are in place within 6 months after the commencement of the Act for a smooth transition.
- l) Amend Clause 36(2) to enable the Cabinet Secretary, in consultation with the Board, to make regulations for the better execution of this section, which shall ease the Authority's day-to-day operations.
- m) Include a Clause 40(g) specifying that the Authority must establish reserves to address future or contingent liabilities, guided by an Actuary's advice. This is essential for fund sustainability and tariff review.
- n) Amend Clause 41(2) to read, 'the administrative expenses referred to under subsection (1) shall not exceed ten percent of the annual expenditure of the Fund.' This aligns with best practices, which allow for a margin between 10% and 15% for administrative expenses.
- o) Clarify on Clause 44(2) on whether the appropriate title Committee or Tribunal. If it is an independent body, who will fund its operations and how its decisions will be enforced.
- p) Delete Clause 47(5), as it pertains to an operational matter that falls within the purview of the Authority's day-to-day functions and does not require regulations.
- q) Revise Clause 49(5) on the fine for health facilities/healthcare providers upon conviction to include full reimbursement of unlawfully obtained amounts and a fine not exceeding Kshs. 5,000,000. This adjustment will enhance the deterrent effect of convictions for fraudulent activities.

- r) Delete paragraph 2(2) in the First Schedule, as asset disposal shall be guided by the provisions of the Public Procurement and Asset Disposal Act, No. 33 of 2015.
- s) Amend paragraph 6(1) in the First Schedule to extend the transition period to two years, as one year is insufficient to complete the entire transition process, including the winding up of contracts.

86) The **Insurance Regulatory Authority** made submissions as follows-

- a) Redraft the definition of the term “household” to remove ambiguity and enhance clarity.
- b) Define the term 'primary health care' and specify that levels 1, 2, and 3 of health services correspond to those defined under the Health Act, 2017.
- c) Replace the phrase ‘premium’ with ‘contribution’ in Clause 27(5) as the term is not defined under Clause of the Bill.
- d) Amend Clause 34(4) to include termination of a contract on the grounds of revocation of accreditation as provided under Clause 33(4). Currently, the only ground for termination is the failure to meet quality standards set by the Cabinet Secretary.
- e) Define the term 'claim' in Clause 35 to provide clarity in the context of the Social Health Insurance Bill.
- f) Delete Section 52 as there is no provision on claims administration services under the Bill.
- g) Insert a provision for regulation and supervision of the social health insurance authority. Considering that the Authority will be collecting funds from the public, it is important to have an oversight body to ensure proper prudential management and market conduct.

87) The **Central Organization of Trade Unions (Kenya)** made the following submissions-

- a) Amend Clause 7(1)(h)(iv) to include two representatives, as per the previous NHIF Act. Additionally, for a quorum to be constituted, at least one of the two representatives of COTU(K) should be present.
- b) Addition of a new Clause after Clause 17 to facilitate transition of NHIF staff to the Social Health Authority.
- c) Amend Clause 35(3) to assign the Fund’s Authority the core responsibilities of claim management rather than outsourcing them to other entities. Outsourcing such services, including fund collection and benefit management, could disrupt the authority's operations.

88) The **Federation of Kenya Employers (FKE)** made the following submissions-

- a) Delete Clause 5(j) to allow the Cabinet Secretary to consult the Authority but not be bound by any advice given by the Authority.
- b) Include FKE under Clause 7(1)(h) to ensure complete representation in the labor sector, which includes government, workers, and employers.
- c) Delete "or levies" in Part III and replace it with "monies allocated for those purposes from the fees administered" to prevent double payment and reduce costs for businesses.
- d) Delete "compulsory public service employee's insurance benefit scheme" in Clause 25(d) and replace it with a new clause: "Funds from the national government, county governments, and their respective entities for the administration of employees' benefits." This avoids discrimination and ensures a more efficient management approach.
- e) Add the definition of "social unit" and "person" in Clause 27(1) for clarity.
- f) Specify the applicable rates in Clause 2(a) to align with the Bill for clarity and consistency.
- g) Make provisions for refugees as many of them have resided in the country for extended periods and may qualify for citizenship through naturalization.
- h) Provide clarity on whether the ten percent is a one-time, monthly, or annual contribution and offer more general clarification on penalties.
- i) Prescribe essential healthcare benefits in Clause 31(1) to clearly define the essential benefits.
- j) Provide clear linkage between the Authority (Funds) and the primary health care services in Clause 34.
- k) Reduce the cap of administrative expenses from 5% to 2% in line with NSSF, ensuring it does not exceed 2% of the audited financial statement in Clause 41(2).
- l) Insert the words "as amended from time to time" in Clause 48(4) to align with the provisions of the Data Protection Act, 2018 and maintain consistency with existing law.
- m) Increase the fine in Clause 49(1) to not exceeding one million to align it with similar provisions. Additionally, separate subclauses (b) and (c) as they deal with service providers, distinct legal entities from staff, to standardize the fines.
- n) Replace "Despite the generality" with "Subject to subsection (1)" in Clause 50(2) to clarify that consultation with the Board in making regulations is mandatory, not optional.
- o) Add a new principle in Clause 50(4) (e) for meaningful public participation specified under article 10(2)(a) of the constitution in the regulations making process to conform to the constitutional requirement of public participation.

- p) Absorb NHIF staff following due process provided by applicable labor laws in paragraph 6(2) of the First Schedule for a seamless transition and to protect jobs and households.
- q) Include an automatic "saving" provision in Clause 6(2) to transition all NHIF staff to the new Authority without requiring them to reapply, addressing concerns of unfair labor practices.

89)The **Confraternity of Patients ( COFPAK)** made the following submissions-

- a) Amend Clause 27(1)(b) to allow for monthly contributions instead of annual contributions to accommodate unemployed individuals who depend on daily wages.
- b) Provide a definition for 'emergency treatment' in Clause 28 and its eligibility criteria that align with the provisions of the Kenyan Constitution under Article 43(2).
- c) Define the phrase "essential healthcare benefit packages and timings' in Clause 31(1) as it lacks clarity regarding the healthcare package for beneficiaries.
- d) Inclusion of Patients Organization (COFPAK) in Clause 45(b) to represent the patient's views in the Dispute Resolution Committee.
- e) Employers continue paying for the social health insurance for the former/retired staff.
- f) Patients should access healthcare services in any facility in the country (whether private, public, or faith-based) without necessarily selecting facilities as a prerequisite without any extra payments.

90)The **Kenya Healthcare Federation** made the following submission-

- a) That the bill/act to be referred as the Social Health Protection Act
- b) Amend structures of the social health insurance to include two arms Social Health Insurance and Social Health Assistance that goes beyond traditional diseases.
- c) Amend definitions of a child, mature minor, chronic illness, emergency treatment, and tariff in Clause 2.
- d) Amend Clause 5(d) to define relevant bodies allowing accreditation to be defined and to include KMPDC, PPB, Nursing Council or any other relevant professional body that is mandated by the law to license service providers.
- e) Inclusion of the words "healthcare background" in the list of qualifications in Clause 7(1)(f).

- f) Deletion of the word “not being a public officer” and addition of the word “healthcare background” in the list of qualifications Clause 7(1)(g) to avoid discrimination against other public officers.
- g) Amend Clause 7(1)(h) to include Kenya Healthcare Federation as a for private sector representation in the Authority’s Board.
- h) Remove the phrase 'sentenced to a term of imprisonment exceeding six months' from Clause 8(2). Criminals convicted of any offense should be ineligible for public office.
- i) Clarify on the remuneration and quantifications of the CEO by the Authority’s board in Clause 13(1) for accountability and to prevent blame shifting.
- j) Amend Clause 14(1) to require a master's degree for the CEO instead of a bachelor's degree, and ensure trained individuals are not excluded from the qualification list
- k) Clauses 21(a), 25(1)(b), and 29(a) specify the percentage (%) of funds allocated by the National Assembly to Primary Healthcare Fund, Social health Insurance Fund, Emergency, Chronic and Critical Illness Fund for transparency and accountability purposes.
- l) Addition of new Clause after Clause 23 to read, “PHC Fund promotion shall be deployed and publicized by Community Health Promoters to ensure continued membership subscription and membership education on benefits of SHIF triple funds.”
- m) Amend Clause 26(5) to remove the requirement to produce proof of registration as a precondition of accessing any public services from national and county governments.
- n) Amend Clause 27(20)(c) to include the population not in a household, that is, street children, people in elderly homes, mature minors (persons/families and children affected by teenage pregnancies.
- o) Deletion of the word “government” in Clause 27(5) and replace it with “Social Health Authority”.
- p) Addition of a Clause after Clause 27(5) to make provision for persons who lose formal employment to allow transition into other forms of contribution into the fund.
- q) Amend clause 28(b) to define the term “emergency” and provide a list of emergency treatments/conditions to be covered.
- r) Amend Clause 30 to include a penalty for denial; of emergency services by health providers and facilities.
- s) Amend Clause 31(1) to define essential healthcare benefits package components.

- t) Addition of new Clause after Clause 48(4) to make provision for good communication, accountability, and transparency.
- u) Addition of a new Clause after Clause 49(1) to protect employees whose contributions fail to be paid by an employer.
- v) Amend Clause 35(4) to include medical practitioners in the decision on the appropriateness of a procedure where the medical service provider is seeking a pre-authorization.
- w) Amend Clause 36(1) to provide for minimum timelines for claims settlements and provide recourse on delayed payments.
- x) Amend Clause 38(1) to provide for the maximum percentage of funds that can be placed on investment without the disruption of SHA operations.
- y) Amend Clause 52 to grant the Insurance Regulatory Authority (IRA) regulatory authority over the Social Health Insurance Authority and apply provisions of the Insurance Act to all aspects of insurance business carried out by the authority.

91) The **Rural Private Hospitals Association of Kenya (RUPHA)** submitted as follows:

- a) Amend the definition of 'empanelment' in Clause 2 by removing 'approved by the board' to avoid granting the SHA Board the power to usurp the functions of another government agency, the 'accrediting body' referred to in Clause 33(2).
- b) Amend the definition of "health care provider" and "health care facility" for clarity and alignment with the Health Act, 2017.
- c) Provide clarity on whether the term Social Health Authority and National Social Health Authority are to be used interchangeably in the Bill.
- d) Define the term 'essential health care' to demarcate the scope of primary healthcare and align the Bill with the objectives as outlined in Clause 3(b) and (d).
- e) Redraft Clause 5(f) to differentiate guidelines, which are advisory and non-binding, from regulations, which carry the force of law and are enforceable.
- f) Redraft Clause 7(1)(h)(iii) to specify the inclusion of 'private healthcare facilities' in the Bill's representation. The change will also align with the definition assigned by the Health Act, 2017.
- g) Include 'monies appropriated by the National Assembly for the provision of Primary Health Services to indigent and vulnerable persons' in Clause 21.
- h) Amend Clause 24 to read as follows, "In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Primary Healthcare Fund", as the Board will be responsible for implementing the Regulations published by the Cabinet Secretary.

- i) Make a provision in Clause 25(1) that states the purpose of the Social Health Insurance Fund (SHIF), provides clarity, and limits any misappropriation of the monies that will be paid to SHIF.

92) The **Kenya Faith-Based Health Services Consortium (KCCB, CHAK, MEDS & SUPKEM)** made the following submissions-

- a) Make provision for a time frame for meaningful public participation in Clause 46.
- b) The First Schedule to allow NHIF or dispute resolution committee to settle claims, and liabilities before transition.
- c) Amend Clause 27(2)(a) to allow 1.5 % deduction and a cap of Kes 5,000 to caution employee and employer, instead of the proposed 2.75% of the salaried contributions.
- d) Amend Clause 7 to include Faith Based Organizations (FBO) in the Board, since they provide 40% of healthcare services.
- e) Inclusion of a provision in Clause 13 for recruitment to commence 6 months prior to the end of the CEO's contract and hiring to occur 3 months before the exit to avoid the need for acting appointments.
- f) The Bill in Clause 35 should refrain from legislating operational aspects such as outsourcing, single sourcing or syndicated procurement to prevent potential fraud and conflicts of interest involving private entities responsible for claim management.
- g) That if insurance brokers are entrenched in Clause 36, they should not be allowed to handle funds, and all funds to remain under the control of the Authority.
- h) The planned transition in First Schedule should adhere to the existing legislation on labor laws and rights of employees, is fair, sensitive to employee concerns and free from discrimination, punitive measures or regressive actions.
- i) Clarify on Clause 16(3) to establish regulations that ensure proper order and chain of command within the Board to safeguard the CEO'S role and prevent other members from sidelining them.

93) **International Budget Partnership Kenya (IBP-Kenya)** made the following submissions -

- a) That Clause 27(2)(b) should specify when unsalaried Kenyans without monthly income should make their contributions to allow for better planning. Requiring annual lump sum payments may lead to widespread defaults and pose challenges to the Government.
- b) That the Bill should clarify whether both the national and county governments are responsible for paying the premiums as stated in Clause 27(2)(c).

- c) That Clause 20 lacks clarity regarding the claims process for public health facilities, which could impact healthcare services in county health facilities. National legislation related to healthcare in county facilities, as per the Fourth Schedule of the Constitution, should ensure a balance of functional responsibilities and finances. Counties should be given the opportunity to be creative and manage primary healthcare with adequate resources.
  - d) That the Senate should clarify if the separation of the NHIF into the separate funds will not create an additional layer of bureaucracy in the management of social health insurance schemes.
  - e) Amend Section 35 as the proposal could increase the Fund operating costs, contradicting the Bill's goals to keep administrative cost below 5%. The Section could also create conflict of interest with private health insurers who compete with NHIF and the proposed Authority.
  - f) Clarify in Clauses 26 and 27 whether penalties apply to the vulnerable and poor for late premium payments. Specifically, Clause 27(c) should define the government's role in providing social protection for the poor instead of mandating them to seek credit for healthcare expenses.
- 94) The minutes of the Committee meetings on the Bill have been attached to this report as *Annex 1*. In addition, a schedule of the meetings held with the aforementioned stakeholders has been attached to this report as *Annex 5*.
- 95) The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this report as *Appendix 6*.

## CHAPTER THREE

### COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

#### A. Committee Observations

96) Having considered the Social Health Insurance Bill, 2023, National Assembly Bill No. 58 of 2023 and submissions from stakeholders, the Committee made the following observations -

- a) Article 43 of the Constitution of Kenya guarantees all citizens the right to the highest attainable standard of health. This includes access to reproductive health care, and emergency medical treatment.
- b) The Government of Kenya has committed to accelerating the attainment of Universal Health Coverage (UHC) as a key agenda for enhancing socio-economic development. UHC aims at ensuring that all Kenyans access and receive essential quality health services without suffering financial hardship. These services include promotive, preventive, curative, rehabilitative and palliative health services.
- c) Progress towards the attainment of UHC is crucial to addressing the high burden of communicable conditions, a rising burden of non-communicable conditions, and cushioning the health system from emerging and re-emerging disease outbreaks and changing demographic patterns.
- d) Out-of-pocket payments (OOP) for health services remain a major financial barrier to accessing health services in Kenya, with many households suffering catastrophic health expenditure. Social health insurance will enable Kenya to protect the poor and vulnerable, invest in its human capital and make progress in its overall goal of inclusive human development.
- e) The Social Health Insurance Bill seeks to put in place a legislative framework to regulate the provision of social health insurance with a view to promoting the implementation of UHC, and ensuring that all Kenyans have access to affordable and comprehensive quality health services.
- f) The Bill provides for the promotion of preventive and promotive health care through the establishment of the Primary Healthcare Fund which will primarily purchase primary healthcare services from county health facilities.
- g) The Bill provides for the coverage of costs of emergency treatment, critical illness and chronic illness through the establishment of the Emergency, Chronic and Critical Illness Fund. This Fund is premised on the Constitution of Kenya, 2010 which provides that a person shall not be denied emergency medical treatment.

- h) The Bill promotes the attainment of Universal Health Coverage in the country as it seeks to ensure that all Kenyans have access to affordable and comprehensive quality health services through the establishment of the Social Health Insurance Fund. The Fund will provide health cover for older persons, indigents and other vulnerable persons in society including persons in lawful custody. The Bill is therefore aligned to the Constitution of Kenya, 2010 which requires the government to provide appropriate social security to persons who are unable to support themselves and their dependents.
- i) The Bill repeals the National Health Insurance Fund Act, No. 9 of 1998 and seeks to promote transparency and establish checks and balances in the delivery of social health insurance through the separation of key functions such as registration, claims management, empanelment and dispute resolution. This separation is expected to enhance efficiencies, and effectiveness of the Fund.
- j) The Bill also makes the Social Health Authority a strategic purchaser compared to the National Health Insurance Fund which was a passive purchaser: It provides for the active identification of the package of healthcare to which the population is entitled; selection of healthcare providers from whom services will be purchased; contracting of the services to be purchased, including contractual arrangements and mechanisms of paying providers. With this, the Social Health Authority is expected to enhance responsiveness to the health needs of Kenyans as contemplated in the Kenya Universal Health Coverage Policy, 2020-2030.
- k) The Bill seeks to enhance efficiency in the delivery of social health insurance by limiting administrative expenses to 5 percent of the annual expenditure of the Fund.
- l) The Bill seeks to address the chronic challenge of reverse subsidization of health care: For example, the Committee found that, cumulatively, so far, the Government has spent close to KShs. 100 Billion on enhanced schemes for teachers, police officers and other civil servants. Owing to high utilization, funds from the normal NHIF cover have been used to sustain the enhanced schemes, leading to a reverse subsidy in which the poor pay for health services rendered to the more fortunate. Further, the Committee found that contracts for the enhanced schemes were often outsourced to private service providers leaving NHIF with liquidity challenges.
- m) The Bill is further aligned to the Kenya Health Financing Strategy, 2020-2030 whose goal is to ensure adequacy, efficiency and fairness in the financing of health services in a manner that guarantees all Kenyans access to essential high quality health services they require. The Strategy calls for the prioritization of mechanisms to pool resources in a manner

that ensures efficiency and equity through the creation of several pools of funds including the social health pool to meet the costs of health services in Kenya. In furtherance of this, the Strategy recommends the establishment of a functional and autonomous Kenya Social Health Insurance Fund for the management of the mandatory-pooled health revenues needed for curative and rehabilitative essential services. The strategy further recognizes that a single social health insurance fund, governed by an independent board and supported by competent management, is the preferred institutional mechanism for mandatory insurance, as it limits administrative expenses, which are usually high with multiple social health insurance funds.

- n) Majority of the concerns raised by stakeholders with regards to the Bill during public participation had already been addressed in the amendments passed the National Assembly. For example, concerns raised regarding the fate of staff at NHIF once the NHIF Act is repealed. The Bill as passed by the National Assembly allows for qualified staff to be absorbed by the Authority. It further provides for the option of early retirement, or redeployment within the public services.
- o) It was further the observation of the Committee that, considering the paradigm shift represented by the Bill, concerns raised by stakeholders during public participation regarding novel challenges that were likely to arise during implementation would be more appropriately addressed through regulations, rules and guidelines.

#### **B. Committee Recommendations**

97)The Committee therefore recommends that the Senate **passes the Bill without amendments.**

Annex 1



**MINUTES OF THE NINETIETH SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON MONDAY 9<sup>TH</sup> OCTOBER, AT 10.00AM, ON THE ZOOM ONLINE MEETING PLATFORM.**

**PRESENT**

1. Sen. Jackson Kiplagat Mandago, EGH, MP	-	<b>Chairperson</b>
2. Sen. Mariam Sheikh Omar, MP	-	<b>Vice-Chairperson</b>
3. Sen. Erick Okong'o Mogeni, SC, MP	-	Member
4. Sen. Ledama Olekina, MP	-	Member
5. Sen. Raphael Chimera, MP	-	Member
6. Sen. Joseph Nyutu Ngugi, MP	-	Member
7. Sen. Abdul Mohamed Haji, MP	-	Member
8. Sen. Hamida Kibwana, MP	-	Member
9. Sen. Esther Anyieni Okenyuri, MP	-	Member

**SECRETARIAT**

1. Dr. Christine Sagini	-	Committee Clerk
2. Ms. Florence Waweru	-	Clerk Assistant
3. Mr. Mitch Otoro	-	Legal Counsel
4. Mr. Jackson Wekesa	-	Legal Counsel
5. Ms. Annette Khayela	-	Research Officer
6. Ms. Brenda Wekesa	-	Research Officer
7. Mr. Victor Kimani	-	Audio Officer
8. Ms. Gladys Chombo	-	Protocol Officer
9. Ms. Lilian Onyari	-	Fiscal analyst
10. Mr. Ibrahim Mohammed	-	Sergeant –at-arms

**MIN/SEN/SCH/497/2023**

**PRELIMINARIES**

The meeting was called to order at 10.30 a.m. with a word of prayer from the Chairperson.

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MIN/SEN/SCH/498/2023

ADOPTION OF AGENDA

The Agenda was adopted as proposed by Sen. Mariam Sheikh Omar, MP and seconded by Sen. Hamida Kibwana, MP as follows;

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of minutes of the sitting held on Friday, 6<sup>th</sup> October, 2023;
4. Matters arising from previous minutes;
5. Overview and consideration of memoranda matrix on the Digital Health Bill (National Assembly Bill No.57 of 2023) and the Social Health Insurance Bill (National Assembly No. 58 of 2023) (*Committee Paper No.48*);
5. Any other business;
6. Adjournment/Date of the Next Meeting.

MIN/SEN/SCH/499/2023

CONFIRMATION OF MINUTES OF THE SITTING HELD ON FRIDAY, 6<sup>TH</sup> OCTOBER, 2023

The minutes of the 89<sup>th</sup> sitting held on Friday, 6<sup>th</sup> October, 2023 were confirmed to be a true record of the deliberations having been proposed by Sen. Esther Anyieni Okenyuri, MP and seconded by Sen. Mariam Sheikh Omar, MP.

MIN/SEN/SCH/500/2023  
MINUTES

MATTERS ARISING FROM PREVIOUS

There were no matters arising.

MIN/SEN/SCH/501/2023

OVERVIEW AND CONSIDERATION OF MEMORANDA MATRIX ON THE DIGITAL HEALTH BILL(NATIONAL ASSEMBLY BILL NO.57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY NO. 58 OF 2023) (COMMITTEE PAPER NO.48);

The committee considered the matrices on public participation under each Bill and noted the following -

a) **Under the Digital Health Bill (National Assembly Bill No.57 Of 2023)**

1. On the composition of the Digital Health Agency Board, Members noted that there was a need to further prescribe the criteria for the three representatives of the Council of Governors to ensure technical skill and competence. Members proposed making such specifications as a representative of the County Executive Committee Health Caucus, or the Chief Officer of Health Caucus.
2. Members further noted that several stakeholders had requested for representation on the Board. Noting that this was an issue that cut across several parastatals, Members noted that there was a need to review the composition of Boards in general, and to propose amendments to the State Corporations Act.
3. Noting the similarities between the Digital Health Bill, 2023, and the County E-Health Bill sponsored by Sen. Hamida Kibwana, MP, Members noted that there was a need to harmonize the two Bills with a view to ensuring the prudent use of public resources.

b) **Under the Social Health Insurance Bill (National Assembly No. 58 of 2023)**

1. Members noted that the rate of contributions should be specified in the law rather than be left to regulations.
2. Provisions ought to be made under the Transitional Provisions to guarantee no loss of livelihood for current NHIF staff.
3. Members further noted that several stakeholders had requested for representation on the Board. Noting that this was an issue that cut across several parastatals, Members noted that there was a need to review the composition of Boards in general, and to propose amendments to the State Corporations Act.
4. Members noted general concerns arising from provisions on registration, contributions, fines, penalties and the enhanced schemes and noted that they could be addressed where necessary, following the roll-out and implementation of the Bill.

Following extensive deliberations on the two Bills, the Committee resolved to adopt the Bills without amendments, and to address the issues raised in the Bills once they were assented to.

**MIN/SEN/SCH/503/2023**

**ANY OTHER BUSINESS**

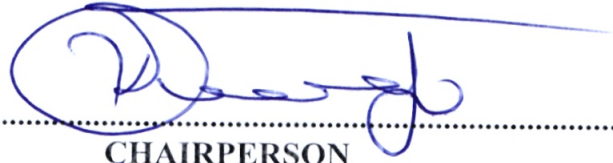
There was no other business.

MIN/SEN/SCH/504/2023

ADJOURNMENT

There being no other business, the meeting was adjourned at 1.30 pm. The next meeting was scheduled for 1.45 pm.

SIGNED: .....



CHAIRPERSON

DATE: .....

11/19/2023



**MINUTES OF THE EIGHTY-NINTH SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON FRIDAY 6<sup>TH</sup> OCTOBER, AT 10.00AM AT SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS.**

**PRESENT**

- |   |   |                         |
|---|---|-------------------------|
| 1. Sen. Jackson Kiplagat Mandago, EGH, MP | - | <b>Chairperson</b>      |
| 2. Sen. Mariam Sheikh Omar, MP            | - | <b>Vice-Chairperson</b> |
| 3. Sen. Abdul Mohamed Haji, MP            | - | Member                  |
| 4. Sen. Raphael Chimera, MP               | - | Member                  |
| 5. Sen. Hamida Kibwana, MP                | - | Member                  |
| 6. Sen. Esther Anyieni Okenyuri, MP       | - | Member                  |

**ABSENT WITH APOLOGY**

- |                                      |   |        |
|--------------------------------------|---|--------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - | Member |
| 2. Sen. Ledama Olekina, MP           | - | Member |
| 3. Sen. Joseph Nyutu Ngugi, MP       | - | Member |

**SECRETARIAT**

- |                          |   |                   |
|--------------------------|---|-------------------|
| 1. Dr. Christine Sagini  | - | Clerk Assistant   |
| 2. Ms. Florence Waweru   | - | Clerk Assistant   |
| 3. Mr. Mitch Otoro       | - | Legal Counsel     |
| 4. Mr. Jackson Wekesa    | - | Legal Counsel     |
| 5. Ms. Annete Kwamboka   | - | Legal Counsel     |
| 6. Mr. Victor Kimani     | - | Audio Officer     |
| 7. Mr. Ngeno             | - | Media Relations   |
| 8. Ms. Gladys Chombo     | - | Protocol Officer  |
| 9. Ms. Lilian Onyari     | - | Fiscal analyst    |
| 10. Mr. Ibrahim Mohammed | - | Sergeant –at-arms |

**INATTENDANCE (see attached attendance register)**

**1. Ministry of Health**

- |                     |   |   |
|---------------------|---|---|
| a) Mr. Harry Kimtai | - | Principal Secretary State<br>Department of Medical Services |
|---------------------|---|---|

- b) Ms. Terry Rotich - State Legal Counsel
- c) Dr. Elizabeth Wangia - Ag, Director Health Financing
- d) Dr. Joyce Wamiewe - Directorate of Digital Health

## **2. Council of Governors**

- a) Hon. Mutahi Kahiga - Governor Nyeri – Chairperson, Human Resource, Labour and Social Welfare Committee, COG
- b) Ms. Irene Ogamba - Director
- c) Ms. Mabel Abuor - Official
- d) Ms. Naomi Kefa - Legal Counsel

## **3. National Hospital Insurance Fund- NHIF**

- a) Dr. Samson Kuhora
- b) Ms. Evelyne Khamase
- c) Mr. Chrisostim Wafula

## **4. Insurance Regulatory Authority- IRA**

- a) Ms. Diana Sawe Tanui - Corporation Secretary
- b) Ms. Teresa Mburu
- c) Mr. Wilson Wachira

## **5. Federation of Kenyan Employers- FKE**

- a) Ms. Jackline Mugo - Chief Executive Officer
- b) Dr. Rachel - Board Member
- c) Mr. Stephen Obiro - Head of advocacy
- d) Mr. Samson Mugwe - Head Finance

## **6. Christian Health Association of Kenya- CHAK**

- a) Dr Sama Omwenda - General Secretary
- b) Mr. Moses Mukua
- c) Mr. Jeophrey Mwalo

## **7. Rural Private Hospital Association of Kenya-RUPHA**

- a) Dr. Brian Lishenga - Chairman
- b) Ms. Cynthia Munene - Chief Executive Officer

## **8. International Budget Partnership of Kenya- IBP**

- a) Mr. John Kinuthi
- b) Ms. Nancy Ndanu
- c) Ms. Faith Ann Kinyanjui
- d) Ms. Cuba Hatson

## **9. Confraternity of Patients Kenya (COFPAK)**

- a) Mr. Joab Ogallo - Chairperson
- b) Ms. Winfred Wagura - Secretary

## **10. Association of Kenya Insurers (AKI)**

- a) Mr. Kiama William
- b) Ms. Lynne Obwanda

## **11. Kenya Healthcare Federation**

- 1. Dr. Kanyenje Gakombe
- 2. Mr. Peter Kanda
- 3. Ms. Idah Kabukuru
- 4. Dr. Jane Kyula

## **12. Kenya Association of Private Hospitals (KAPH)**

- a) Dr. Abdi Mohamed - Chairperson

## **13. Kenya Union of Nutritionists and Dietitians**

- a) Ms. Lilian Mumina - National Treasurer

## **14. Kenya Union of Clinical Officers**

- a) Ms. Mary Boniface
- b) Mr. Odongo Okatch
- c) Mr. Peter Mulwo
- d) Mr. Veyeni Moses

**MIN/SEN/SCH/491/2023**

**PRELIMINARIES**

The meeting was called to order at 10.30 a.m. with a word of prayer from the Chairperson.

**MIN/SEN/SCH/492/2023**

**ADOPTION OF AGENDA**

The Agenda was adopted as proposed by Sen. Mariam Sheikh Omar, MP and seconded by Sen. Hamida Kibwana, MP as follows;

1. Prayer;
2. Adoption of the Agenda;
3. Committee Paper on the Digital Health Bill (National Assembly Bill No.57 of 2023) and the Social Health Insurance Bill (National Assembly No. 58 of 2023) (*Committee Paper No.47*);
4. Submission of memoranda on the Digital Health Bill (National Assembly Bill No.57 of 2023) and the Social Health Insurance Bill(National Assembly No. 58 of 2023) by-
  - a. Ministry of Health;
  - b. Council of Governors(CoG);
  - c. National hospital Insurance Fund(NHIF);
  - d. Insurance Regulatory Authority (IRA);
  - e. Central Organization of Trade Unions (COTU);
  - f. Federation of Kenya employers (FKE);
  - g. Christian Health Association of Kenya (CHAK);
  - h. Rural Private Hospitals Association of Kenya(RUPHA);
  - i. International Budget Partnership, Kenya (IBP);
  - j. Confraternity of Patients Kenya (COFPAK); and
  - k. Association of Kenya Insurers (AKI);
5. Any other business;
6. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCH/493/2023**

**COMMITTEE PAPER ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILL NO.57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY NO. 58 OF 2023) (COMMITTEE PAPER NO. 47)**

The Committee considered and took note of the contents of Committee Paper No. 47 on the Digital Health Bill (National Assembly Bills No. 57 of 2023) and the Social Health Insurance Bill (National Assembly No.58 Of 2023).

The Chairperson then opened the meeting with a note of appreciation for the prompt attendance. He highlighted the importance of the Bills before the Committee in the achievement of the National Government legislative agenda on Universal Health coverage. This was followed by a round of introductions of all present.

**MIN/SEN/SCH/494/2023**

**SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILL NO.57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL**

**(NATIONAL ASSEMBLY NO. 58 OF 2023)( all memoranda annexed)**

The Chairperson opened the session for submission of memoranda. The memoranda received on each Bill and discussions therein are summarized per the attached matrix.

**MIN/SEN/SCH/495/2023**

**ANY OTHER BUSINESS**

The Committee resolved to hold an online meeting on Monday, 9<sup>th</sup> October, 2023 for purposes of consideration and adoption of the Bills' reports in readiness for laying in the house on Wednesday, 11<sup>th</sup> October, 2023.

**MIN/SEN/SCH/496/2023**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 3.00 p.m. The next meeting will be on Monday, 9<sup>th</sup> October, 2023.

SIGNED: .....



CHAIRPERSON

DATE: .....

11/10/2023



**MINUTES OF THE NINETY-FIRST SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON MONDAY 9<sup>TH</sup> OCTOBER, AT 1.15 PM, ON THE ZOOM ONLINE MEETING PLATFORM.**

**PRESENT**

1. Sen. Jackson Kiplagat Mandago, EGH, MP	-	<b>Chairperson</b>
2. Sen. Mariam Sheikh Omar, MP	-	<b>Vice-Chairperson</b>
3. Sen. Erick Okong'o Mogeni, SC, MP	-	Member
4. Sen. Raphael Chimera, MP	-	Member
5. Sen. Joseph Nyutu Ngugi, MP	-	Member
6. Sen. Hamida Kibwana, MP	-	Member
7. Sen. Esther Anyieni Okenyuri, MP	-	Member

**ABSENT WITH APOLOGIES**

1. Sen. Ledama Olekina, MP	-	Member
2. Sen. Abdul Mohamed Haji, MP	-	Member

**SECRETARIAT**

1. Dr. Christine Sagini	-	Committee Clerk
2. Ms. Florence Waweru	-	Clerk Assistant
3. Mr. Mitch Otoro	-	Legal Counsel
4. Mr. Jackson Wekesa	-	Legal Counsel
5. Ms. Annette Khayela	-	Research Officer
6. Ms. Brenda Wekesa	-	Research Officer
7. Mr. Victor Kimani	-	Audio Officer
8. Ms. Gladys Chombo	-	Protocol Officer
9. Ms. Lilian Onyari	-	Fiscal analyst
10. Mr. Ibrahim Mohammed	-	Sergeant –at-arms

**MIN/SEN/SCH/505/2023**

**PRELIMINARIES**

The meeting was called to order at 1.15 p.m. with a word of prayer from the Chairperson.

**MIN/SEN/SCH/506/2023**

**ADOPTION OF AGENDA**

The Agenda was adopted as proposed by Sen. Mariam Sheikh Omar, MP and seconded by Sen. Hamida Kibwana, MP as follows;

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of minutes of the sitting held on Friday, 6<sup>th</sup> October, 2023;
4. Matters arising from previous minutes;
5. Consideration and adoption of the Committee Reports on the -
  - a) The Digital Health Bill (National Assembly Bill No.57 of 2023); and
  - b) The Social Health Insurance Bill (National Assembly No. 58 of 2023)
5. Any other business;
6. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCH/507/2023**

**CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORTS ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

1. The Committee considered and adopted the Report on Digital Health Bill (National Assembly Bills No. 57 of 2023) having been proposed by Sen. Raphael Chimera, MP, and seconded by Sen. Esther Okenyuri, MP; and
2. The Committee considered and adopted the Report on the Social Health Insurance Fund (National Assembly Bills No. 58 of 2023) having been proposed by Sen. Joe Nyutu, MP, and seconded by Sen. Mariam Sheikh Omar, MP.

**MIN/SEN/SCH/503/2023**

**ANY OTHER BUSINESS**

There was no other business.

**MIN/SEN/SCH/504/2023**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 2.05 pm. The next meeting was scheduled on notice.

SIGNED:  .....  
CHAIRPERSON

DATE: 11/10/2023 .....

Annex 2

*The Social Health Insurance Bill, 2023*

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REPUBLIC OF KENYA

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PARLIAMENT

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NATIONAL ASSEMBLY BILLS  
(*Bill No. 58 of 2023*)

**THE SOCIAL HEALTH INSURANCE BILL, 2023**

(A Bill published in the Kenya Gazette Supplement No. 164 of 2023 and passed by the National Assembly, with amendments, on September 27<sup>th</sup>, 2023)

**N.A. /B/No. 58/2023**

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EXONA

**THE SOCIAL HEALTH INSURANCE BILL, 2023**  
**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I- PRELIMINARY**

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Objects of the Act.

**PART II—ESTABLISHMENT OF THE SOCIAL  
HEALTH AUTHORITY**

- 4—Establishment of the Social Health Authority.
- 5—Functions of the Authority.
- 6—Powers of the Authority.
- 7—The Board of the Authority.
- 8—Qualifications for appointment.
- 9—Vacancy of office.
- 10—Conduct of business and affairs of the Board.
- 11—Delegation by the Board.
- 12—Remuneration of members.
- 13—Appointment of the Chief Executive Officer.
- 14—Qualification for appointment as Chief Executive Officer.
- 15—Tenure of office of the Chief Executive Officer.
- 16—Corporation Secretary.
- 17—Staff.
- 18—Protection from personal liability.
- 19—Common seal of the Board.

**PART III—PRIMARY HEALTHCARE FUND**

- 20—Establishment of the Primary Healthcare Fund.
- 21—Sources of Funds.
- 22—Expenditure of the Fund.

23—Capital of the Fund.

24—Implementation of the Primary Healthcare Fund.

**PART IV—THE SOCIAL HEALTH INSURANCE  
FUND**

25—Establishment of the Social Health Insurance Fund.

26—Registration.

27—Contributions.

**PART V—THE EMERGENCY, CHRONIC AND  
CRITICAL ILLNESS FUND**

28—Establishment of the Emergency, Chronic and  
Critical Illness Fund.

29—Sources of funds.

30—Implementation of the Emergency, Chronic and  
Critical Illness Fund.

**PART VI—BENEFITS, TARRIFS, EMPANELMENT,  
CONTRACTING AND CLAIMS**

31—Benefits

32—Tariffs.

33—Empanelment.

34—Contracting.

35—Claims management.

36—Settlement of claims.

**PART VII—FINANCIAL PROVISIONS**

37—Financial year.

38—Retention of receipts and earnings.

39—Annual estimates.

40—Expenses of administering the Fund.

41—Accounts and audit.

42—Annual report.

**PART VIII—DISPUTE RESOLUTION TRIBUNAL**

43—Dispute Resolution.

44—Establishment of the Dispute Resolution Tribunal.

45—Vacancy in the Dispute Resolution Tribunal .

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**PART IX—MISCELLANEOUS PROVISIONS**

- 46—Stakeholder engagement.
- 47—Digitization.
- 48—Offences and penalties.
- 49—Recovery of sums due under this Act.
- 50—Regulations.
- 51—Conflict with other laws.
- 52—Application of Cap. 487.
- 53—General Penalty.
- 54—Repeal of No. 9 of 1998.
- 55—Winding up.

**SCHEDULES**

**FIRST SCHEDULE — TRANSITIONAL PROVISIONS**

**SECOND SCHEDULE — CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

**THE SOCIAL HEALTH INSURANCE BILL, 2023**  
**A Bill for**

**AN ACT of Parliament to establish the framework for the management of social health insurance; to provide for the establishment of the Social Health Authority; to give effect to Article 43(1)(a) of the Constitution; and for connected purposes**

**ENACTED by the Parliament of Kenya as follows—**

**PART I—PRELIMINARY**

1. This Act may be cited as the Social Health Insurance Act, 2023 and shall come into force on such date as the Cabinet Secretary may designate by notice in the *Gazette*.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Authority” means the Social Health Authority established under section 4;

“beneficiary” means a person who—

- (a) is a contributor;
- (b) has not attained the age of twenty-one years, has no income of his own and is living with the contributor;
- (c) has not attained the age of twenty-five years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award;
- (d) is a person with disability and is wholly dependent on and living with the contributor; or
- (e) is a spouse of the contributor;

“Board” means the Board of the Social Health Authority constituted under section 7;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health;

“chronic illness” means a condition that lasts one year or more and require ongoing medical attention or limit activities of daily living or both;

“Claims Office” means the Claims Management Office established under section 35;

“critical illness” means a serious and potentially life-threatening condition that demands urgent medical intervention and can have a substantial impact on a person’s health, well-being and quality of life;

“contracting” means the entering into a formal agreement with an empaneled health care provider or healthcare facility for purposes of provision of services;

“contributor” means a person liable to contribute to the Fund as provided under section 27;

“Dispute Resolution Tribunal” means the Tribunal established under section 44;

“Emergency, Chronic and Critical Illness Fund” means the fund established under section 28;

“emergency treatment” means the necessary immediate health care that must be administered to prevent death or worsening of a medical situation;

“empanelment” means enrolment of a health care provider into the list of health care service facilities approved by the Board;

“employer” has the meaning assigned under the Employment Act, 2007; No.11 of 2007.

“Funds” means the Primary Healthcare Fund established under section 20, the Social Health Insurance Fund established under section 25 and the Emergency, Chronic and Critical Illness Fund established under section 28;

“health care provider” has the meaning assigned to it under the Health Act, 2017; No. 21 of 2017.

“healthcare services” has the meaning assigned to it under the Health Act, 2017; No. 21 of 2017.

“household” means a social unit comprising of an eligible contributor, whether contributing by self or paid for, and their beneficiaries, or who share the same social-economic needs associated with consumption and production;

“indigent” means a person who is poor and needy to the extent that the person cannot meet their basic necessities of life;

“means testing” means a method that uses the Means Testing Instrument to determine whether an individual or a household has the ability to pay for their social health insurance premium;

“Means Testing Instrument” means a set of indicators that capture various socio-economic aspects of an individual or a household for purposes of conducting a means testing;

“medical insurance provider” has the meaning assigned to it under the Insurance Act, Cap. 487;

“Primary Healthcare Fund” means the Fund established under section 20;

“primary health care” means essential health care based on practical, scientifically sound and socially acceptable methods and technology that is made universally accessible to individuals and families in the community at levels 1, 2 and 3 of health services, to meet their health needs at every stage of the life cycle, with their full participation and at an affordable cost to the community and the country;

“spouse” means the wife or husband of a contributor;

“tariff” means the rates or fees that are paid to healthcare facilities or healthcare providers for services covered under this Act;

“Universal Health Coverage” means that all individuals and communities receive the health services they need including the full spectrum of essential, quality health services from health promotion to prevention, treatment, rehabilitation, and palliative care without suffering financial hardship; and

“vulnerable person” means a person who needs special care, support or protection, including the orphaned and vulnerable children, widows or widowers, person with disability, elderly persons or indigent due to a risk of abuse or neglect and who has been identified as such by the relevant government body.

3. The objects of this Act shall be to—

Objects of the Act.

- (a) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;
- (b) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;
- (c) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and
- (d) promote strategic purchasing of healthcare services.

## **PART II—ESTABLISHMENT OF THE SOCIAL HEALTH AUTHORITY**

4. (1) There is established an Authority to be known as the Social Health Authority.

Establishment of the Social Health Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) receiving and borrowing money; and
- (d) doing or performing such other things or acts necessary for the proper performance of its functions under this Act.

(3) The provisions of the First Schedule shall have effect with respect to the Authority.

**5.** The functions of the Authority shall be to—

Functions of the Authority.

- (a) register the beneficiaries in accordance with this Act;
- (b) manage the Funds established under this Act;
- (c) receive all contributions and other payments required by this Act to be made to the Funds;
- (d) empanel and contract health care providers and healthcare facilities upon inspection, licensing and certification of the health care providers and healthcare facilities by the relevant body;
- (e) consider and make payments to contracted health care providers and healthcare facilities out of the Funds in accordance to the provisions of this Act;
- (f) develop guidelines for the operations and implementation of the Funds established under this Act;
- (g) establish sectoral linkages for effective management and growth of the Funds;
- (h) monitor and evaluate programs and activities under the Funds;
- (i) receive and address complaints that may arise from the implementation of this Act;
- (j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;
- (k) implement all government policies on social health insurance and related functions; and
- (l) perform any other function conferred on it by this Act or any other written law.

**6.** (1) The Authority shall have all the powers necessary for the performance of its functions under this Act.

Powers of the Authority.

(2) Without prejudice to the generality of the foregoing, the Authority shall have power to—

- (a) manage, control and administer the assets of the Authority in such manner and for such purpose as best promotes the objects for which the Authority

is established in accordance with the Public Procurement and Assets Disposal Act, 2015:

No. 33 of 2015.

Provided that the Authority shall not charge or dispose of any immovable property without the prior approval of the National Assembly;

- (b) receive any gifts, grants, donations or endowments made to the Fund or any other monies in respect of the Fund and make disbursements therefrom in accordance with the provisions of this Act;
- (c) open a banking account or banking accounts for the Fund with authorization from the National Treasury; and
- (d) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the purpose for which the Fund is established.

7. (1) The Authority shall be managed by a Board which shall consist of—

The Board of the Authority.

- (a) a non-executive Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health or a designated representative;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a designated representative;
- (d) the Director-General for Health;
- (e) a representative of the County Executive Committee Health Caucus;
- (f) one person, not being a Governor, nominated by the Council of County Governors with knowledge in field of finance, accounting, health economics, law or business and management;
- (g) one person, not being a public officer with proven experience in matters of health insurance, health financing, financial management, health economics, healthcare administration.

(h) four persons, not being public officers, nominated by—

- (i) the Kenya Medical Association;
- (ii) the informal sector association;
- (iii) the consortium of healthcare providers; and
- (iv) the Central Organization of Trade Unions-Kenya.

(i) the Chief Executive Officer of the Authority, who shall be an *ex-officio* member of the Board.

(2) The members of the Board nominated under subsection (1) (f), (g) and (h) shall be appointed by the Cabinet Secretary by Notice in the Gazette.

(3) The Chairperson and the members of the Board appointed under subsection (1) shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) In appointing persons as members of the Board under subsection (1) (f), (g) and (h), the Cabinet Secretary shall ensure that the appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups and ensure regional balance.

8. (1) A person shall be eligible for appointment as a Chairperson or member of the Board under section 7(1)(a), (g) and (h) if that person—

Qualifications for  
appointment

- (a) is a citizen of Kenya;
- (b) holds a minimum of a bachelor's degree from a university recognized in Kenya;
- (c) has knowledge and experience of not less than ten years in data science, information technology, health governance, health administration, health policy, finance or economics, five of which shall be at managerial level; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be eligible for appointment as a member of the Board under section 7 if that person—

- (a) has at any time been convicted of a criminal

offence and sentenced to a term of imprisonment exceeding six months;

- (b) is declared to be of unsound mind;
- (c) is an undischarged bankrupt;
- (d) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry; or
- (e) has been found in accordance with any law or parliamentary reports to have misused or abused a state office or public office or in any way to have contravened the provisions of Chapter Six of the Constitution.

9. The office of the chairperson or member of the Board shall become vacant if the holder—

Vacancy of office.

- (a) resigns from office by notice in writing to the appointing authority;
- (b) is absent from three consecutive meetings of the Board without lawful cause;
- (c) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (e) is incapacitated by prolonged physical or mental illness;
- (f) is otherwise unable or unfit to discharge his duties; or
- (g) dies.

10. The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule, but subject thereto, the Board may regulate its own procedure.

Conduct of business and affairs of the Board.

11. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this

Delegation by the Board.

Act.

12. The chairperson and members of the Board shall be paid such remuneration, fees, allowances and such other reimbursements as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration of members.

13. (1) There shall be a Chief Executive Officer of the Authority who shall be competitively recruited and appointed by the Board.

Appointment of the Chief Executive Officer.

(2) The Chief Executive Officer shall hold office on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

14. (1) A person shall be qualified for appointment as the Chief Executive Officer of the Authority if that person—

Qualification for appointment as Chief Executive Officer.

- (a) has a minimum of a master's degree from a university recognized in Kenya;
- (b) has at least ten years' knowledge and experience in health insurance, health financing, health economics, healthcare administration or any other relevant field;
- (c) has served in a management level for a period of at least five years;
- (d) has not been convicted of an offence and is not serving a term of imprisonment; and
- (e) meets the requirements of Chapter Six of the Constitution.

(2) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Board.

(3) The Chief Executive Officer shall be administrator of the Funds established under this Act.

(4) In administering the Funds referred to in subsection (3), the Administrator of the Funds shall—

- (a) open and operate such banks with the approval of the Board and the National Treasury;
- (b) supervise and control the day-to-day

administration of the Funds established under this Act;

- (c) in consultation with the Board, develop such policies as may be necessary for the attainment of the objects of the Funds established under this Act;
- (d) consult with the Board on matters relating to the administration of the Funds established under this Act;
- (e) cause to be kept books of accounts and other books and records in relation to the Funds established under this Act of all activities and undertakings financed from the Funds;
- (f) with the approval of the Board, enter into and sign contracts or agreements in furtherance of the objects of the Funds established under this Act;
- (g) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Funds established under this Act and showing the expenditure incurred from the Funds, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Public Finance Management Act and the Public Audit Act;
- (h) prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation; and
- (i) implement any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Funds established under this Act.

No. 18 of 2012.

No. 34 of 2015.

(5) The existing government financial and procurement regulations shall, to the extent they relate to the administration of public funds established under the Public Finance Management Act, apply in the

No. 18 of 2012.

administration of the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund.

(6) The administrator of the Funds under sub-section (3), shall ensure that the monies held in the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund, including any earnings or accruals, are spent only for the purposes for which these Funds are established.

**15.** The Chief Executive Officer shall hold office for a period of three years and shall be eligible for re-appointment for one further term of three years.

Tenure of office  
of the Chief  
Executive Officer.

**16.** (1) There shall be a Corporation Secretary who shall be competitively recruited and appointed by the Board on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

Corporation  
Secretary.

(2) A person qualifies for appointment as the Corporation Secretary if that person—

- (a) holds a bachelor's degree in law from a university recognized in Kenya;
- (b) is an Advocate of the High Court of Kenya;
- (c) has at least five years' experience as a corporation secretary or a similar governance role;
- (d) is a member in good standing of the Institute of Certified Public Secretaries of Kenya; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be the Secretary to the Board and shall—

- (a) in consultation with the Chairperson of the Board, issue notices for meetings of the Board;
- (b) keep, in custody, the records of the deliberations, decisions and resolutions of the Board;
- (c) transmit decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation and other relevant action;
- (d) provide guidance to the Board on their duties and responsibilities on matters relating to governance;

and

(e) perform such other duties as the Board may direct.

17. The Board may appoint such staff as may be necessary for the proper discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine upon the advice of the Salaries and Remuneration Commission.

Staff.

18. (1) No matter or thing done by a member of the Board or an officer, employee or agent of the Authority shall, if the matter or thing was done in good faith in the execution of the functions or powers of the Authority, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

Protection from personal liability.

(2) Notwithstanding subsection (1), nothing in this section shall exempt a member of the Board, officer, employee or agent of the Authority from individual responsibility for unlawful or criminal act committed by the member of the Board, officer, employee or agent of the Authority.

19. (1) There shall be a common seal of the Authority which shall be kept in the custody of the Corporation Secretary and shall not be used except on the direction of the Board.

Common seal of the Authority.

(2) The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairperson and the Chief Executive Officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer.

(3) The Board shall, in the absence of either the Chairperson or the Chief Executive Officer, in any particular matter, nominate one member to authenticate the seal of the Authority on behalf of either the Chairperson or the Chief Executive Officer.

### **PART III-PRIMARY HEALTHCARE FUND**

20. There is established a Fund to be known as the Primary Healthcare Fund whose object shall be to purchase primary health care services from health facilities.

Establishment of the Primary Healthcare Fund.

21. There shall be paid into the Primary Healthcare Fund— Sources of Funds.

- (a) monies appropriated by the National Assembly;
- (b) any grants, gifts, donations or bequests;
- (c) monies allocated for that purposes from fees or levies administered; and
- (d) monies accruing to or received by the Fund from any other source.

22. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established. Expenditure of the Fund.

(2) The expenditure incurred on the Fund shall be limited to annual budget estimates prepared by the Authority at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates by the Board shall be approved by the National assembly in the supplementary budget estimates.

23. The capital of the Fund shall be as appropriated by the National Assembly or from any other source provided for under this Act. Capital of the Fund.

24. The Cabinet Secretary shall in consultation with the Board make regulations for the implementation of the Primary Healthcare Fund. Implementation of the Primary Healthcare Fund.

#### **PART IV—THE SOCIAL HEALTH INSURANCE FUND**

25. (1) There is established a Fund be known as the Social Health Insurance Fund. Establishment of the Social Health Insurance Fund.

(2) There shall be paid into the Fund—

- (a) contributions under the Act;
- (b) monies appropriated by the National Assembly for indigent and vulnerable persons; and
- (c) gifts, grants, innovative financing mechanisms or donations.

26. (1) Every Kenyan shall register as a member of the Social Health Insurance Fund. Registration.

(2) A person who, being a non-Kenyan, and is ordinarily resident in Kenya, shall be eligible for registration as a member of the Social Health Insurance Fund.

(3) A child born after commencement of this Act shall be registered at birth as a member of the Social Health Insurance Fund.

(4) Registration shall be conducted continuously at various points in such manner as shall be prescribed by the Cabinet Secretary.

(5) Any person who is registerable as a member under this Act shall produce proof of compliance with the provisions of this Act on registration and contribution as a precondition of dealing with or accessing public services from the national government, county government or a national or county government entities.

(6) A person who is a non-Kenyan that intends to enter and remain in the territory of Kenya for a period of less than twelve months shall be required to be in possession of a travel health insurance cover as may be designated by the Cabinet Secretary.

(7) The Cabinet Secretary shall establish the policy, regulatory or administrative measures to give effect to subsection (6).

27. (1) The following persons shall be liable to contribute to the Fund under this Act— Contributions.

- (a) every Kenyan household;
- (b) a non-Kenyan resident, ordinarily residing in Kenya for a period exceeding twelve months;
- (c) the national government;
- (d) a county government; and
- (e) any other employer.

(2) Contributions under this Act shall be paid as follows—

- (a) in the case of a household whose income is derived from salaried employment, by a monthly statutory deduction from the wages or salary by the employer at a rate prescribed under this Act;
- (b) in the case of a household whose income is not

derived from salaried employment, by an annual contribution of a proportion of household income as determined by the means testing instrument in the manner prescribed under this Act;

- (c) in the case of households in need of financial assistance as determined by the means testing instrument, by the government at a rate apportioned from funds appropriated by Parliament and County Assemblies for that purpose as prescribed under this Act;
- (d) in the case of persons under lawful custody, by the Government from funds appropriated by Parliament for that purpose at a rate prescribed under this Act;
- (e) in case of a person who is a permanent resident in Kenya, by such person at a rate as may be prescribed under this Act; and
- (f) in the case of any other person, by the person himself out of his own funds in the manner prescribed under this Act.

Provided that the contributions under this section shall be paid at the time of registration.

(3) A person referred to in subsection (2)(b) shall pay their contributions on an annual basis.

(4) A person shall only access healthcare services under this Act where their contributions to the Social Health Insurance Fund are up to date and active.

(5) The government shall ensure that premium financing products are provided for non-salaried persons for the payment of social health insurance.

(6) Any person who fails to pay any contribution in respect of any period on or before the day on which payment is due shall be liable to a penalty equal to two percent of the amount due for contribution for the period which the contribution remains unpaid and the total annual contributions.

(7) A person shall pay all outstanding contributions and penalties accrued before resuming access to the healthcare services provided under this Act.

**PART V—THE EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND**

28. There is established a Fund be known as the Emergency, Chronic and Critical Illness Fund to—

Establishment of the Emergency, Chronic and Critical Illness Fund.

- (a) defray the costs of management of chronic illnesses after depletion of the social health insurance cover; and
- (b) to cover the costs of emergency treatment.

29. The sources of funds for the Emergency, Chronic and Critical Illness Fund shall be—

Sources of funds.

- (a) monies appropriated by the National Assembly;
- (b) gifts, grants, donations or endowments; and
- (c) such monies from any other lawful source.

30. The Cabinet Secretary shall in consultation with the Board make regulations for the implementation of the Emergency, Chronic and Critical Illness Fund.

Implementation of Emergency, Chronic and Critical Illness Fund.

**PART VI—BENEFITS, TARRIFS, EMPANELMENT, CONTRACTING AND CLAIMS**

31. (1) Every beneficiary shall be entitled to an essential healthcare benefits package prescribed by the Cabinet Secretary in consultation with the Board.

Benefits.

(2) Notwithstanding the provisions of this Act, nothing shall be construed to preclude any beneficiary from taking private health insurance cover.

32. (1) The benefits payable under this Act shall be based on a tariff.

Tariffs.

(2) The Cabinet Secretary shall, in consultation with the Board, prescribe the tariffs applicable to the benefits package under this Act.

(3) The tariffs referred to under subsection (1), may be reviewed from time to time.

33. (1) The Authority shall make payments out of the Funds to health care providers or health care facilities that are empaneled and contracted in accordance with the provisions of this Act.

Empanelment.

(2) A health care provider or healthcare facility seeking to be empanelled under the Act shall make an application to the body responsible for accreditation for quality of care in the manner prescribed by the Cabinet Secretary.

(3) Upon the publication of the list of empanelled health care providers and healthcare facilities on the website and in the Kenya Gazette, the Authority may contract the healthcare providers or healthcare facilities within thirty days of the date of the publication of the list.

(4) The body under subsection (2) may, at any time, revoke any accreditation under this section.

(5) A healthcare provider or healthcare facility aggrieved by the decision of the body under subsection (2) may appeal to the Dispute Resolution Tribunal within thirty days of the decision of the Board.

**34.** (1) The Authority may from time to time negotiate and enter into contracts with healthcare service providers and healthcare facilities who qualify under section 33(3) for the provision of health services to the beneficiaries.

Contracting.

(2) The Authority shall publish on its website and in such other manner as the Authority may deem appropriate, the health service providers and healthcare facilities referred to in subsection (1) to be contracted health service providers for purposes of this Act.

(3) A publication under this section shall be subject to fulfillment by the healthcare service provider and healthcare facility of such criteria, including meeting quality standards set by the Cabinet Secretary in accordance with section 33(2).

(4) Every contracted health care provider and healthcare facility shall be issued with such identification as may be prescribed by the Authority and such identification shall be displayed in a conspicuous position.

(5) The Authority shall terminate the contract with any health care provider and healthcare facility where such health care provider or healthcare facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).

(6) Upon termination of a contract under subsection (5) the Authority shall, by notice in the Gazette, revoke the declaration made under subsection (3).

(7) Any health care provider who, or health facility which displays the identification referred to in subsection (4) without permission of the Authority commits an offence and is liable upon conviction to a fine not exceeding one million, or to imprisonment for a term not exceeding two years or to both.

**35.** (1) There is established within the Authority an office to be known as the Claims Management Office which shall review and process the claims made under this Act.

Claims  
Management.

- (2) The Claims Office shall be responsible for—
- (a) reviewing, processing and validating medical claims from healthcare providers and healthcare facilities;
  - (b) appraising medical claims based on the benefit package;
  - (c) issuing pre-authorizations for access to healthcare services based on the benefit package;
  - (d) developing an e-claims management system;
  - (e) undertaking quality assurance surveillance in respect of claims;
  - (f) establishing systems and controls for detecting and identifying fraud appropriate to the Fund's exposure and vulnerability;
  - (g) sensitizing claimants on the consequences of submitting false and fraudulent claims;
  - (h) collecting and analyzing data for purposes of claim management;
  - (i) preparing quarterly reports on claims for submission to the to the Board and the Cabinet Secretary; and
  - (j) performing any other functions as may be necessary for the better carrying out of its functions under this Act.

(3) The Claims Management Office may delegate the performance of its functions under subsection 2(a) and (b) to a suitable entity.

(4) The entity referred to under subsection (3) shall be a medical insurance provider and a claim settling agent as defined and licensed by the Insurance Regulatory Authority under the Insurance Act:

Cap. 487.

Provided that a suitable number of entities shall be contracted to manage the claims from the zones identified in the manner prescribed in the Regulations.

(5) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.

**36.** (1) The Authority shall make payments to a contracted healthcare provider or healthcare facility upon submission of a claim by the Claims Management Office.

Settlement of claims.

(2) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.

#### **PART VII—FINANCIAL PROVISIONS**

**37.** The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

Financial year.

**38.** All receipts, earnings and accruals to the Authority and the balance of the Funds at the close of each financial year shall be retained by the Authority for the purposes of the Funds.

Retention of receipts and earnings.

**39.** (1) The Authority shall, within three months after the end of the financial year, cause to be prepared estimates of its revenue and expenditure for that financial year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned, and in particular shall provide for—

- (a) the payment of all the claims and benefits of the contributors in respect of medical and healthcare expenses incurred by them or their named beneficiaries pursuant to the provisions of this Act;
- (b) the payment of salaries, allowances and other charges in respect of the staff of the Authority;

- (c) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;
- (d) the proper maintenance of buildings and grounds of the Authority;
- (e) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; or
- (f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Authority may consider appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and after the approval, the annual estimates shall not be increased without prior consent of the Board.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3).

**40.** (1) There shall be paid out of the finances of the Authority such administrative expenses as may be incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

Expenses of administering the Funds.

(2) The administrative expenses referred to under subsection (1) shall not exceed five percent of the annual expenditure of the Fund.

**41.** (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

Accounts and audit.

(2) Within three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Authority together with—

- (a) a statement of income and expenditure of the Authority during the year; and
- (b) statement of the assets and liabilities of the

Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Finance Management Act, 2012 and the Public Audit Act, 2015.

No. 18 of 2012.

No. 34 of 2015.

42. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Authority for the immediately preceding year.

Annual report.

(2) The Cabinet Secretary shall, within three months of submission of the report under subsection (1), transmit the report to Parliament.

#### PART VIII—DISPUTE RESOLUTION TRIBUNAL

43. (1) A person aggrieved by a decision made under this Act may, within one month from the date of the decision, appeal to the Dispute Resolution Tribunal for a review of such decision.

Dispute  
Resolution.

(2) The Tribunal may uphold, reverse, revoke or vary the decision of the Board appealed under subsection (1).

(3) A person who is not satisfied with an order made by the Tribunal under subsection (2) may appeal to the High Court within twenty-one days from the date the order is made.

44. (1) There is established a Tribunal to be known as the Dispute Resolution Tribunal for the purpose of hearing and determining complaints, disputes and appeals in accordance with this Act or any other written law.

Establishment of  
Dispute  
Resolution  
Tribunal.

(2) The Tribunal shall consist of—

- (a) a Chairperson who shall be appointed by the President from among persons qualified to be judges of the High Court; and
- (b) four other persons who shall be appointed by the Judicial Service Commission and shall possess knowledge and experience in health, health economics, business administration, insurance and who are not in the employment of the Government or the Board and are not health service providers.

(3) The members of the Tribunal shall hold office for a period of three years and shall be eligible for

reappointment for one further term of three years.

(4) The quorum for a meeting of the Tribunal shall be the Chairperson and two other members.

(5) The members of the Tribunal shall be entitled to receive such allowances as the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission, may determine.

(6) The Cabinet Secretary shall prescribe procedures for the operationalization of the Tribunal.

45. The office of a member of the Tribunal shall become vacant if the member—

Vacancy in the  
Dispute  
Resolution  
Tribunal.

- (a) dies;
- (b) resigns;
- (c) is unfit by reason of mental or physical infirmity to perform the duties of his office;
- (d) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (e) has failed to attend at least three consecutive meetings of the Tribunal ; or
- (f) is removed from office on any of the following grounds—
  - (i) gross violation of the Constitution or any other written law; or
  - (ii) gross misconduct or misbehaviour.

**PART IX—MISCELLANEOUS PROVISIONS**

46. (1) The Authority shall facilitate public participation and stakeholder engagement in the carrying out of its functions under this Act.

Stakeholder  
engagement.

(2) The Cabinet Secretary shall prescribe regulations on the modalities of engaging stakeholders at the national and county level.

47. (1) All processes and services under this Act shall continue to be digitized using appropriate, reliable, secure, inter-operable, verifiable and responsive technology through an information system.

Digitization.

(2) The processes and services referred to in subsection (1) shall include—

- (a) registration of members;
- (b) member identification;
- (c) contributions to the Fund;
- (d) empanelment of facilities;
- (e) execution of contracts;
- (f) member identification;
- (g) notification and preauthorization;
- (h) claims management; and
- (i) settlement of claims.

(3) Every Kenyan shall be uniquely identified for purposes of provision of health services under this Act.

(4) The digitization of processes and services under this Act shall conform to the provisions of the Data Protection Act, 2019 and all other relevant laws.

No. 24 of 2019.

(5) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.

**48.** (1) Any person who—

Offences and penalties.

- (a) fails without lawful excuse to pay to the Social Health Insurance Fund within the period prescribed by this Act any contribution which he or she is liable as a contributing employer to pay under this Act; or
- (b) knowingly makes any deduction from the wages of the employee in respect of any contribution which he or she is liable as a contributing employer to pay under this Act, other than a deduction which he or she is authorized to make by this Act; or
- (c) for the purpose of obtaining any benefit for himself or herself or for any other person, knowingly makes any false statement or representation, or produces or furnishes, or causes to be produced or furnished, any document or information which he or she knows to be false in

any material particular,

commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or to both.

(2) A person who misappropriates any of the funds or assets of the Fund, or assists or causes any person to misappropriate or apply funds, otherwise than in the manner provided in the Act, commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

(3) Any person who, for the purpose of obtaining the payment of any benefit under this Act, knowingly makes any false statement, whether orally or in writing, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding sixty months, or to both.

(4) Any person who with intent to obtain the payment of any benefit under this Act, impersonates any person whether living or dead, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

(5) A health care provider or health facility which knowingly or fraudulently alters or falsifies any information with intent to defraud the Authority or to obtain any benefit that it is not entitled to under this Act, commits an offence and is liable on conviction to—

- (a) a fine not exceeding two million;
- (b) suspension; or
- (c) removal from the register of empaneled and contracted health care providers.

(6) The Authority shall cause the name of every health care provider or health facility suspended under subsection (5) (b) to be notified in the *Gazette* and such institution shall not, during the suspension, be entitled to any benefit from the Fund.

(7) The Board shall cause the name of every health

care provider or health facility removed from the register under subsection (5)(c) to be notified in the *Gazette*, at least two newspapers of national circulation and at the official website of the Authority.

(8) A health care provider or health facility which has been removed from the register under subsection (5) (c) shall not be entitled to receive any benefit from the Authority.

49. (1) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Authority, as the case may be, the amount of any contribution or any other sum that was not obtained in a lawful manner, together with any penalty found to be due from such person to the Authority and any sum so ordered shall be recoverable as a fine and paid into the Funds.

Recovery of sums  
due under this  
Act.

(2) All sums due to the Authority shall be recoverable as debts due to the Authority, and without prejudice to any other remedy, may be recovered by the Authority summarily as a civil debt.

(3) All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any authorized officer of the Authority.

(4) All sums recovered by legal proceedings in respect of monies which should have been paid into the Funds shall, when recovered, be paid into the Funds.

(5) Despite any other written law, the assets of the Funds shall not be liable to attachment under any process of law.

50. (1) The Cabinet Secretary shall, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

Regulations.

(2) Despite the generality of subsection (1), the Cabinet Secretary may make Regulations prescribing—

- (a) any matters incidental to the payment and collection of any contributions under this Act;
- (b) the amount and rates of contributions payable by contributors into the Fund;

- (c) the manner of the making and determination of the healthcare benefits package;
- (d) the manner of the making and determination of any claim to any benefit;
- (e) the settlement of valid claims;
- (f) the process of enrolment of healthcare providers and healthcare facilities on the list of approved healthcare providers and healthcare facilities; and
- (g) anything which is required to be prescribed for the better giving effect of the provisions of this Act.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and
- (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(4) The principles and standards applicable to the delegated power referred to under this Act are those found in—

- (a) the Statutory Instruments Act;
- (b) the Interpretation and General Provisions Act;
- (c) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (d) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

No. 23 of 2013.

Cap. 2.

**51.** This Act shall prevail in the case of any inconsistency between this Act and any other legislation on matters related to provision of social health insurance.

Conflict with other laws.

**52.** The provisions of the Insurance Act shall apply to the Authority only in respect to claims administration services.

Application of Cap. 487.

**53.** A person convicted of an offence under this Act

General penalty.

for which no other penalty is prescribed shall be liable to a fine not exceeding one million shillings or, in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

**54.** The National Health Insurance Fund Act, 1998 is repealed.

Repeal of No. 9 of 1998.

**55.** In the event of winding up of any of the Funds established under this Act, the cash balances shall be transferred to the Exchequer while other assets shall be transferred to the National Treasury.

Winding up.

**FIRST SCHEDULE** (s.4(3))

**TRANSITIONAL PROVISIONS**

1. In this Schedule—

"appointed day" means the day appointed for the coming into operation of the Social Health Insurance Act, 2023;

"Fund" means the National Health Insurance Fund existing immediately before the appointed day.

2. (1) On the appointed day, all the funds, assets and other property movable and immovable which immediately before that day, were held for and on behalf of the Fund in the name of the National Health Insurance Fund Board shall, by virtue of this paragraph and without further assurance, vest in the Authority.

(2) Every public officer having the power or duty to effect or amend any entry in a register relating to property or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the Authority, do all such things as are by law necessary to give final effect to the transfer of the property mentioned in sub-paragraph (1).

3. On the appointed day, all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Fund shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.

4. On and after the appointed day, all actions, suits or legal proceedings pending by or against the Government for and on behalf of the Fund shall be carried on or prosecuted by or against the Authority.

5. (1) On the appointed day, the Fund shall not provide enhanced benefits schemes and packages.

(2) Notwithstanding the provisions of subparagraph (1), all enhanced benefits schemes and packages which immediately before the appointed day, were being provided by the National Health Insurance Fund shall, by virtue of this paragraph and without further assurance, vest in the Authority until the lapse of the existing contracts.

6. (1) Notwithstanding the provisions of paragraph (2), the National Health Insurance Fund Board shall wind up the Fund within one year from

the appointed day and the cash balances and all other assets shall be transferred to the Authority.

(2) Despite subparagraph (1), the Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff under section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board.

(3) Notwithstanding the provisions of subparagraph (1), the staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised.

(4) Despite the provisions of sub-paragraph (2) and (3), the Authority shall review the qualifications of all the staff of the Fund and shall, in the appointment of its staff, give priority to the staff of the Fund who are found to be suitably qualified for the positions in the approved staff establishment.

(5) A staff of the Fund not appointed by the Authority under subparagraph (2) may exercise his or her option to either—

- (a) retire from public service; or
- (b) be redeployed within the public service.

7. The annual estimates for the Fund for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Board of the Authority in such manner as the Cabinet Secretary may approve.

**SECOND SCHEDULE** (s.10)

**CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting. Meetings.

(2) The chairperson may call a special meeting of the Board at any time the chairperson deems fit for expedient transaction of the business of the Board.

(3) The notice for a meeting of the Board shall be given in writing to each member of the Board at least fourteen days before the day of the meeting.

(4) In the case of a special, or extra-ordinary meeting, a notice of less than fourteen days' notice shall be considered sufficient.

(5) Notwithstanding the provisions of subparagraph (2), the chairperson may, upon requisition in writing by at least two thirds of the members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(6) The notice to be given under paragraph (2) and (3) shall state—

- (a) the venue and time of the meeting; and
- (b) the agenda with sufficient details of business to be discussed at the meeting.

(7) The chairperson shall preside at every meeting of the Board at which the chairperson is present but in the chairperson's absence, the members present shall elect from among themselves a chairperson who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by the concurrence of a majority of all the members present and voting at the meeting.

(9) The Board may, with approval of the Cabinet Secretary, co-opt or invite any number of persons to act as advisors or consultants at any of its meetings or form such committees to perform such functions or duties of the

Board as the Board shall determine.

(10) Subject to the provisions on quorum, no proceedings shall be invalid by reason only of a vacancy among the members of the Board.

(11) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board.

(12) The quorum for the meetings of the Board shall be five members. Co-opted or invited persons shall not be counted in the quorum of the meetings of the Board and shall not be eligible to vote.

2. (1) The Board may establish such committees as it deems appropriate for the performance of its functions.

Committees of the Board.

(2) A Committee established under sub-paragraph (1) shall elect a chairperson from amongst its members.

(3) The Board may where it deems appropriate, co-opt or invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subparagraph (1) shall be ratified by the Board.

3. (1) If a member of the Board is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable before the commencement of the meeting, declare such interest.

Disclosure of Interest.

(2) The person making the disclosure of interest under subsection (1) shall not, unless the Board or committee otherwise directs, take part in any consideration or, discussion of, or vote on any question touching on the matter.

(3) A person who contravenes subparagraph (1) commits an offence.

(4) No member of the Board or officer, employee or agent of the Board shall enter into a service contract or trade with the Board.

(5) A disclosure of interest made under this paragraph

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shall be recorded in the minutes of the meeting at which it is made.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose. Minutes

*The Social Health Insurance Bill, 2023*

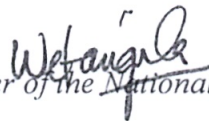
---

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 27<sup>th</sup> September, 2023.



*Clerk of the National Assembly*

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



*Speaker of the National Assembly*

---

Annex 3

ya Ports Authority (KPA) has allocated Sh1.6 billion for the project.

rehabilitation of Kendu Bay pier on September 20  
GEORGE ODIWUOR I NATION

## REPUBLIC OF KENYA



### THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

#### INVITATION FOR SUBMISSION OF MEMORANDA

At a sitting of the Senate held on Tuesday, 3<sup>rd</sup> October, 2023, **the Digital Health Bill [National Assembly Bills No. 57 of 2023]** and **the Social Health Insurance Bill [National Assembly Bills No. 58 of 2023]** were introduced in the Senate by way of First Reading and thereafter stood committed to the Standing Committee on Health.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 [5] of the Senate Standing Orders, the Standing Committee on Health now invites interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of written memoranda submitted to the Clerk of the Senate on the address [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) and copied to [healthcommittee.senate@parliament.go.ke](mailto:healthcommittee.senate@parliament.go.ke) to be received on or before **Saturday, 7<sup>th</sup> October, 2023 at 5.00 p.m.**

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

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

Emma

REPUBLIC OF KENYA



Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
Fax: 2243694  
E-mail: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke)

**Annex 4**

The Senate  
Clerk's Chambers  
Parliament Buildings  
P. O. Box 41842 -00100  
NAIROBI, Kenya

PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/163/09/2023

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

**Dr. Brian Lishenga, MBChB, MSc, MFMED,**  
Chairperson,  
Rural Private Hospitals Association,  
P. O. Box 4982-00200,  
**NAIROBI.**

Dear *Sm*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee hereby invites you to -

- a) Submit your written memoranda to the Clerk of the Senate on the address [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) and copied to the Standing Committee on Health on the address [healthcommittee.senate@parliament.go.ke](mailto:healthcommittee.senate@parliament.go.ke) on or before **Friday, 6<sup>th</sup> October, 2023** at 8.00 a.m.; and
- b) Appear before the Committee on **Friday, 6<sup>th</sup> October, 2023** at **10.00 a.m.** at the **Senate Chamber, Main Parliament Buildings** to deliberate on your submissions.

The Bill may also be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>

**Dr. Christine Sagini, Senior Clerk Assistant (Cell Number: 0725-052269; Email [christine.sagini@parliament.go.ke](mailto:christine.sagini@parliament.go.ke)),** is the Clerk to the Committee and is responsible for all arrangements relating to this matter.

Yours

*Sincerely*  
*[Signature]*

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

Il Xenna

REPUBLIC OF KENYA



Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
Fax: 2243694  
E-mail: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke)

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NAIROBI, Kenya

PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/157/09/2023

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

Hon. Anne Waiguru, EGH, OGW,  
Chairperson,  
Council of Governors,  
Delta Corner,  
P.O Box 40401 – 00100  
**NAIROBI.**

Dear *Governor*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Yours

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

REPUBLIC OF KENYA

Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
Fax: 2243694  
E-mail: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke)



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NAIROBI, Kenya

PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/160/09/2023

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

**Mr. Godfrey Kiptum,**  
Chief Executive Officer &  
Commissioner of Insurance,  
Insurance Regulatory Authority,  
P. O. Box 43505-00100,  
**NAIROBI.**

Dear *Seny*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL  
(NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH  
INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Yours

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

REPUBLIC OF KENYA

Telegraphic Address

'Bunge', Nairobi

Telephone 2848000

Fax: 2243694

E-mail: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke)



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PARLIAMENT

OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/157/09/2023

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

**Ms. Susan Nakhumicha Wafula,**

Cabinet Secretary,

Ministry Of Health,

Afya House- Cathedral Road,

P.O BOX 30016-00100,

**NAIROBI.**

Dear *CS*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Yours *Sincerely,*

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

Copy to -

**Mr. Harry Kintai,**  
Principal Secretary,  
State Department for Medical Services,  
Afya House- Cathedral Road,  
P.O BOX 30016-00100,  
**NAIROBI.**

REPUBLIC OF KENYA

Telegraphic Address

'Bunge', Nairobi

Telephone 2848000

Fax: 2243694

E-mail: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke)



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PARLIAMENT

OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/157/09/2023

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

**Ms. Susan Nakhumicha Wafula,**  
Cabinet Secretary,  
Ministry Of Health,  
Afya House- Cathedral Road,  
P.O BOX 30016-00100,  
**NAIROBI.**

Dear

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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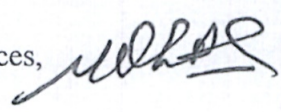
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Yours

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

Copy to -

✓ **Mr. Harry Kimtai,**  
Principal Secretary,  
State Department for Medical Services,  
Afya House- Cathedral Road,  
P.O BOX 30016-00100,  
**NAIROBI.**



REPUBLIC OF KENYA

Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
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E-mail: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke)



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NAIROBI, Kenya

PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/159/09/2023

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

Dr. Francis Atwoli, CBS, EBS, MBS,  
Secretary General,  
Central Organization of Trade Unions,  
Solidarity Building, Digo Road,  
P.O Box 13000 – 00200  
**NAIROBI.**

Dear *Sir,*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Yours

*Sincerely,*

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

REPUBLIC OF KENYA

Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
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NAIROBI, Kenya

PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCA/CORR/162/09/2023

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

Dr. Tim Theuri,  
Chief Executive Officer,  
Kenya Healthcare Federation,  
P. O. Box 37929-00100,  
**NAIROBI.**

Dear *Sm*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Yours

*Sincerely*  
*J.M. Nyegenye*

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

8

REPUBLIC OF KENYA

Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
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PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/CORR/164/09/2023

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

**Dr. Samuel Mwenda,**  
Chairperson,  
Christian Health Association of Kenya,  
P. O. Box 30690 - 00100,  
**NAIROBI.**

Dear *Sir,*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

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Yours

*Sincerely,*

*[Signature]*

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

REPUBLIC OF KENYA

Telegraphic Address  
'Bunge', Nairobi  
Telephone 2848000  
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PARLIAMENT  
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/DSEC/SCH/CORR/165/09/2023

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

**Dr. Samson Kuhora,**  
Ag. Chief Executive Officer,  
National Health Insurance Fund,  
P. O. Box 30443-00100,  
**NAIROBI.**

Dear *Sir*

**RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (NATIONAL ASSEMBLY BILLS NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)**

The Standing Committee on Health is established pursuant to standing order 228 (3) of the Senate Standing Orders and is mandated to consider all matters relating to medical services, public health and sanitation.

At the sitting of the Senate held on Tuesday, 3<sup>rd</sup> October, 2023, the Digital Health Bill (National Assembly Bills No. 57 of 2023) and the Social Health Insurance Bill (National Assembly Bills No. 58 of 2023) were introduced in the Senate by way of First Reading and thereafter stood committed to the Standing Committee on Health.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee hereby invites you to -

- a) Submit your written memoranda to the Clerk of the Senate on the address [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) and copied to the Standing Committee on Health on the address [healthcommittee.senate@parliament.go.ke](mailto:healthcommittee.senate@parliament.go.ke) on or before **Friday, 6<sup>th</sup> October, 2023** at 8.00 a.m.; and
- b) Appear before the Committee on **Friday, 6<sup>th</sup> October, 2023** at **10.00 a.m.** at the **Senate Chamber, Main Parliament Buildings** to deliberate on your submissions.

The Bill may also be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>

**Dr. Christine Sagini, Senior Clerk Assistant (Cell Number: 0725-052269; Email [christine.sagini@parliament.go.ke](mailto:christine.sagini@parliament.go.ke)),** is the Clerk to the Committee and is responsible for all arrangements relating to this matter.

Yours

*Sincerely*  
*[Signature]*  
J.M. NYEGENYE, CBS,  
CLERK OF THE SENATE.

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REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

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Standing Committee on Health

13<sup>th</sup> Parliament | Second Session

SCHEDULE FOR STAKEHOLDER ENGAGEMENT ON

THE DIGITAL HEALTH BILL, 2023  
AND THE  
SOCIAL HEALTH INSURANCE BILL, 2023

No.	ACTIVITY	DESCRIPTION	PROPOSED TIMELINES
1.	Advertisement for submission of written memoranda	1. Publish advertisement on: a) two newspapers with national distribution b) Parliament website c) Parliament social media pages	a) Newspaper Adverts - <b>Proposed date for publication:</b> Wednesday, 4 <sup>th</sup> October, 2023. - <b>Proposed deadline for submission of memoranda:</b> Saturday, 7 <sup>th</sup> October, 2023.
<b>A. Structured Stakeholder Engagement</b>			
2.	<i>Government Institutions</i>	- MOH - COG - NHIF - IRA	10.00 am Friday, 6 <sup>th</sup> October, 2023

2 xema

3.	<i>Private Sector/ NGO</i>	- FKE - KHF - AKI - RUPHA - COTU	11.00 am	
4.		- IBP Kenya	12.00 noon	
5.	<i>Faith Based Organisation (FBO)</i>	- CHAK	1.00 pm	
<b>B. Bill Report</b>				
9.	<i>Consideration and adoption of:</i>	a) The Committee Report on Public Participation b) Committee Stage Amendments		Monday, 9 <sup>th</sup> October, 2023
11.	<i>Tabling of the Bill Report</i>			Wednesday, 11 <sup>th</sup> October, 2023

CONSIDERATION OF PUBLIC VIEWS RECEIVED ON THE SOCIAL HEALTH INSURANCE BILL, 2023

Stakeholders

1. Ministry of Health.
2. Kenya Healthcare Federation (KHF).
3. Civil Society Organizations consisting of—
  - a) Kenya AIDS NGOs Consortium (KANCO);
  - b) Amnesty International Kenya;
  - c) People's Health Movement (PHM);
  - d) Institute of Public Finance (IPF);
  - e) Transparency International Kenya (TI Kenya);
  - f) Scaling Up Nutrition Civil Society Alliance;
  - g) Kenya Human Rights Commission (KHRC);
  - h) Remusi Housing Cooperative Society Ltd;
  - i) Young Professionals for Development;
  - j) International Commission of Jurists, Kenya (ICJ Kenya); and
  - k) Organizations of African Youth – Kenya.
4. International Budget Partnership Kenya (IBP Kenya).
5. Federation of Kenya Employers (FKE).
6. Central Organization of trade Unions (COTU).
7. Kenya Association of Retired Officers (KARO).
8. Pharmaceutical Society of Kenya (PSK).
9. Health NGO's Network (HENNET).
10. Association of Kenya Medical Laboratory Scientific Officers.
11. The Actuarial Society of Kenya (TASK).
12. International Commission of Jurists, Kenya (ICJ Kenya).

13. Kenya Dental Association (KDA).
14. Moi University.
15. National Hospital Insurance Fund (NHIF).
16. Rural Private Hospitals Association of Kenya (RUPHA).
17. Former Parliamentarians Association Kenya (FOPA Kenya).
18. Council of Governors (CoG).
19. Insurance Regulatory Authority (IRA).
20. Confraternity of Patients Kenya (COFPAK).
21. Association of Kenya Insurers (AKI).
22. Kenya Union of Nutritionists and Dieticians.
23. Kenya Union of Clinical Officers.
24. Kenya Faith Based Health Services Consortium (FBOs) consisting—
- a) Kenya Conference of Catholic Bishops (KCCB);
  - b) Christian Health Association of Kenya (CHAK);
  - c) Supreme Council of Kenya Muslims (SUPKEM); and
  - d) Mission for Essential Drugs and Supplies (MEDS).

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Long Title	Kenya Healthcare Federation	Amend the Long Title to the Bill to add Article 43(2) of the Constitution to provide for emergency care services.	Article 43(2) of the Constitution is missing in the Long Title. The Constitution of Kenya guarantees persons of the right to emergency health care services. Omission of Article 43(2) was noted.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Health NGO's network	<p>Recommend addition of key policies that the bill is operationalizing such that the statement reads;</p> <p>'AN ACT of Parliament to establish the framework for the management of social health insurance; to provide for the establishment of the Social Health Authority; to give effect to Article 43(1)(a) of the Constitution; The Health Policy 2012-2030; The UHC Policy 2020-2030 and for connected purposes.</p>	<p>What other policy documents is the bill seeking to implement? This is the initial step in ensuring developed policies/frameworks/strategies are included in key documents to ensure their implementation.</p>	
1.	Kenya Healthcare Federation	<p>Amend the title to the bill to have it referred to as the <u>Social Health Protection Act</u>.</p>	<p>No rationale provided.</p>	
Part 1	The Confraternity of Patients Kenya (COFPAK)	<p>To read "Chronic illness" means a condition that lasts Six months or more and requires ongoing medical attention or limit activities of daily living or both;</p>	<p>For example, Tuberculosis is a chronic disease caused by Bacillus Mycobacterium, this condition may take between 6 to 12 months of treatment. In the proposed Bills going by the durational classification of Chronic illness, the eligible population may be disadvantaged. A need to include 6 months and above of treatment and follow-up.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part 1	The Confraternity of Patients Kenya (COFPAK)	The definition of the beneficiary should include biological children plus any child under the contributor's care deemed to benefit directly from the contributor.	Children under guardianship, Orphans, and Vulnerable Children should not be discriminated against from benefitting the social insurance fund.	
Part 1 Clause 2	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the interpretation of the term "empanelment" be amended to read. "means enrolment of a health care facility into the list of health care service facilities approved by the accrediting body.		
Part 1 Clause 2	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	provide a definition for "Health care facility" that provides a distinction with a "health care provider" in line with the Health Act, 2017.	For avoidance of ambiguity and for consistency with the Health Act, 2017,	
Part 1 Clause 2	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	Apply a single consistent name for the "Authority		
Part 1 Clause 2	RURAL PRIVATE HOSPITALS	Define essential health care	A definition of essential health care will properly demarcate the scope of primary health care. This is critical to give effect to the	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	ASSOCIATION OF KENYA (RUPHA)		“objects of the Act” as outlined particularly by Part I Clause 3(b) and (d)	
Section 2	THE NATIONAL HEALTH INSURANCE FUND (NHIF)	Define a household as a nuclear unit of a contributor, the declared spouse and children.	The unit of contribution is the household. A misinterpretation of the unit will have a significant impact on the resources allocated to or generated by the contributor.	
Section 2	Council of Governors	“Chronic illness” means a condition that lasts six months or more and require ongoing medical attention or limit activities of daily living or both;	One year is a long period and may beat the essence of having the Fund.	
Section 2	Insurance Regulatory Authority (IRA)	Redraft the definition of household	To remove ambiguity and enhance clarity.	
Section 2	Insurance Regulatory Authority	Define levels 1, 2 and 3 of health services as those defined under the Health Act.	It is not clear what levels 1, 2 and 3 of health services refer to.	
2	Health NGO’s network	Include (f) vulnerable person as defined in part 1 (2).	beneficiary” means a person who— Vulnerable person is defined under part 1 but not included as a beneficiary in the interpretation.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Civil Society Organisations (11)	<ol style="list-style-type: none"> <li>1. Add “Individual” to read individual contributor</li> <li>2. Delete “<i>and who has been identified as such by the relevant government body</i>” to avoid discrimination of those who may be missed from registration</li> <li>3. Include the words, “transport of the ill or injured” in the definition of emergency medical treatment.</li> </ol>	<ol style="list-style-type: none"> <li>1. The government for legal purposes is also a person, in this case it should not be construed as a beneficiary as it is also listed a liable contributor in Clause 27.</li> <li>2. Left as it is, there is a risk of discriminating upon individuals not registered under other programs for vulnerable persons e.g Inua Jamii.  Emergency medical services include transport of the ill or injured by ambulance or air medical service.</li> </ol>	
	Federation of Kenya Employers (FKE)	<ol style="list-style-type: none"> <li>1. Add “as amended from time to time” to read: “data commissioner” means the person appointed under section 6 of the Data Protection Act, 2019 (as amended from time to time)</li> <li>2. Replace Authority with Agency to read: 7.  (2) Without prejudice to the generality of the foregoing, the Agency shall have power to— (a) manage, control and administer the assets of the Agency in such manner and for such purpose as best promotes the objects for which the Agency is established</li> </ol>	<ol style="list-style-type: none"> <li>1. To not render the reference obsolete if the referenced Act be amended.</li> <li>2. To cure typo in the name of the agency</li> <li>3. To provide criteria for nomination of the private sector representative to be appointed</li> </ol>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>in accordance with the Public Procurement and Assets Disposal Act, 2022 (as amended from time to time)</p> <p>3. One person nominated by the most representative Employers Federation in Kenya. 8 (1) There shall be a Board of Directors of the Agency which shall consist of—</p> <p>(g) one person nominated by the most representative Employers body, Federation of Kenya Employers and appointed by the Cabinet Secretary to represent the private sector;</p>		
	<p>International Commission of Jurists, Kenya (ICJ Kenya)</p>	<p>Include, “vulnerable groups as defined in Article 21 of the Constitution of Kenya,” in the definition of the vulnerable persons</p>	<p>The lack of a comprehensive social health insurance scheme in Kenya has led to the exclusion of members of marginalized, vulnerable, and disadvantaged groups such as women, youth and other key populations from accessing quality healthcare services and remains a significant threat to the goal of Universal Health Coverage by 2030. Social Health Insurance law should protect, respect, promote and fulfil</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			the rights of all vulnerable groups as defined in Article 21 of the Constitution of Kenya in all matters regarding health.	
	Kenya Healthcare Federation and Kenya Dental Association	Amend the Bill to provide for the definition of the term “child”.	Omission of child definition noted.	
		Amend the Bill to provide for the definition of the term “mature minor”.	Omission of child definition noted.	
		Amend definition of the term “chronic illness” to include condition start from time of diagnosis or from the three months of having suffered from the clinical condition.	Definition defective as it doesn’t cater for diagnosis at first point of care contact or from the three months of having suffered from the clinical condition as per the medically known definition.	
		Amend definition of “emergency treatment” to cater for dental care emergencies as associated with pain and morbidity.	Definition missing other aspects of acute and emergency pain conditions.	
		Amend definition of “tarrif” to also cater for the fee guides that are gazette as benchmarks by professional regulatory bodies.	Definition doesn’t take note of existing professional regulatory bodies fee guides as bench marks for services rendered.	
	Kenya Dental Association	Define the word “basic care package” and provide for both medical and dental care minimum care benefits.	All Kenyans should be assured of a minimum basic care package.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Define the words “essential care package”.	All Kenyans should be assured of freedom to access.	
		Define the words “enhanced care package”.	All Kenyans should be assured of freedom to access enhanced care packages.	
		Define the words “managed care schemes”.	All Kenyans should be assured of freedom to access enhanced care packages.	
Article 3(d)	The Confraternity of Patients Kenya (COFPAK)	Add "and commodities"  To read  To promote strategic purchasing of healthcare Services and <i>commodities</i> .	. Considering adding the word commodities sends a strong sense of inclusion beyond the service offered by HCPs.	
Section 4	Council of Governors	Amend to read (1) There is established an Authority to be known as Social Health Authority. (2) The Authority shall be a successor in title to the National Health Insurance Fund, 1998.	The emphasis is good.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part II	Health NGO's network	An addition of a section on the objects and purpose is of the fund recommended. Without this inclusion, the bill leaves room for misuse of the fund.	A section on Objects and Purposes of the Fund is missing hence no clarity in what the fund is intended for. The functions of the PHC Fund and Chronic illnesses fund have clearly been outlines in two bullets. However, that of the Social Health Insurance Fund is missing.	
5	International Budget Partnership Kenya	<ol style="list-style-type: none"> <li>1. This role should be further expanded to include a responsibility to be accountable to the public by periodically publishing and publicizing its budget and expenditure reports in line with the Public Finance Management Act 2012</li> <li>2. The bill should define this role clearly.1 This can be aligned with Section 14,4(h) which spells out the administrative role of the Chief Executive Officer of the authority.</li> <li>3. This should also be a role assigned to the Cabinet Secretary for Health under Section 43(2) that the annual report should be made public within 7 days of tabling them in Parliament in line with Section 7(3) of the PFM Regulations for the National Government.</li> </ol>	To strengthen the accountability mechanisms for the	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Sec 5	Council of Governors	There is need to amend the provisions to separate some of these roles and vest them in different management and accountability structures, for purposes of increasing checks and balances to ensure effective accountability.	<p>This is necessary because a major problem in the management of the current NHIF has been that the NHIF board combines the functions of;</p> <ul style="list-style-type: none"> <li>(i) Accreditation and empanelment of health facilities as providers</li> <li>(ii) Determinations of the benefits package;</li> <li>(iii) Setting premium rates and tariffs for contributors;</li> <li>(iv) Collection of revenue from the contributors and management of the funds;</li> <li>(v) Setting of the reimbursement rates to be paid to service providers;</li> <li>(vi) Receiving, processing and making of payment claims.</li> </ul> <p>This combinations creates a conflict of interest which undermines accountability. Available evidence indicates that an Expert Panel established by MOH in 2019 in its Report recommended the separation of roles and establishment of more</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			independent structures to be assigned different roles and act as checks and balances on each other and enhance accountability.	
Section 5 (a)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposal to amend 5 (a) to read: "Register Contributors and Beneficiaries in accordance with the Act."	Registration of contributors will enable the authority for purposes of tracking contribution.	
5(d)	Kenya Healthcare Federation and Kenya Dental Association.	Definition of relevant body allowing accreditation to be defined and to include KMPDC, PPB, Nursing Council or any other relevant professional body as mandated by law to license service providers.	Function listed without clarification which is needed on which relevant body which is referred to here	
Clause 5 (f)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be rewritten to read "In consultation with the Cabinet Secretary, develop regulations and guidelines for the operations and implementation of the Funds established under this Act;		
5(j)	Federation of Kenya Employers (FKE)	Delete section.	Potential conflict of interest and bias is avoided in the advice the Cabinet Secretary receives on matters relating to health insurance in Kenya. The cabinet secretary may consult the Authority but will not be bound by any advice the Authority gives.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 5 (1)(2)	FOPA Association of Kenya	The current Enhanced Schemes provided by NHIF will cease to exist once the Bill is enacted.		
7	Civil Society Organisations (11)	Provide a nominee of the CSOs by National Health NGOs Network or  Have at least one representative from Civil Society Organizations.	CSOs have in-depth knowledge of community needs including the marginalized communities. Their inclusion will add value in the different intersectional perspectives to be considered during implementation	
	Health NGO's network	We ask for 2 seats (male and female) for CSOs and 1 seat for youth Add a clause (j) two representatives from health Civil Society Organizations (CSOs) and (k) Youth-led & serving health Civil Society Organizations (CSOs)	The absence of CSOs in the board authority or leadership structure is a notable gap in the proposed social health insurance bill. CSOs play a vital role in ensuring transparency, accountability, and representation in policy formulation and implementation, especially in matters related to healthcare.  Health CSOs are not only employers, but represent the voices, needs and desires of the community on matters health. Without such representation communities remain voiceless in contravention of the constitution of Kenya.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Clause 7 (1) (h) (i) and 7 (1) (h) (iii)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that Clause 7(1)(h)(i) be retained, however, Clause 7(1)(h)(iii) be re-written to read "private healthcare facilities"	This change will also align with the definition assigned by the Health Act, 2017	
Section 7 1 h I – iv	Christian Health Association of Kenya (CHAK)	To amend and provide a slot for the FBO who provide 40% of healthcare in Kenya in hard-to-reach areas. "Kenya Faith Based Services Consortium."	FBOs have no slot	
Article 7 (1)	The Confraternity of Patients Kenya (COFPAK)	Include The Confraternity of Patients Kenya (COFPAK) an organization that champion patient safety and well- being at all levels of healthcare.	In the proposed Bill, the constitution of the Board lacks representation of the patients. COFPAK, a premier patient organization has a strong link with the public to promote bottom-up people-centered healthcare in Kenya towards the attainment of Universal Health Coverage and enhance public faith and confidence.	
7 (1)	Kenya Healthcare Federation and Kenya Dental Association	Add the words who shall be 'competitively' recruited and appointed.	Missing important word on merit appointments.	
7(1)(f)	Kenya Healthcare Federation and Kenya Dental Association	Add the words, 'healthcare background', in the list of qualifications.	Missing important qualifications for appointment.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 7(1)(h),	Association of Kenya Insurers(AKI)	Add (v) Association of Kenya Insurers		
Section 7(1)(h)	Kenya Union of Clinical officers(KUCO)	One representative elected by associations in the health sector.	KMA only represents Medical Officers and is therefore not representative of all health workers, the representative should be elected by all health sector representatives.	
	Kenya Union of Clinical officers(KUCO)	Insert Immediately after section 7(4) the following... 7(5) One representative from the Kenya Health Professional Oversight Authority (KHPOA)		
7(1) (g)	Kenya Healthcare Federation and Kenya Dental Association	Delete the words 'not being public officer'.  Add the words, 'healthcare background', in the list of qualifications.	Persons in a-e are public officers and as such other public officers should not be unfairly discriminated against.  Missing important qualifications for appointment.	
	Kenya Dental Association	Appointment criteria missing - may create room for handpicking of persons.	Healthcare providers cannot be appointed if they are public officers or owning a facility. This is discriminatory.  One should not be a healthcare provider?	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Kenya Healthcare Federation	Add the words Kenya Healthcare Federation(KHF) after (v).	Representative body of Providers in private sector.	
7(1) (h)	Federation of Kenya Employers (FKE)	<p>Add FKE to the Board h) five persons, not being public officers, nominated by—</p> <p>(i) the Kenya Medical Association;</p> <p>(ii) the informal sector association;</p> <p>(iii) health care providers; and</p> <p>(iv) the Central Organization of Trade Unions Kenya.</p> <p>(v) the Federation of Kenya Employers</p>	<p>a) The Federation notes a gross omission of formal employers' body from the Board. This is considering that employers are central to the provision and implementation of this Bill.</p> <p>b) The Authority will largely depend on the contributions of employees in formal employment. This means that accurate deduction and timely remission of these contributions will be done by employers, hence the need for employers' representation on the Board.</p> <p>c) Kenya has ratified ILO Convention 144 on Tripartite Consultations and hence recognizes the tripartism engagement. Hence the labour sector representation is not complete when you have only Government, workers without employers. Further the Bill refers to employers under various sectors.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Central Organization of Trade Unions (Kenya) (COTU)	That COTU (K) should nominate two representatives for workers in line with the previous NHIF Act where workers have two slots on the board.	In line with the previous NHIF Act	
		One of the two representatives of COTU (K) should be present.	For a quorum to be constituted.	
	Pharmaceutical Society of Kenya	<p>Five persons not being public officers nominated by-</p> <p>Add (v) a nomination from the Pharmaceutical Society of Kenya (PSK)</p>	<p>Pharmacists are healthcare providers.</p> <p>60% of healthcare costs are on Health Products and Technologies that are managed and dispensed by Pharmacists.</p> <p>The Pharmacist would play a critical role in the Board of Authority on how to rationalize medication resources for positive health outcomes.</p> <p>Pharmaceutical Society of Kenya to nominate a suitable pharmacist for the slot of health care providers.</p> <p>Medicines account for a large budget of the insurance claims. Having the pharmacist as a medicine expert will boost the board immensely in rationalizing these claims.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Association of Kenya Medical Laboratory Scientific Officers	Amend by deleting the word Kenya medical association and replacing by the word "Caucus of health professionals associations in Kenya.	To liberalize health Professional representation in the social health authority and avoid creation of monopoly of one health profession yet health is provided by a team of health professionals.	
	Federation of Kenya Employers (FKE)	<p>Include representative of employers to the Board by inserting a new section 7 (1)h(v) to read as follows;</p> <p>h) five persons, not being public officers, nominated by-</p> <p>(i) the Kenya Medical Association;</p> <p>(ii) the informal sector association;</p> <p>(iii) health care providers; and</p> <p>(iv) the Central Organization of Trade Unions Kenya.</p> <p>(v) the Federation of Kenya employers</p>	<ol style="list-style-type: none"> <li>1. The employers play a critical role of in employment creation for Kenyans, the contribution from workers in the formal employment is deducted and remitted, and workers have private medical schemes to supplement the National Social Health Insurance Schemes, among others.</li> <li>2. The Authority will largely depend on the contributions of employees in formal employment. This means that accurate deduction and timely remittance of these contributions will be done by employers, hence the need for employers' representation on the Board.</li> <li>3. FKE is the most representative employers. The Federation is recognized tripartite social partner under the industrial relations charter which governs the Labour sector</li> </ol>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			4. Section 27(1)(e) includes employers as contributors.	
	Kenya Dental Association	<p>Amend clause to provide for key voices in healthcare service delivery. Expand to seven (7) persons.</p> <p>7 h (I) – (IV) place cadres as per the following list—</p> <ul style="list-style-type: none"> <li>i. Specialists, Medical Doctors-KMA</li> <li>ii. Dental Officers-KDA</li> <li>iii. Pharmacists-PSK</li> <li>iv. Clinical Officers-KCA/KUCO</li> <li>v. Nurses-NNAK/KNUN</li> <li>vi. Main representative union in healthcare-KMPDU to replace COTU Patient representation</li> </ul>	<p>Expand Board representation.</p> <p>Ensure odd numbers.</p> <p>Consider representation by the Kenya Dental Association on the basis of neglect of oral health diseases and increasing burden of oral healthcare conditions</p> <p>Expand representation by KMPDU as the main union representing doctors who are a key pillar in healthcare provision needs to nominate a representative to sit on the board</p> <p>KMPDU champions for both doctors and patient rights</p> <p>Cure lacuna on meaning of healthcare providers as drafted</p>	
Section 8	Kenya Union of Clinical officers(KUCO)	<p>Add under section 8;</p> <p>8(j) two persons nominated by Associations representing health providers;</p>	To include users and, to diversify expertise.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 8	NATIONAL HEALTH INSURANCE FUND (NHIF)	“A Chairperson appointed by the President by virtue of his or her knowledge and experience in matters relating to insurance, financial management, public administration, economic, health or business administration.	The clauses are too prescriptive thus limiting the powers of the appointing authorities.	
8(1)(b)	Kenya Healthcare Federation and Kenya Dental Association	Delete Bachelor’s degree and replace with Master’s Degree.	Superior qualifications necessary for the job.	
8(1)(c)	Kenya Healthcare Federation and Kenya Dental Association	Add the words, ‘healthcare background’, in the list of qualifications.	Missing important qualifications for appointment.	
Section 8(1)(h)	Association of Kenya Insurers(AKI)	Amend Clause 8 (1) (h) to read: one person nominated by health care providers  Add Section 8(1)(K) on person nominated by the Association of Kenya Insurers		
8(2)	Kenya Healthcare Federation and Kenya Dental Association	Delete the phrase ‘sentenced to a term of imprisonment exceeding six months;’.	Criminals convicted of any offence should not be allowed to serve at any public office.	
Section 8 (2) (e)	NATIONAL HEALTH	“by the bodies who have authority to issue reports on matters regarding	This makes it clear that even reports from Parliament and other relevant watchdog commissions	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	INSURANCE FUND (NHIF)	breach of Chapter Six of the constitution.	can be used to declare someone not fit for office.	
11	Civil Society Organisations (11)	Include two clauses that provide 1. powers of the Board; and 2. functions of the Board.	The delegation clause does not make sense without express stipulation of the powers and functions of the Board.	
12	Pharmaceutical Society of Kenya	Their reimbursement approval should be done by the Public Service Commission.	Independence of the Board can be compromised if their reimbursement needs the approval of the Cabinet Secretary of Health.	
13(1)	Kenya Healthcare Federation and Kenya Dental Association	Provide an addition that the Boards decision is final.  The authority be reclassified for proper remuneration of CEO.	This provides room for Autonomy and accountability.  In the absence of this there may be blame shifting and accountability compromised.  This entity carries a sensitive and important function in the lives of Kenyans. Due importance should be given to the Qualifications and remuneration of employees.	
Section 13(1)	Christian Health Association of Kenya (CHAK)	Limit vacancy period to 3 months; and search to start automatically after 6 months to the end of the CEO contract.	Does not provide CEO transition plans, with prolonged CEO vacancies in current NHIF	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
14(1)	Kenya Healthcare Federation and Kenya Dental Association	Delete Bachelor's degree and replace with Master's Degree.	Superior qualifications necessary for the job.	
	Kenya Healthcare Federation and Kenya Dental Association	Add the words 'healthcare background', in the list of qualifications.	Missing important qualifications for appointment.	
	Kenya Dental Association	Delete 14 (b) on gazette bill - 'Advocate of the High Court'.	<p>It was NOT in the initial draft and should not be allowed to be here. It offends the profession to lock them out whereas they carry the bigger burden of responsibility and duty of care. The CEO position need not have a compulsory clause of being advocate. As a doctors' union we are strongly opposed to this clause being inserted. It has basis whatsoever.</p> <p>Locking doctors out of this position because they are not advocates is tantamount to reserving this to advocates. KMPDU submits that healthcare management needs to tap into the available wide expertise of those in it who understand that space well and NOT to lock them out. Advocates can serve as corporation legal secretary and dispute resolution committee members. These can be expressly stated. However, the position should of CEO should be left to be</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			filled competitively. We state this is a NO and demand that delete Clause 14(b) Express clauses that deny and lock out healthcare workers from positions in the healthcare system like from Board Chair and CEO in this case should NOT be entertained.	
15	Kenya Healthcare Federation and Kenya Dental Association	The appointment be for a period of 5 years , eligible for renewal for a further 3 years.	This is to give the office bearer time to implement his vision and make lasting impact.	
16	Health NGO's network	Replace 'bachelor's degree to 'master's' degree in law' which is a most suitable requirement for this position.	A bare minimum of a degree for a CEO is not a qualifiable standard for a holder of this position.	
Section 16 (1)	Christian Health Association of Kenya (CHAK)	Responsibility be Clear in the regulations e.g. Custody of the common seal	CEO vs Corporation secretary (Law, CPS), Chain of command	
Section 16(2)(a)	Kenya Union of Clinical officers(KUCO)	Amend to read (a) holds a bachelor's degree from a university recognized in Kenya	To avoid discrimination and align with MWONGOZO guidelines.	
Section 16(3)	Christian Health Association of Kenya (CHAK)	In regulations; clearly protect the role of Chair and the CEIO, so that they cannot simply be side-lined by other members, meetings called & binding decision are made. E.g. Absence of CEO and or Chair should be for justifiable reasons should be allowed.	Clarify in regulations, for proper order and chain of command at the Board.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
16 & 18	Helium Health	<p>The Bill should introduce specific measures, including amongst others, modern technological safeguards such as encryption, intrusion detection, and regular security audits in line with international best practices to ensure secure data exchange through the Health Data Bank.</p>	<p>The provisions of Sections 16 and 18 of the Bill seek to establish a Comprehensive Integrated Health Information System (“System”) which shall be developed, operationalized, and maintained by the Digital Health Agency (“the Agency”) in collaboration with the Cabinet Secretary appointed for the Agency. This System will act as a central platform for collecting, analysing, storing, and sharing all health data in Kenya. Its main goal is to prioritise data subjects in healthcare delivery, facilitate secure data exchange and processing among healthcare facilities, and ensure standardization of health data management.</p>	
17	Civil Society Organisations (11)	All staff need to be competitively and openly recruited.	The appointments will leave room for bias and possible discrimination.	
	Central Organization of Trade Unions (Kenya) (COTU)	<p>The Staff of the fund are eligible to apply for the positions advertised by the Board if not appointed</p> <p>(a) Retire from Public Service (b) Be redeployed within public service</p>	Has been the previous practice	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		That the current staff of NHIF be absorbed in the proposed Social Health Authority unconditionally under a transition clause as has been the practice previously.		
Part III	Federation of Kenya Employers (FKE)	Delete “or levies” and replace with: (c) “monies allocated for those purposes from fees administered;”	The proposal charging of levies will result to unpredictability of the costs. This may lead to double payment and increased costs to businesses.	
20	Civil Society Organisations (11)	We recommend abolition of the Primary Health Care Fund to avoid duplicity.	There is clear duplicity in the funds.	
	International Budget Partnership Kenya	Review the clause.	<p>The bill does not shed light on;</p> <ol style="list-style-type: none"> <li>1. Primary health services are a function of county government and as such this section of the law should be clear on the linkage between county government budgeting processes and the expenditure out of the Fund. Will the funds be channeled to facilities through a claims process or will some such as the funding for Community Health Practitioners be disbursed as matching conditional grants?</li> <li>2. The drive for autonomy of primary health facilities by</li> </ol>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			counties. How is facility autonomy related to the clause and how will it impact the purchase of services in public primary health facilities?	
Section 20	Council of Governors	The provision should be amended to ensure that the objects of the fund include purchase of primary health care services such as preventive and promotive primary health care services that may not be provided through health facilities.	The proposed amendment is necessary because the object of the fund as rendered by the provision in its current form is very restrictive as it is limited to primary health care services from health facilities. This is a very narrow understanding which is limited to services provided by health facilities. This will continue the focus on curative services and continue to leave out most of the preventive and promotive primary health care services that are not provided by health facilities. Who will pay for these services, most of which are rendered by county governments.	
Clause 20	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	As recommended earlier, define essential health services in the context of primary healthcare and provide a clear distinction between healthcare provider and healthcare facility.		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
21	Kenya Healthcare Federation and Kenya Dental Association	The Bill ought to be specific on the proportion in terms of percentage.	This provides clarity, transparency and accountability which support good governance.	
	Civil Society Organisations (11)	There is need for revision of the clause to include county governments in the sourcing of the funds.	There is an interference in health service provision as a devolved function.	
Part II Clause 21	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	In addition to the stated sources of funds include, “monies appropriated by the National Assembly for provision of Primary Health Services to indigent and vulnerable persons		
23	Kenya Healthcare Federation and Kenya Dental Association	Add new clause to read—  PHC Fund promotion shall be deployed and publicized by Community Health Promoters to ensure continued membership subscription and membership education on benefits of SHIF triple funds.	Linkage of PHC Fund with PHC Bill/Act and Community Health Promoters to ensure continued membership subscription and membership education on benefits of SHIF.	
Part II Clause 24	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause reads. “In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		regulations for the Primary Healthcare Fund”.		
Section 24	Christian Health Association of Kenya (CHAK)	Consider retention of Quarterly capitation tariff, at a higher & more commercially viable rate than the current rate of Kshs/83/month per head, for unlimited outpatient services.	Clarifying the regulations	
25	Federation of Kenya Employers (FKE)	25 (d)Delete – “compulsory public service employee’s insurance benefit scheme” Proposed New clause:  d) funds from the national government, county governments and their respective entities for the administration of employees’ benefits; and	Having a separate insurance arrangement for a segment of the contributors will be considered as discriminative and will also lead to inefficient way of managing the Authority.	
	Kenya Healthcare Federation	The Bill be specific on the proportion in terms of %  Expand sources of funds to be comprised of Sin Tax Levies	Government contribution to be a percentage of the national budget to cater for indigents, unemployed and vulnerable persons  Consider to have Sin Tax Levies be paid into the SHIF	
Section 25	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposal to include clause Section 20 (f) “Investment income including but not limited to rental income.”	Income received by the Authority from areas such as investments and rental income will be used to pay benefits.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
25(1)	International Commission of Jurists, Kenya (ICJ Kenya)	Include, “any monies from County Governments as may be appropriated by County Assemblies,” as one of the Primary Healthcare Fund sources.	County Governments have a duty under the Fourth Schedule Part 2 of the Constitution to promote primary health care.	
		Include, “any monies from County Governments as may be appropriated by County Assemblies,” as one of the Social Health Insurance Fund sources.	Health is a devolved function and the Fourth Schedule Part 2 of the Constitution assigns County Governments functions and powers over county health services including county health facilities, pharmacies and ambulances.	
Section 25(1)	Insurance Regulatory Authority (IRA)	Insert the word ‘to’ between the words ‘Fund and ‘be’ so that the statement reads there is established a Fund to be known as the Social Health Insurance’.	To correct the typographical error.	
Part II Clause 25 (1)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	we recommend that the purpose(s) for which the SHIF is established be stated explicitly	For clarity and limit any misappropriation of monies that will be paid into SHI Fund	
25(1)(b)	Kenya Healthcare Federation and Kenya Dental Association	The Bill be specific on the proportion in terms of percentage.	Government contribution to be a percentage of the national budget to cater for indigents, unemployed and vulnerable persons.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Expand sources of funds to be comprised of Sin Tax Levies.	Consider to have Sin Tax Levies be paid into the SHIF.	
Part IV Clause 25 (1) (d)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	Employees insurance benefit scheme” appears erroneous. Either create such a scheme explicitly with its attendant administrative and operational processes or refer to this simply as “the contribution of public service employees to the Social Health Insurance Fund”.	The reference to a “public service employees insurance benefit scheme” appears erroneous	
Section 26	NATIONAL HEALTH INSURANCE FUND (NHIF)	Amendment to this section, to read as follows: “Registration shall be conducted continuously at various points in such a manner as shall be prescribed by the Cabinet Secretary in consultation with the Board”.	Justification, to take into account the Board’s day to day operations on registration.	
Part IV Clause 26 (1)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that Clause 26(1) be amended to read “Every Kenyan shall register as a contributor to the Social Health Insurance Fund”. • We recommend that an interpretation of the term “member” be provided and that clauses then introduced to describe how Kenyans shall be “assigned membership to the various established Funds”.		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part IV Clause 26 (2)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that clause 26(2) reads ““A person who, being a non-Kenyan, and is ordinarily resident in Kenya, shall be eligible for registration as a contributor to the Social Health Insurance Fund”		
Part IV Clause 26 (3)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that clause 26(3) reads “A child born after commencement of this Act shall be registered at birth as a beneficiary under the Act”.  We have excluded mention of the Fund to which the child shall be attached because it is our view that this fact shall be determined by regulations.		
Part IV Clause 26 (5)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that clause 26(5) reads ““Any person who is registerable as a contributor under this Act shall produce proof of registration with the Social Health Insurance Fund as a precondition of dealing with or accessing public services from the national government, county government or a		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		national or county government entities.”		
		We recommend that clause 26(2) reads ““A person who, being a non-Kenyan, and is ordinarily resident in Kenya, shall be eligible for registration as a contributor to the Social Health Insurance Fund”		
Section 26 (5)	Kenya Union of Clinical officers(KUCO)	delete	Contravenes the Bill of Right in the CoK.	
Section 26 (5)	Christian Health Association of Kenya (CHAK)	Transition period be 12 months in line with the miscellaneous clauses on transition, from the “appointed day”. Please define the appointed day.	There should be a transitional period to avoid denial of basic social services to citizens e.g. To report a crime and get police help.	
26(5)	Kenya Healthcare Federation and Kenya Dental Association	The requirement to produce proof of registration be removed/deleted as a precondition of accessing any public services from national and county governments.	No one should be denied access to any public services if there are not registered with the SHIF.	
	Civil Society Organisations (11)	Delete the precondition.	This has the potential to limit other fundamental rights as provided in the constitution including access to other socio-economic rights.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
27	International Budget Partnership Kenya	<ol style="list-style-type: none"> <li>1. Reduce contributions for the unsalaried to quarterly or monthly. This will alleviate the financial burden associated with making a lump sum contribution at one point in the year for those in the informal sector. In addition, such a move would provide a steadier rate of income into the fund over the year.</li> <li>2. Ensure the means tested instrument measures the annual household income for the unsalaried, which is then subject to a standard (flat) or progressive rate of contribution. Such a proposal would ensure that the rate applied across unsalaried income levels is reflective of the income distribution of the households in this group.</li> </ol>	<p>The requirement for unsalaried Kenyans who may be either in this poverty bracket or barely making it with day wages may be unrealistic.</p>	
	Federation of Kenya Employers (FKE)	<p>Add definition of—</p> <ol style="list-style-type: none"> <li>a) “social unit”; and</li> <li>b) “person”.</li> </ol>	<p>Need for clarity on definition of “household”</p> <p>Need clarity as to the definition of a person. I.e. does the law envisage a situation where all Kenyans are born with a debt that keeps rising when they don't have income? Unemployment rates are at an all-time high therefore to expect everyone to contribute is unrealistic. The Act needs to</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			provide for the unemployed and non-income earning class	
Section 27(1)	Council of Governors	Amend by deleting sub-clause (d)	This need to be clear the instances when counties will pay out to the fund.	
Section 27(1)(a)	Christian Health Association of Kenya (CHAK)	We propose 1.5% on basic pay ( not gross), up to a maximum of Kshs 5,000 for employee and employer. Retract the 2.75% proposal that is being shared around. Please define basic pay/or gross pay as case may be.	Regulations to clarify	
Section 27 (1)(b)	The Confraternity of Patients Kenya (COFPAK)	Amend contributions to the social insurance fund to be made monthly instead of annually.	The majority of the unemployed depend no daily wages and can only remit monthly contributions to the schemes and not a one-off annual payment. Otherwise, it will be discriminatory, and burdensome and may result in default in payments	
27(2)	Civil Society Organisations (11)	Revise to have contributions to be remitted monthly for all households.	Having salaried households contribute monthly and non-salaried households, annually trenches inequality. Most small-scale traders may not be able to afford the annual contributions at once.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Federation of Kenya Employers (FKE)	Prescribe the specific applicable rate in the Act.	<ol style="list-style-type: none"> <li>1. This is to conform with the Act-Rate prescribed in the Act.</li> <li>2. NSSY Act, NITA Act, Employment Act (Affordable Housing Levy) have set precedence.</li> <li>3. The employees and employers need clarity on the rate.</li> </ol>	
	Federation of Kenya Employers (FKE)	Prescribe the specific applicable rate in the Act.	This is to conform with the Act. Rate prescribed in the Act. NSSF Act, NITA Act, Employment Act (Affordable housing Levy) have set precedence. The employees and employers need clarity on the rate	
	Federation of Kenya Employers (FKE)	Need to make provision for refugees	Refugees are not permanent residents in the country and yet most of them have stayed in the country for so many years and would easily qualify to be citizens by naturalization. Besides, consideration should be made over the fact that the said refugees use the same medical facilities.	
Section 27(2)(a)	Christian Health Association of Kenya (CHAK)	Recommended: 1.5% of gross salary higher cap of kshs. 5,000 from the employer, and Kshs. 5,000 from employee to avoid distorting premiums costs of medical	2.75% to be addressed in recommendations.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		insurance in the open market. Define Gross pay for this purpose.		
Section 27 (2)(b),(3)	Christian Health Association of Kenya (CHAK)	Should be payable in instalments, and affordable. Means testing to be fair and just. Means testing tool should be reviewed at least twice a year, to allow those in need to be updated.	Should be payable in installments and affordable. Means testing to be fair and just.	
Section 27(2)(c)	Council of Governors	Amend by deleting the phrase "County assemblies" to read as follows: © In the case of household in need of Financial Assistance as determines by the means testing instrument, by the government at a rate apportioned from funds appropriated by parliament for that purpose as prescribed under this Act.	This needs to be clear the instances when counties will pay out to the Fund.	
27(2) (c)	Kenya Healthcare Federation and Kenya Dental Association	Provide an addition that the statement includes populations not in a household e.g. street children , people in elderly homes, mature minors(persons/families and children affected by teenage pregnancies) etc.	These persons are not classified as indigents and are within a household. There's a risk of leaving them out and exposing them to healthcare catastrophes.	
	Kenya Dental Association	Means testing /Proportion Pay annually once! If you do not pay uniform penalty. What mitigation exists or should be inbuilt in this law?	Reduce fines to be equivalent to 3-5 times the amount they needed to contribute Place minimum and maximum.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>Repeat offender make it 10- fold. Repeat repeater of offence make it 100-fold. Make it proportionate.</p> <p>Imprisonment will not bring in the money. Making reasonable fine will bring in the money but also deter repeat offence. The penalty should also be realistic otherwise many Kenyans will default and land in prison. Or this will create another corruption opportunity to buy freedom.</p>	
27(3)	Kenya Healthcare Federation and Kenya Dental Association	Provide that contributions be done annually and upfront.	To prevent the current cases of adverse selection and paying of premiums into the fund only when sickly which practice interferes with the sustainability of the fund.	
	Civil Society Organisations (11)	Delete clause 27 (3).	Unnecessary clause.	
27(5)	Kenya Healthcare Federation and Kenya Dental Association	The word the 'government' be deleted and replaced with Social Health Authority.	<p>It's not the role of government to make known to the public available modes of premium financing into the fund.</p> <p>The government and SHA may assist in sharing of information on any available public and premium financing/loan products in the market.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Add new clause after 27(5) on loss of formal employment, employee shall notify SHA within 21 days and be allowed to start making contributions into SHIF as per the established contribution guidelines	To provide for persons who lose their formal employment to allow transition into other forms of contribution into the fund	
Section 27(5)	Insurance Regulatory Authority (IRA)	Replace the phrase 'premium' with 'contribution'.	The clause is titled 'contributions' in the marginal note, and the term 'premium' is not defined under Clause 2 of the Bill.  Further, the term 'premium' means the consideration paid by a policy holder for assumption of risk by an insurer.	
Section 27(5)	Christian Health Association of Kenya (CHAK)	Recommended: Refrain from increasing debt burden of indigents or the poor; move such individuals to UHC paid by GOK as an option.	Provide mitigation for losses due to non-payment of this credit line to informal sector.	
Section 27(6)	Kenya Union of Clinical officers(KUCO)	Amend to read; “(6) any employer or household who fails to pay any contribution in respect of any period on or before the day on which the payment is due shall be liable to a penalty equal to 10% of the amount due for contribution for the period in which the contribution remains unpaid and the total annual contributions.”	It is not within the discretion of the employees to determine when the deductions are remitted. The responsibility lies squarely under the employer.  This shall help to correct a situation where the employer has been deducting money for Health Insurance from members but they are never remitted to the fund, on the other hand denying the	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			beneficiaries services when they need them most. Failure to pay on time denies the employees and beneficiaries' coverage and condemns them to unnecessary penalties that will be unfair.	
Section 27 (6)	Council of Governors	Amend by deleting the clause	It is not proper to criminalize nonpayment. Further, the clause has not addressed employers who fail to remit the contributions on time. Alternatively, if it must be retained, then drafting language used under sec 48(1)(a) should be adopted i.e. fails without lawful excuse to pay..”	
27(6)	Federation of Kenya Employers (FKE)	Provide clarity on whether the ten percent is one-off; monthly or annual.	There is need for clarity on the penalty	
27(7)	Civil Society Organisations (11)	Exempt emergency services from this precondition	The clause defeats the purpose of emergency services, which is to first, save life.	
Section 28	The Confraternity of Patients Kenya (COFPAK)	Clearly define the emergency treatment and the eligibility criteria. The definition should not contravene the provisions of the CoK under Article 43(2).	For better provision of quality services, there is a need for beneficiaries to understand the nature of emergency services available and eligibility criteria.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 28	NATIONAL HEALTH INSURANCE FUND (NHIF)	Amend Section to provide guidance on who is able to access the funds. The criteria to be set by the Cabinet Secretary in consultation with the Board. To include a clause on who is eligible to access benefits for treatment of Chronic and Critical Illness. The modalities of access to be addressed in the regulations.	Operationally, this Fund is an excess-of-loss account for members who exceed the cover limits when managing chronic/critical conditions; and for purchase of road ambulance evacuation, and Accident and Emergency services at a hospital. This will aid in preventing misuse of the funds therein.	
Part V Clause 28 (a)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the phrase after depletion of the social health insurance cover be deleted from clause 28(a).  The clause should be amended to read.  “28. There is established a Fund to be known as the Emergency, Chronic and Critical Illness Fund whose purpose is to— (a) defray the costs of management of chronic illnesses. (b) to cover the costs of emergency treatment”.		
28(b)	Kenya Healthcare Federation and Kenya Dental Association	Emergency treatment be defined. This can be defined as “treatment up to the point where patient is handed over from emergency or treatment up	As the name suggests, the fund is urgently needed and critical to facilitate access to quality health care to persons at the hour of urgent need.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>to the point where patient has been stabilized at any receiving facility.</p> <p>Emergency list of covered treatments/select conditions should be listed.</p>	<p>The amendment will provide clarity on what the cover includes to ensure responsibility assignment and related accountability</p> <p>Emergency list of covered treatments/select conditions should be listed to allow for public education and awareness on the benefits of enrolling for SHIF.</p> <p>Article 43(2) provides that no one should be denied emergency treatment; This right cannot be limited by a statute as claimed by the precondition of denial of public services by non-registration into the SHIF.</p>	
29	Kenya Healthcare Federation and Kenya Dental Association	<p>Additional sources of funds be included and these can be from such sources such as—</p> <ol style="list-style-type: none"> <li>1. National Assembly allocations to bodies like KENHA, KURA and St Johns Ambulance (for the portion of the fund beyond evacuation).</li> <li>2. A percentage of private 3rd party insurance premiums be included as a source of funds to the emergency care fund.</li> </ol> <p>At the end of the financial year / following personal injury claim</p>	<p>Currently the funds for emergency treatment (beyond evacuation) are coming from different pockets. Extra funds should be allocated to this fund and can be levied from KENHA/KURA/St Johns Ambulance.</p> <p>The current process of claiming from insurance companies 3rd party insurance is through a legal suit. Emergency care is never catered for by a majority of insurance providers in cases of road traffic accidents. The funds are often unused and hospitals left</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		reconciliations may be done with the private insurance company as to the actual claims.	with high costs of unpaid care because the process of claiming for compensation is quite lengthy. It is therefore our proposal that a portion of motor vehicle and motorcycle premiums be used to pool funds into the emergency care fund.	
	Association of Kenya Medical Laboratory Scientific Officers	Amend by replacing the word national assembly by the word parliament; to read as follows; monies appropriated by Parliament.	This is to make it consistent with other provisions in Part 3 Section 27 (c) and (d) Also the emergency chronic and critical illness fund involves both national and county government hence needs to involve both the national assembly and senate that make up parliament and avoid any potential conflict in the two houses of parliament in appropriation of funds.	
Part V Clause 29	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	In addition to the stated sources of funds include, “monies appropriated by the National Assembly to defray the costs of management of chronic diseases and emergency treatment for indigent and vulnerable persons”.		
30	Kenya Healthcare Federation and	The regulations to include a penalty for denial of emergency services by health providers and facilities.	This ensures that hospitals/ facilities/ providers undertake treatment of emergency cases.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Kenya Dental Association			
Part V Clause 30	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause reads. "In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Emergency, Chronic and Critical Illness Fund".		
Part VI	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that PART VI is amended to read "BENEFITS, TARIFFS, and CONTRACTING AND CLAIMS". The word "empanelment" should be excluded.		
31	Kenya Association of Retired Officers (KARO)	Be amended by inserting a new sub (clause 3) stating the "Cabinet Secretary in consultation with the Board shall prescribe provisions for enhanced benefit schemes and packages for beneficiaries who are not covered by the private Medical Insurance due to their age and the nature of illnesses".	This will be in line with constitutional provision on the right to the highest attainable standard of health and social security,  It will also provide for the cost of chronic illnesses and protect the beneficiaries against discrimination on health and age grounds which is in line with Article 57 to line in dignity, respect and free from abuse and receive reasonable care and	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			assistance from their family and the STATE.	
31(1)	Kenya Healthcare Federation and Kenya Dental Association	Provide definition of the components of essential healthcare benefits package	The phrase has been used generally without elaboration of the minimum defined healthcare benefits that would fall under the essential benefits package	
	Federation of Kenya Employers (FKE)	Define what essential healthcare benefits constitute.	Essential Benefits need to be clearly defined and secured in the Act.	
	Association of Kenya Medical Laboratory Scientific Officers	Amend by adding the word with the approval of parliament immediately after the word Board to read as follows—  “Every beneficiary shall be entitled to an essential healthcare benefits package prescribed by the Cabinet Secretary in consultation with the Board with approval of parliament”	This is to ensure that the people’s representatives are in approval and agreement with the cabinet secretary on essentials health care package offered to the citizens of Kenya and eliminate vested interest indetermination of the same.	
Section 31(1)	Council of Governors	The provision should be amended in line with the amendments proposed in respect of section 5 which deal s with the functions of the Authority and recommends the separation of roles and vesting them in different structures.	The role of determining the essential healthcare benefits package is too important to be left to the Cabinet Secretary and the board.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part VI Clause 31 (1)		We recommend that this clause be amended to read. "31. (1) Every beneficiary shall be entitled to a healthcare benefits package prescribed by the Board in consultation with the Cabinet Secretary. Delete the word "essential". In our considered assessment the use of the word essential is limited to primary healthcare and Universal Health Coverage, yet the benefits to be enjoyed by beneficiaries go well beyond the scope of primary healthcare. • In addition, in line with our previous recommendations we recommended revising the order of functions in this clause. We recommend that the Board in consultation with the Cabinet Secretary prescribes the Benefits Package. In our view this		
Section 31(1)	The Confraternity of Patients Kenya (COFPAK)	Clearly define the essential healthcare benefit package and timings	The proposal lacks a clear definition of the healthcare package for the beneficiaries therein.	
31(3)	Kenya Healthcare Federation and	Add the phrase 'and any other member of public organized in such	The SHA should make it possible for any member of the public or	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Kenya Dental Association	a manner to have a publicly arranged enhanced healthcare benefits package' after the words civil servants.	organized groups of persons to access public health insurance at affordable rates for enhanced healthcare benefits packages.	
	Federation of Kenya Employers (FKE)	Delete the subclause.	Giving preferential treatment to a category of contributors is discriminatory to other contributors. Contributors should be treated the same.	
Section 32	Council of Governors	The provision should be amended in line with the amendments proposed in respect of section 5 which deals with the functions of the Authority and recommends the separations of roles vesting them in different structures.	The determination of the tariffs applicable to the benefits package is too important to be left to the Cabinet Secretary and the Board. Effective accountability will be secured through separation of roles.	
Part VI Clause 32 (1), 32 (2) and 32 (3)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clauses be amended to read as follows in order to create sector wide acceptance of any prescribed tariffs. 32(1) "The benefits payable under this Act shall be based on a tariff". 32(2) "The Cabinet Secretary shall, in consultation with the Board, following conventions and agreements negotiated with representatives of health care providers and health care facilities, prescribe the tariffs applicable to the	Since the intent of the drafters in using the word tariff is to predetermine and fix prices associated with payable benefits.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		benefits package under this Act. 32(3) The tariffs referred to under subsection (1), shall be reviewed every three years.		
32(2)	Association of Kenya Medical Laboratory Scientific Officers	Amend by inserting the words and approval by parliament to read as follows; The Cabinet Secretary shall, in consultation with the Board and approval by parliament prescribe the tariffs applicable to the benefits Package under this Act. This is to ensure that the people's representatives are in approval and agreement with the cabinet secretary on tariffs applicable to the benefits package offered to the citizens of Kenya and eliminate vested interest indetermination of the same.	This is to ensure that the people's representatives are in approval and agreement with the cabinet secretary on tariffs applicable to the benefits package offered to the citizens of Kenya and eliminate vested interest indetermination of the same.	
32(1) (2) (3)	Kenya Healthcare Federation and Kenya Dental Association	All healthcare stakeholders- facilities and providers be engaged as well to enable development of a scientific method of arriving at the tariffs/fee guides/fee benchmarks for care provision.  Currently gazetted service fee benchmarks to apply while tariffs remain to be reviewed factoring cost of	To ensure effectiveness of the insurance model, a regular review of the tariff ensures an effective cover as economic situations of the future are unknown.  For example, Monetary and fiscal policy decisions are made regularly and even annually.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		inflation since 2016 when they were last reviewed by the regulator, KMPDC.  The tariffs be reviewed at least every 3 years.	This is to minimize clash of services provision and unhealthy competition and payment of care between public and private health insurance providers	
33 (1)	Kenya Healthcare Federation	Provide that all licensed healthcare providers and facilities shall qualify for contracting to provide healthcare services either as comprehensive care centers or stand-alone health facilities	A cure for cartelization amongst select care providers Increases access to care to public Increases competition amongst providers thereby lowering costs of care and improving quality of care delivered	
	Kenya Dental Association	Clause should provide for automatic onboarding of all service providers on making applications in requisite forms; Applications should not be charged a fee.  Provide that all licensed healthcare providers and facilities shall qualify for contracting to provide healthcare services either as comprehensive care centres or stand-alone health facilities.	A cure for cartelization amongst select care providers.  Increases access to care to public.  Increases competition amongst providers thereby lowering costs of care and improving quality of care delivered.	
Part VI Clauses 33 (1)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be transferred to the “contracting section” and be re-written as follows.		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		“The Authority shall make payments out of the Funds to health care facilities that are contracted in accordance with the provisions of this Act.”		
Section 33(1),(2),(3)	Council of Governors	These provisions should be amended to clearly identify the body responsible for accreditation and empanelment of healthcare service providers.	The proposed amendment is necessary to make it clear who is responsible for accreditation and empanelment of health care service providers.	
Section 33(2)	Kenya Union of Clinical officers(KUCO)	Amend to read; (2) A health care provider of healthcare facility seeking to be empaneled under the Act shall apply to the relevant regulatory body for accreditation for quality of care; the approval should be done based in the KHPOA joint inspection report.	Accreditation should be done by the relevant regulatory body that registered the facility based on the KHPOA joint inspection report. KHPOA is the body authorized by law to coordinate all the regulatory bodies to conduct joint inspection for the facility and develop a joint inspection report that should be relied upon to accredit, professionals and facilities for empanelment.	
Part VI Clauses 33 (2)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be transferred to the “contracting section” and be re-written as follows. “A healthcare facility seeking to be contracted under the Act shall first make an application for empanelment to the body responsible	It is our view that this amendment corrects errors in interpretation of the terms (health care provider vs health care facility). It also ensures the proper separation of functions between the SHA (contracting) and the accrediting body	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		for accreditation of quality of care in the manner prescribed by the Cabinet Secretary”.	(empanelment and quality of care).	
Section 33 (2)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposal to delete Section 33(2) as the section provides for accreditation, which is not a function of the Board. Proposal that to replace section 33(2) with the following: “A healthcare provider seeking empanelment shall make an application to the Board in the manner prescribed by the Cabinet Secretary in regulations” Add a provision for gazettelement upon empanelment by the Board.		
33 (2)	Kenya Healthcare Federation and Kenya Dental Association	<p>Provide that elaboration of the body making accreditation be known from the outset;</p> <p>All licensed facilities and providers should be able to provide services to any Kenya without creation of operating hurdles</p> <p>Body/bodies responsible for accreditation of quality care be listed.</p> <p>E.g. To be done by Conformity Assessment Bodies after certification of the facilities.</p>	<p>This ensures separation of duties for good governance, minimizes cartelization and ensures SHA is not bogged down with facility and providers accreditation functions.</p> <p>Increases access to care to public</p> <p>Increases competition amongst providers thereby lowering costs of care and improving quality of care delivered</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>The CABs need to be accredited by the Kenya Accreditation Service (KENAS) with guidance from the Ministry of Health.</p> <p>In the alternate, professional regulatory and licensing bodies to be given authority under the act to provide final approval checks for engagement with SHA as service providers</p>		
	<p>Association of Kenya Medical Laboratory Scientific Officers</p>	<p>Amend by adding the word relevant health professional regulatory immediately after the word the to read as follows; “A health care provider or healthcare facility seeking to be empaneled under the Act shall make an application to the relevant health regulatory body responsible for accreditation for quality of care in the manner prescribed by the Cabinet Secretary.”</p>	<p>This is to eliminate ambiguity and ensure all health professionals services are properly licensed and regulated avoid overlaps conflicts and un necessary expenses to ensure quality of care in all health spectrum of services</p>	
		<p>Amend by inserting the word relevant health regulatory immediately after the word the to read as follows—</p> <p>The relevant health regulatory body under subsection (2) may, at any time, revoke any accreditation under this section.</p>	<p>This is to eliminate ambiguity and ensure all health professionals services are properly licensed and regulated avoid overlaps conflicts and un necessary expenses to ensure quality of care in all health spectrum of services.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
33 (3)	Kenya Healthcare Federation	<p>Amend phrase to mean 30days after lodging of application as a service provider, a provider/facility will be listed in the gazette list of service providers</p> <p>Where denial for listing is met, reasons for the same should also be shared in writing to provider/facility</p>	<p>Ensure increased access to care.</p> <p>Minimize cartelization in the listing of service providers.</p> <p>Ensures adherence to fair administrative action principles.</p>	
	Kenya Dental Association	<p>The usage of the word 'may' gives a lot of room for abuse of discretion- replace the word with 'shall'.</p> <p>Amend phrase to mean 30days after lodging of application as a service provider, a provider/facility will be listed in the gazette list of service providers.</p> <p>Where denial for listing is met, reasons for the same should also be shared in writing to provider/facility.</p> <p>33(3) Proposal to delete the words 'Empanelment'.</p>	<p>Ensure increased access to care.</p> <p>Minimize cartelization in the listing of service providers.</p> <p>Ensures adherence to fair administrative action principles.</p> <p>Empaneling providers is counterproductive and retrogressive. It creates cartel behaviour. Institutional /professional accreditation should suffice then Quality Assurance enhanced/strengthened.</p>	
Section 33 (3)	NATIONAL HEALTH INSURANCE FUND (NHIF)	de-gazettement on matters related to medical fraud etc, as opposed to degazetting contracts, alluded to in section 34 (6).		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 34(3)	Kenya Union of Clinical officers(KUCO)	Amend to read; (3) A declaration under this section shall be subject to fulfilment by the healthcare service provider and healthcare facility of such criteria, including meeting quality standards set by the Cabinet Secretary in consultation with the board.	31(2) does not relate to the subject matter. The set criteria should be contained in a policy developed by the board.	
Section 34(4)	Insurance Regulatory Authority (IRA)	Enhance Section 34(4) to include termination of contract on grounds of revocations of accreditation as provided under Section 33(4).	The only ground for termination is currently failure to meet the quality standards set by the Cabinet Secretary. The proposal will therefore enhance the protection offered to contributors and beneficiaries.	
Part VI Clauses 33 (4)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be transferred to the “contracting section” and be re-written as follows. “The Authority shall revoke any contract with a health facility		
33 (4)	Kenya Healthcare Federation and Kenya Dental Association	Where revocation/suspensions is sought reasons for the same should also be shared in writing to provider/facility	Minimize cartelization in the listing of service providers Ensures adherence to fair administrative action principles and rules of natural justice.	
	Civil Society Organisations (11)	Add a clause or revise the clause to include a written justification of why the revocation will be done	Revocation of accreditation at any time without any written notice/justification opens a	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			window for abuse of power by the office holder.	
Part VI Clauses 33 (5)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend a clear separation of the contracting function of the SHA from the empanelment function of the accrediting body. This clause should be transferred to the contracting section and re-written as follows. "A healthcare facility aggrieved by the decision of the Authority to not contract it may appeal to the Dispute Resolution Committee within 30 days of the decision of the Board.	It is our view that appeals by aggrieved health facilities on matters concerning empanelment should be addressed to the accrediting body and not the Social Health Authority.	
33 (6)	Kenya Healthcare Federation and Kenya Dental Association	New clause add after 33(5); Dispute Resolution Committee shall consider disputes within 60days of lodgment of appeal of following decisions of the accrediting body	Provide for timely determination of disputes by the dispute resolution committee; Ensures separation of duties and checks and balances between different entities	
34	Federation of Kenya Employers (FKE)	Provide clear linkage between the Authority (Funds) and the primary health care services	How will the authorities work together?	
34 (1)	Kenya Healthcare Federation and Kenya Dental Association	The below clause be included— That the service contracts be reviewed every 3 years	Ensures service level engagements are done on fair business principles	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part VI Clauses 34(1)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend this clause be deleted in view of the amendments we have suggested to clause 33(3) which in its proposed amended form would read. "Upon application by an empanelled health facility, the Authority may contract the healthcare facility for the provision of health services to the beneficiaries within thirty days of the date of the application by the health facility".		
Part VI Clause 34 (2)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that this clause be rewritten as follows. "The Authority shall publish on its website and in such other manner as the Authority may deem appropriate, the contracted health care facilities for purposes of this Act.		
Part VI Clause 34 (3)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that if the term "declaration" must be retained an interpretation of its meaning be provided in the preliminaries. • Otherwise, we recommend that the clause be rewritten as follows. "Contracting under this section shall be subject to fulfilment by the healthcare facility of such criteria,		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		including meeting quality standards set by the Cabinet Secretary in accordance with section 33(2).		
Part VI Clause 34 (4)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be re-written to read as follows. "Every contracted health care facility shall be issued with such identification as may be prescribed by the Authority and such identification shall be displayed in a conspicuous position".		
Part VI Clause 34 (5)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be re-written to read as follows. " The Authority shall terminate the contract with any health care facility where such health care facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).		
34 (5)	Kenya Healthcare Federation and Kenya Dental Association	Where there are disputes with a particular provider/facility, SHA to report the same to the accrediting body to investigate the matter and give a decision to revocation/suspension/termination of service level engagement.	Ensures separation of duties and checks and balances between different entities Minimize cartelization and witch hunting in the listing/ blacklisting/ penalization of service providers.  Ensures adherence to fair administrative action principles and rules of natural justice.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part VI Clause 34 (6)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that if the term “declaration” must be retained an interpretation of its meaning be provided in the preliminaries. • Otherwise, we recommend that the clause be rewritten as follows. “Upon termination of a contract under subsection (5) the Authority shall, by notice in the Gazette, revoke the contract issued under subsection (3).”		
Section 34 (6)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposed inclusion, That the termination of contract should also be published on the Authority’s website.	This is to inform the public.	
Section 35	Kenya Union of Clinical officers(KUCO)	Define stall competencies	To build capacity and enable the office to carry out its mandate without outsourcing the proposed entity.	
Section 35	Insurance Regulatory Authority (IRA)	Define the word ‘claim’	There is need to define claims for clarity in the context of the Social Health Insurance Bill.	
35	Civil Society Organisations (11)	Revise clause 4 to read “the Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section in consultation with the Authority”.	The regulations ought to be made in consultation with the Authority.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	International Budget Partnership Kenya	This proposal should be reviewed with the goal of evaluating the risks and benefits of that approach.	<ol style="list-style-type: none"> <li>1. This proposal raises several risks. First, it could increase the cost of running the fund, which will go against the goal of keeping administrative costs below 5% as indicated in the bill.</li> <li>2. it may create a conflict of interest as private health insurance companies are competitors with NHIF and the Authority proposed to come after it</li> <li>3. it may create negative incentives in the push to seem to be doing well.</li> </ol>	
35. (1)	Kenya Healthcare Federation and Kenya Dental Association	<p>Include a clause on Claims Management Office.</p> <p>Staff Composition of the claims management office to comprise all healthcare provider cadres from general to specialized care service providers for ease of services approval and suitability checks.</p>	Ensures efficient and quality care delivery in line with existing professional scopes of practice and provides assurance to the attainment of the highest standard of healthcare.	
	Pharmaceutical Society of Kenya	Make CMO a department or a Directorate of the Social Health Authority.	a) CMO cannot be a private entity and for good stewardship and governance of use of Public Funds.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<ul style="list-style-type: none"> <li>b) The public sector should be striving to have its own mechanism of handling its operations fully and not delegating or relying on private entities.</li> <li>c) The funds to be used in setting up a private entity should be used for healthcare provision to Kenyans.</li> <li>d) Private Healthcare providers in Kenya are yet to provide healthcare successfully &amp; profitably through public funding (NHIF).</li> </ul>	
Section 35(1)	Council of Governors	The provision should be amended in line with the amendments proposed in respect of sections 5 which deals with the functions of the Authority and recommends the separation of roles and vesting them in different structures.	The establishment of the Claims Management Office within the Authority does not satisfy the need to separate the roles for the purpose of enhancing accountability. Who establishes the claims management office? In its current form the provision implies that it is the Authority to do so. In which event, the office is an arm of the Authority and not a separate independent body. Indeed, and examination of the functions of the Claims Management Office set out by subsection (2) indicates that the office is mere agent discharging	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			some of the functions of the Authority under section 5 of the Bill. See section 5(e).	
Section 35 (1)	NATIONAL HEALTH INSURANCE FUND (NHIF)	The entire Clause needs to be revised to read as follows: "There is established within the Authority an office to be known as the Claims Management Office under the direction of the Board which shall review, and process claims made under this Act.	To provide clarity that the Claims Management Office works under the directions of the Authority.	
Part VI Clause 35 (1)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA	We recommend the following amendments. The Claims Management Office within the Authority be renamed the "Claims Management and Settlement Office". • We recommend that the clause be re-written to read as follows. ""There is established within the Authority an office to be known as the Claims Management and Settlement Office which shall review, process, and settle the claims made under this Act.		
Part VI Clause 35 (2)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA	We recommend that "the settlement of valid claims on behalf of the Authority be included as a function of the renamed Claims Management and Settlement Office in clause	In line with this therefore, the Act should provide for the staffing compliment of the claims settlement function carried out on	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		35(2). • We recommend that the claims settlement function on behalf of the Authority be listed as a non-delegated function of the Claims Management and Settlement Office.	behalf of the Authority by this office	
Section 35(2)(b)	Kenya Union of Clinical officers(KUCO)	(b) four other persons who shall be appointed by the Cabinet Secretary and shall possess knowledge and experience in health, health economics, business administration insurance and who are not in the employment of the Government or the Board and including one representative from health providers associations.	Exclusion of a health provider's representative will deny the committee of necessary expertise from a person with requisite knowledge and experience on matters under consideration.	
35(2)	Pharmaceutical Society of Kenya	<p>Add to list of responsibilities:</p> <p>Functions of the Pharmacist Office in the CMO.</p> <p>Ensure that any surplus made from the CMO go towards provision of healthcare</p>	<p>The Pharmacists office will be responsible for:</p> <p>i) Medication therapy validation,  ii) The appraisal of medication therapies  iii) Pre-authorization of medication therapies.</p> <p>Having CMO resident Pharmacist(s) will ensure constant availability of pharmacy knowledge to facilitate timely decisions.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>Providers/facilities to be accredited to the Social Health Insurance Fund should be licensed by their respective regulatory authorities.</p> <p>There should be no requirement for additional empanelment.</p>	<p>Empanelment creates a barrier and adds to the cost of healthcare provision.</p> <p>This also erodes the trust on the respective regulators that are mandated by law.</p>	
35. (2) (a)(b)(c)	Kenya Healthcare Federation and Kenya Dental Association	<p>Provide a minimum service timeline for review/processing/validation of preauthorization and medical claim E.g.</p> <p>1. Emergency Treatment to be approved within 30minutes of lodging of claim approval.</p> <p>2. Elective treatment to be considered within 3hrs to 24hours on a case by case basis.</p> <p>Adherence to the urgency of needed treatments</p>	<p>Ensure persons get timely treatment which results to quality care outcomes.</p> <p>Minimizes provider frustrations on delays in treatment approvals of claims lodged;</p>	
35 (3)	Kenya Healthcare Federation and Kenya Dental Association	<p>Delete the full clause on aspect of outsourcing to private medical insurance providers or brokers.</p> <p>Proposal for Claims Management office to have in-house built capacity.</p>	<p>Public funds usage should not be delegated to private entities to manage utilization;</p> <p>Room for corruption</p> <p>Room for conflict of interest, herding, patient care flow control to related business entities</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>Proposal for Claims Management office to have a director in charge to report to the SHA.</p>	<p>Lack of capacity in suggested business entities where claims processing will be outsourced</p>	
	<p>Kenya Dental Association</p>	<p>Proposal for Claims Management Office to be de-linked from SHA.</p> <p>It can be housed under the Health Act as special ombudsman. Public body or authority to check on healthcare service claims processing.</p>	<p>35 (3) (4) create avenues for drawing money from public coffers into private brokerage firms. Remove that layer! Build on what NHIF had. Claims management office is doing very little. Only purpose seems to be to outsource. In the era of IT. Reduction of admin cost when outsourced as a saving measure. Make regulations. Do not enshrine this to promote leakage.</p> <p>Social health Insurance should strive to set up internal capacity, recruit competent personnel. This is a public fund. Brokerage will channel business to specific private entities and these providers are an extra cost; increasing cost of care transferred/passed on to the health provider /patient. Whereas there might be justification of pooling and purchasing as a best practice appropriate controls are a must. If this is adopted the aim to promote efficiency and remove of conflict of interest. Create oversight to ensure efficiency. Alternatively take out that function as a separate</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			body that checks on claims and payments. In essence make it tamper proof free from meddling and corruption.	
	Central Organization of Trade Unions (Kenya) (COTU)	<p>The claims management Office shall delegate the performance of its functions under subsection (10) (a)(b) and (c) to a suitable entity</p> <p>The core duties of claims management be retained by the Social Health Authority</p>	Outsourcing such essential services including benefits and collection funds will derail the operations of the authority as these should remain the core functions of the Social Health Authority	
	Association of Kenya Medical Laboratory Scientific Officers	Amend by adding the words with approval of parliament immediately after the word entity to read as follows; The Claims Management Office may delegate the performance of its functions under subsection 2(a) and (b) to a suitable entity approval of parliament.	This is to ensure the claims management office is not hijacked by cartels, vested interests and corruption enterprises thereby derailing health care financing. Parliamentary approval may act as deterrent to any sabotage of the health sector.	
Part VI Clause 35 (3)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	Clause 35(3) appears twice. Please rectify. • Clause 35(3) The Claims Management Office shall delegate the performance of its functions under subsection (1)(a), (b) and (c) to a suitable entity. This should refer to subsection (2)(a), (b) and (c) instead		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 35(3)	Kenya Union of Clinical officers(KUCO)	Delete	<ul style="list-style-type: none"> <li>- This will increase administration cost</li> <li>- Conflict of interest</li> </ul>	
Section 35(3)	Christian Health Association of Kenya (CHAK)	<p><b>Consortium of brokers.</b> This is a powerful decision-making entity. As a private entity, primary goal would be to profit from this exercise.</p> <p><b>Proposal:</b> to improve public the public entity, empower an internal SHA professional claims division, with clear qualifications in medical, finance, audit and legal fields; performance Contract employees with key performance indicators, monitoring &amp; evaluation mechanisms.</p>	Avoid legislations on operational issues like which function can be out-sourced to what kind of commercial insurance brokers.	
Section 35 (3)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposed amendment to the Section to read as follows: “The Claims Management Office may with the authority of the Board, delegate the performance of its functions under subsection (1) (a), (b) and (c) to a suitable entity. The regulations under this section must BE in place at least 6 months after commencement of this Act for ease of transition.	This a core function of the Authority where any delegation is required it should be at the discretion of the Board.	
Section 35(4)	Insurance Regulatory Authority (IRA)	Introduce a consequential amendment to the Insurance Act by introducing a new Section 150B on	To enhance licensing requirements for claims agents to align with the role provided under the Social Health Insurance Bill.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>Licensing requirements for claims settling agents as follows:</p> <ol style="list-style-type: none"> <li>(1) Every person licensed as a medical insurance provider or claims settling agent under this Act who intends to conduct business under Section 35 of the Social Health Insurance Act must have a professional indemnity cover of not less than three million Kenya Shillings or such higher amount as may be determined by the Social Health Insurance Authority.</li> <li>(2) A claims settling agent who intends to conduct business under Section 35 of the Social Health Insurance Act must possess the following qualifications - <ol style="list-style-type: none"> <li>(a) A degree or diploma in insurance, actuarial science, risk management or in any other relevant field from a recognized institution of higher learning.</li> </ol> </li> </ol>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>(b) Membership of a relevant professional body</p> <p>(c) At least five years knowledge and experience in health claims settlement.</p> <p>(d) Any other qualifications as may be determined by the Authority.</p>		
Section 35(3),(4), (5)	Council of Governors	The bill should be amended by deleting the provisions	We note that the Senate Departmental Committee in Health also made this recommendation. If the bill is amended as proposed elsewhere to separate roles and establish an independent body to deal with receiving, assessing and paying claims, there would be no need to delegate these functions to private insurance companies. There is absolutely no justification for delegating such functions.	
35 (4)	Kenya Healthcare Federation and Kenya Dental Association	<p>We recommend that;</p> <p>A medical advisory board be formed (made up of experts in medicine, dentistry, legal and other cadres in healthcare etc.) to give input on pre-authorization decisions in consult.</p>	It is important to involve medical practitioners in the decision on the appropriateness of a procedure where the medical service provider is seeking pre-authorization. Nurses or other staff who are not experts in medicine, are not skilled to do this.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Section 36	NATIONAL HEALTH INSURANCE FUND (NHIF)	The Clause should be amended to read: "The Cabinet Secretary, in consultation with the Board, shall make regulations for the better carrying out of the provisions of this section."	This shall ease the Authority's day to day operations.	
36(1)	Kenya Healthcare Federation and Kenya Dental Association	Provide for minimum timeline for claims settlement.  Suggestion of settlement of claims within thirty (30) days.  Provide for recourse on delayed payment.  Suggestion for a penalty to accrue/interest charge on delayed moneys after lapse of 30wait days.	Builds trust.  Minimizes provider/facility frustrations on delays in treatment approvals and payment of claims lodged.	
Section 36 (1),(2)	Council of Governors	The provision should be amended to align it with the other amendments proposed in respect of the establishment of an independent body to handle claims	The proposed amendment is necessary to align it to the other proposed amendments.	
Part VI Clause 36 (1)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the error in the clause be addressed as follows. a) The Claims Management Office be renamed the Claims Management and Settlement Office. b) The clause 36(1) be re-written to read, "The Claims Management and Settlement	To cure the anomaly of the Claims Management Office, an organ of the Authority appearing to submit claims to itself.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Office shall on behalf of the Authority make payments to a contracted healthcare facility upon receipt of a claim from the suitable entities under clause 35(3).		
Part VI Clause 36 (2)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that the clause be re-written as follows. "The Board, shall in consultation with the Cabinet Secretary make regulations for t		
36(2)	Helium Health	We recommend that the Bill should do away with the penalty of imprisonment in line with international best practices. Moreover, the penalty of imprisonment for data breach is already provided for under the Kenyan Data Protection Act of 2019	The Bill under this Section provides penalties for breach of sensitive personal data as listed in Section 36(1) of the Bill. The Bill provides that offences such as unauthorized data disclosure can attract fines as high as Ten Thousand Shillings, imprisonment of up to fifteen years, or both. Entities can also face additional penalties under the Data Protection Act, 2019, for offences involving sensitive personal data.	
Section 38	THE NATIONAL HEALTH INSURANCE FUND (NHIF)	(1) All moneys in the Fund which are not immediately required to be applied for the purposes of this Act shall be invested— (a) in such investment in a reputable bank, being	The Clause is important as the any insurance company is required to have investments to safeguard its sustainability and continuity. The proceeds from this investments	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		an investment in which trust funds, or part thereof, are authorized by law to be invested; (b) in government securities as may be approved by the National Treasury. (2) All investments made under this Section shall be held in the name of the Authority	will be utilized to pay claims rising under the three funds. Further the investments will be limited to purchase of government securities and fixed deposits in reputable banks as guided by the Central Bank of Kenya.	
38(1)	Kenya Healthcare Federation	Provide for maximum percentage of funds that can be placed on investment without disruption of SHA operations.	Ensures funds protection, security and SHA sustainability.	
	Kenya Dental Association	Provide for maximum percentage of funds that can be placed on investment without disruption of SHA operations. Investment decisions. Rules to safeguard. From bad /poor investment decisions. Clause 38. Place sanctions to Board and CEOs who mismanage this fund. Make it impossible for one to misappropriate from this fund.	Ensures funds protection, security and SHA sustainability.	
Section 40	NATIONAL HEALTH INSURANCE FUND (NHIF)	The Authority shall create such reserves to meet future or contingent liabilities with the advice of an Actuary.	The Authority has to ensure there are reserves, sustainability of the Funds and review of tariffs.	
Section 41 (2)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposed action is to amend as follows: “ The administrative expenses referred to under subsection	The best practice is a margin between 10%- 15% administrative expenses.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		(1) shall not exceed ten percent of the annual expenditure of the Fund.”		
41	Civil Society Organisations (11)	Expressly provide for the functions and powers of the Board.	The powers and functions are not expressly provided for in the Act. There is ambiguity.	
41(2)	Kenya Healthcare Federation	Proposal to cap the expenditure on known Human Resource Establishment and other operational cost centers.	The proportion of 5% on administration expenditure ought to be capped because of the moving target of expenditure	
	Federation of Kenya Employers (FKE)	Provide clear linkage between the Authority (Funds) and the primary health care services	How will the authorities work together?	
	Association of Kenya Medical Laboratory Scientific Officers	Amend by substituting the word three months with word twenty one days (21days) to read as follows; The Cabinet Secretary shall, within twenty one days (21days) of submission of the report under subsection (1), transmit the report to Parliament.	This is to eliminate unnecessary and uncalled for delays in informing parliament on the health situation in the social health authority and ensure speedy and timely actions to avoid pitfalls in the health care financing.	
	Kenya Dental Association	Proposal to cap the expenditure on known Human Resource Establishment and other operational cost centres.  41(2) Part 1 is fine. Part b leaves room for mischief. Delete it-‘Not Exceed Cost of Benefits’.	The proportion of 5% on administration expenditure ought to be capped because of the moving target of expenditure.  41 (2) very good but what are the absolute figures? What is the 5 % based on? What is that amount?	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
42	International Commission of Jurists, Kenya (ICJ Kenya)	<p>Introduce sub clause 42 (4) stating that, “General, the Board of the Within three months following the completion of the audit process by the Auditor Authority shall cause the audited accounts of the Funds to be published in at least two daily newspapers widely circulated throughout Kenya and also on the Social Health Authority’s website.</p>	<p>The Constitution Article 232 (1) provides for transparency and provision to the public of timely, accurate information among the values and principles of public service.</p> <p>The Social Health Authority's functions include managing Funds established under the Act and receiving all contributions and other payments required by the Act.</p> <p>Therefore, the Social Health Authority should be transparent and accountable for the resources collected from different sources and how much of that money is paid to benefits and to whom. Transparency and accountability of the Funds the Social Health Authority handle, with such an important role in health sector financing are fundamental to its effectiveness and efficiency.</p>	
42(3)	Kenya Healthcare Federation and Kenya Dental Association	Add the following words after 2015, and the account reports shall be made publicly available on the SHA website.	Ensure public accountability and transparency.	
43	International Commission of	Introduce subclause 43 (3), providing that, “The Board will publish and publicize the Social Health Authority	The Board must publish and publicize the Social Health Authority annual reports and	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Jurists, Kenya (ICJ Kenya)	annual report transmitted to Parliament under subclause 43 (2).	financial statements on its website to enhance accountability and build the public's confidence that healthcare-related financing is going to be handled by a trustworthy agency. Social Health Insurance will be the locus for financing health care in Kenya, which requires the institution to be transparent and accountable	
43(2)	Kenya Healthcare Federation and Kenya Dental Association	Add the following words after Parliament, and the reports shall be made publicly available on the SHA website	Ensure public accountability and transparency	
	Kenya Dental Association	43(1) (2) Too long. Reduce that time. To 2 months from Board to cabinet Secretary, and 1 month after Cabinet secretary receives it to tabling in Parliament and Auditor-General concurrently.	Ensure public accountability and transparency	
44 & 45	Kenya Healthcare Federation and Kenya Dental Association	Interchange clause 44 and 45 Establish DRC first before setting number order out functions of DRC.	No rationale provided.	
Part VIII Clause 44 and 45	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that clause 45 establishing the Dispute Resolution Committee appear first.		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
44 (2)	Kenya Healthcare Federation and Kenya Dental Association	Provide that decisions from DRC to be made within 60days.	Ensure fair administrative action of all disputes reported and decisions appealed from.	
Section 44 (2)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Clarification, whether the appropriate title is Committee or Tribunal. if it is an independent body, who will fund its operations and how its decisions will be enforced Suggestion: the Act should set up a Tribunal on the proposed terms in Annex 1	Providing the proposed terms as per the Annex will conform with the constitutional requirements of access to justice and fair hearing.	
Section 45	The Confraternity of Patients Kenya (COFPAK)	Inclusion of Patients Organization (COFPAK) to represent the patient's views in the Dispute Resolution Committee.	In consideration of this, the views and perspectives of the healthcare service seekers are represented in the DRC. Nothing about patients without their representatives	
45(2)	Pharmaceutical Society of Kenya	Out of the 4 other persons to be approved by the Cabinet secretary at least two should be Healthcare practitioners possessing a bachelor's degree.	The dispute and resolution committee will be handling practicing healthcare professionals and healthcare matters. Therefore, the levels of training, knowledge and experience is critical in dispute resolution and decision making.	
45(2) (b)	Kenya Healthcare Federation and Kenya Dental Association	Proposal to increase number to 6 persons from 4 persons. Delete exclusions of persons working in government service where	Have a pool of qualified professionals from diverse backgrounds to check on disputes reported.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>engagement into committee is not on a full time basis.</p> <p>Delete the exclusion of health services providers.</p>	<p>Healthcare providers should not be discriminated against on basis that they are qualified healthcare workers or a working in public service.</p> <p>Public sector experience can only be reported adequately by persons working in public sector who are aware about the challenges of the public sector.</p>	
Section 46 (2)	NATIONAL HEALTH INSURANCE FUND (NHIF)	The proposed amendment to read as follows: "The Cabinet Secretary shall in consultations with the Board prescribe regulations on the modalities of engaging stakeholders at the national and county level".	This will ease the Board's day to day operations.	
47	Helium Health	The Bill should set up guidelines for the cross- border data flow or sharing in line with international best practices. The guideline should include consent, and limitation as to who can have access to the data and the purpose for which the data can be used.	<p>The Bill prohibits the transfer of health data outside Kenya except for the purposes of health tourism. By implication, the Bill seeks to prohibit the international transfer of health data save for medical tourism purposes.</p> <p>Due to the fact that the Health Care Sector, particularly, the Digital Health Care Sector operates on a global scale/in a global market we recommend that the Bill should not prohibit the transfer of health outside the</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			shores of Kenya for purposes that are not related to health tourism.	
	International Commission of Jurists, Kenya (ICJ Kenya)	<p>Introduce a sub-clause establishing a structure for public participation and stakeholder engagement as follows:</p> <p>“The Cabinet Secretary, by notice in the Gazette, will appoint a Public Participation and Stakeholder Engagement Committee comprising of representatives from both national and county governments, statutory legal and health professions councils, labour unions, civil society organizations, associations of health professionals.</p> <p>The Cabinet Secretary, in making the appointments under this section, shall ensure equal opportunities for persons with disabilities and other marginalized groups and that no more than two-thirds of the members are of the same gender.</p>	<p>The best practice is for an Act of Parliament to establish structures to facilitate public participation and stakeholder engagement in social health insurance decision-making, for example, a Public Participation and Stakeholder Engagement Committee. The Cabinet Secretary should then prescribe regulations to operationalize the structure for public participation established by the Act of Parliament.</p> <p>If Clause 47 is left as it is without establishing a structure for public participation and stakeholder engagement it may undermine meaningful public participation and deny stakeholders opportunity to influence decision making by the Authority.</p>	
		<p>Introduce subclause 47 (3) to provide as follows:</p> <p>“The Authority shall keep proper records on social health insurance funding, processes and programmes.</p>	<p>The Bill should include strong provisions on access to financial and non-financial information on social health insurance funding, processes and programmes. It should also provide simple procedures for obtaining such</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>A person may have access to the records kept by the Authority under this Act.</p> <p>A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records.”</p>	<p>information from the Social Health Authority.</p> <p>The primary role of a social insurance fund is to collect and pool resources that can purchase health care for the widest section of the population. Therefore, the Bill should include an obligation for the Social Health Authority to provide details that can help the public and oversight institutions consistently understand its performance across revenue, membership, and spending on benefits. Additionally, the information provided must be timely and accurate, including details of money received and how it is spent to the public for scrutiny to enhance citizen oversight and meaningful public participation in decision- making on social health insurance issues.</p>	
47(f)	Association of Kenya Medical Laboratory Scientific Officers	Amend by deleting the entire provision.	The section 2(b) and (f) are the same hence repetition.	
Section 47 (5)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposed amendment, to delete subsection 5.	This an operational matter that does not require regulations.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
Part IX Clause 48 (2) (d)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that Clause 48(2)(d) be deleted, and this requirement be stipulated in the relevant regulations of the accrediting body tasked with empanelment.		
48(4)	Kenya Healthcare Federation and Kenya Dental Association	After clause 4, add the following two new clauses—  SHA shall cause communication to members on reminders on delayed contributions, removal of persons from fund, communication penalties/interests accruing/ services approvals, rejections and payment  SHA shall cause communication to providers of care on services approvals, rejections and payment	Ensure good communication, accountability and transparency.	
	Federation of Kenya Employers (FKE)	Insert: “as amended from time to time” to conform to the provisions of the Data Protection Act, 2019 to read—  (4) The digitization of processes and services under this Act shall conform to the provisions of the Data Protection Act, 2019 (“as amended from time to time”) and all other relevant laws.	This is to ensure consistency with the existing laws and to preclude conflict with other laws especially the Data Protection Act, 2019 which is an enabler to the proposed law.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
49(1)	Kenya Healthcare Federation	After clause 1, add new clause to ensure protection of employees who report rogue employers for non-contribution to the fund.	Need to protect employees whose contributions fail to be paid by an employer.	
	Kenya Dental Association	After clause 1, add new clause to ensure protection of employees who report rogue employers for non-contribution to the fund. Add harsher penalties for SHA staffers who cause losses to the fund.	Need to protect employees whose contributions fail to be paid by an employer.  Protect this fund from pilferage from profiteers. What is the penalty? 49 (3) , (4), (5) ,(6), (7), (8).  Ring-fence this money and ensure audit system to pick up any mischief in a timely manner.	
49(1)(5)	Federation of Kenya Employers (FKE)	Increase the fine to not exceeding one million to read: (a) a fine not exceeding one million shillings to be in line with other similar provisions. Subsections (b) and (c) need to be sections on their own addressing service providers as separate legal persons from the staff	Standardize the fines Section 49 is not clear with due regard to the liability of the offender. It seems to assume that an offender automatically is the service provider while a member of staff also can also engage in fraud individually.	
49(5)(a)	Kenya Healthcare Federation and Kenya Dental Association	The fine to be amended to read; A fine 10 times of the amount lost in the fraud.	The fine should be punitive enough to discourage such activities.	
Section 49 (5)	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposal; Include upon conviction, full reimbursement of amount obtained unlawfully and fine of an	This will increase the deterrent power of the conviction for undertaking fraudulent activities.	

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		amount not exceeding Ksh.5,000,000.		
Part IX Clause 49 (6) and Clause 49 (7)	RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA)	We recommend that Clause 49(6) and 49(7) be rewritten considering that the actions/decisions of the Board with respect to healthcare facilities and healthcare providers shall now be subject to the right of appeal with the Dispute Resolution Committee.		
Section 50	Council of Governors	Amend to read Regulations contemplated under this Act shall be made within period of six months after the effective date of the Act.	Timelines for the development of the regulations is key otherwise implementation of the Act will be a challenge.	
50(2)(1)	Federation of Kenya Employers (FKE)	Delete “Despite the generality” and replace with “Subject to subsection (1)” to read: (2) Subject to subsection (1), the Cabinet Secretary may make Regulations prescribing—	Consultation with the Board in making the regulations should not be left optional but should be mandatory	
50(2)(e)	Kenya Healthcare Federation Kenya Dental Association	Provide that interest will accrue on claims outstanding for more than one month.	Provision of quality health care is only made possible by financially healthy private facilities. Timely payments of claims will go a long way in ensuring this, and in the event delays are experienced, the	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			outstanding amount is paid with interest.	
50(4)	Federation of Kenya Employers (FKE)	Add a new principle (e) meaningful public participation specified under article 10(2)(a) of the constitution	To conform to the constitutional requirement of public participation in the regulations making	
Section 51	Council of Governors	Amend by deleting the entire section	The proposed amendment is necessary as the provision will be unconstitutional in cases where there is a conflict between this Act and county laws establishing their own social health insurance systems such as Kisumu Marua. Such county social insurance systems complement the national systems. This is because Article 191 of the constitution clearly recognizes that national government laws only prevail over county government laws only if certain identified circumstances exist and have been proved.	
Section 52	Insurance Regulatory Authority (IRA)	Section 52 to be deleted	There is no provision on claims administration service under the Bill.	
52	Kenya Healthcare Federation and Kenya Dental Association	Amend the clause to provide that the Social Health Insurance Authority be regulated by Insurance Regulatory Authority (IRA) and that the provisions of the Insurance Act be	To the extent that people covered are paid for insurance, it runs as a commercial business in the field of insurance, thus warranting the regulation under IRA.	

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		applicable to this authority in respect to all matters of carrying out the Insurance business.		
First Schedule	Federation of Kenya Employers (FKE)	The Authority to Absorb the staff of NHIF and follow the due process provided for in the applicable labour laws. New clause: 6(2) (a) On the appointed day, the Staff of the Fund shall without further assurance, be assumed to be the staff of the Authority. The Authority shall bear the obligation of honouring their employment contracts until the lapse of the existing contracts. The Authority may terminate the contract of any staff in accordance with the applicable labour laws	Seamless transition and protecting jobs/household livelihoods.	
First Schedule	Council of Governors	Amend to take care of all issues i.e. the officers, the assets, liabilities and the board.	This is very important for preservation of the Fund.	
First Schedules Clause 2 (2)	THE NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposed amendment, to delete subsection 2 in its entirety.	The Authority shall be guided by the provisions of the Public Procurement and Assets Disposal Act.	
First Schedules Clause 5	THE NATIONAL HEALTH INSURANCE FUND (NHIF)	The proposal is deletion of the Clause 5 of the transition clause.	There is correlation between the benefits of a social health insurance and enhanced schemes. Further there is no legal framework on interaction between private (commercial) health	

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			<p>insurance and social health insurance. The administration fee arising from these enhanced schemes can cushion the critical and emergency care fund. Further these enhanced schemes are in use by the civil servants, parastatals and other government agencies. Retired civil servants and retired parliamentarians also benefit from these schemes.</p>	
<p>First Schedule Clause 6</p>	<p>NATIONAL HEALTH INSURANCE FUND (NHIF)</p>	<p>Proposed amendment, that the period for transition be guided by deliverables defines in the transition plan, and within 2 years.</p>	<p>NHIF has running contracts with healthcare providers and the exit from these contracts need to be properly managed. These shall expire in June 2024. There is need to prepare contracts for the new benefit packages to be assigned by the healthcare providers. The UHC financing for the essential benefit package needs to be in place for ease of implementation. The issue of NHIF members who have paid up-to two (2) years in advance will need to be addressed. The Authority will require time to prepare policies and HR tools for the day to day running of the organization. There is need to plan for the staff benefits to manage exits and transfers</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
First Schedule 6(2)	Federation of Kenya Employers (FKE)	Provide an express "saving" clause that automatically moves all NHIF staff to the new body so that there's no doubt at all. Asking staff members to apply afresh is unfair labour practice.		
First schedule Clause 6 (2)	NATIONAL HEALTH INSURANCE FUND (NHIF)	<p>Proposal to replace subsections 2, 3, and 4 with the following: (1) Subject to subparagraph (2), the staff appointed for the administration of the Fund in office on the appointed day shall be deemed to staff of the Authority under section 17 of the Act. (2) Notwithstanding the provisions of subparagraph (1), within twelve months after the appointed day, the Board shall review the qualifications of all persons deemed to be employees of the Authority under subparagraph (1) and may retain those found suitably qualified for employment by the Board subject to—</p> <p>(a) such persons opting to remain in the service of the Board; and</p> <p>(b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Board.</p> <p>(3) Any employee not retained by the Board under subparagraph</p>	The transition plan /regulations should make it explicit that staff transitioned would be based on acceptable terms on offer, since it is envisioned that the Authority would have all management position	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>(2) may exercise his option to either— (a) retire from the service of the Board; or</p> <p>(b) be redeployed within the public service. (4) Where an employee enters into an agreement with the Board under subparagraph (2), his service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his appointment with the Government. Proposal to include a clause addressing the transition of pension scheme management. Proposal to extend the transition period to 24 months. This will ensure patients admitted in hospitals and those with chronic illnesses will continue to access uninterrupted medical care and are properly transitioned to the new way of accessing care.</p> <p>Generally, the regulations under this section must BE in place at least 6 months after commencement of this Act for ease of transition.</p>		
Second Schedule Clause 12	NATIONAL HEALTH INSURANCE FUND (NHIF)	Proposed to amend as follows: “the quorum for meetings of the Board shall be two-thirds of the total membership.”	The best governance practice is that the quorum of any Board should be two-thirds of the total number of members.	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
General	Christian Health Association of Kenya (CHAK)	FBOs prefer that this claims office remain a public entity, not private.	This is to avoid conflict of interests by private/commercial players. Commercial players may own hospitals, supply chain outlets for medical products etc.	
General	Insurance Regulatory Authority (IRA)	There is need to insert a provision for regulation and supervision of the social health insurance authority.	Considering that the Authority will be collecting funds from the public, it is important to have an oversight body to ensure proper prudential management and market conduct.	
General	Ministry of Health	In support of the Bill.	The Bill was formulated in consultation with stakeholders and ought to be enacted as passed by the National Assembly.	
	Civil Society Organisations (11)	<ol style="list-style-type: none"> <li>1. The Bill needs to specify the functions and powers of the Board expressly to avoid ambiguity</li> <li>2. Afya Bora Fund and Primary Health Care Fund (in the Primary Health Care Bill 2023). We recommend deleting the Primary Health Care Fund to avoid duplicity.</li> <li>3. Afya Bora Fund and Primary Health Care Fund (in the Primary Health Care Bill 2023). We recommend deleting the Primary Health Care Fund to avoid duplicity.</li> </ol>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Kenya Healthcare Federation	Review the structure of Social Health Insurance.	<p>Structure of Social health insurance idea as envisaged needs to be changed to incorporate two arms i.e.—</p> <ul style="list-style-type: none"> <li>a) Social Health Insurance; and</li> <li>b) Social Health Assistance.</li> </ul> <p>Social Health Assistance goes beyond traditional disease expanding it to include where debilitating conditions that need benefit from conditional and unconditional cash transfers known medical causes.</p>	
	International Budget Partnership Kenya	<ol style="list-style-type: none"> <li>1. Clause 27 (2) (c) - Does this provision mean that both national and county governments are responsible for the payment of these premiums?</li> <li>2. Section 27(6) – A moral question that the law should be alive to is whether that group should be penalized when they are not able to pay their annual premiums?</li> <li>3. Section 27(5) - Should this be the role of government to provide social protection to those who are poor rather than them having to get into forms of</li> </ol>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>credit to pay for their health access.</p> <p>4. The provision of primary healthcare services- it is critical that any national level legislation that touches on the delivery of health care in county facilities must provide for the balance of functional responsibility as provided for by the constitution, and the accompanying finances necessary to facilitate the fulfillment of these responsibilities.</p> <p>5. To fulfil their functions, counties should be given chance to be innovative and run primary healthcare with enough resourcing.</p> <p>6. The Senate should clarify if the separation of the NHIF into the separate funds will not create an additional layer of bureaucracy in the management of social health insurance schemes</p>		
	Health NGO's network	<p><b>Robust Control Mechanisms</b> - The bill should incorporate clear control mechanisms to oversee the funding and operation of critical components such as the means testing instrument.</p>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>Establish an oversight committee to conduct regular audits to ensure transparency, accountability, and efficient resource allocation and utilization.</p> <p><b>Collaboration with Civil Society Organizations (CSOs)</b> - Incorporate CSOs into the governance structure to ensure accountability, representation, and diverse perspectives in healthcare policy formulation and implementation.</p> <p><b>Restore Confidence in Operationalization</b> - Outline a mechanism in the bill to actively engage with and inform Kenyan citizens about the operationalization of the social insurance bill, particularly regarding the increasing contributions.</p> <p><b>4. Ensure Ample Public Participation</b> - Allocate sufficient time for public participation at the county level by sharing a well-defined schedule of time and dates for public consultations.</p> <p>This step is crucial to involve communities in shaping the bill, gather diverse perspectives, and ensure that the bills align with the</p>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>specific needs and concerns of different regions within Kenya. We express our discontentment particularly in how public participation for this bill was rushed.</p> <p><b>5. Generation of a report after receiving memorandum</b> - We ask of your office to prepare a report and share it back to the contributing partners to inform of which recommendations were considered, which ones were not considered and why. This is a surety that public participation is given the seriousness it deserves in policy development.</p>		
	<p>The Actuarial Society of Kenya</p>	<p>1. Structure:</p> <p><b>a.) Contribution/pricing:</b> Need to be well defined for: Formal sector - what is the percentage, how will it be reviewed over time? Informal indigents - how many does this cover; how will indigents be reviewed over time? Informal earners - how will means-tested be carried out, how do you ensure the really wealthy individuals in the business are not contributing less than they should and how will contributions be tiered. Cross subsidization-needs to be equitable and lower income formal sector individuals should not</p>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>subsidize higher income informal sector individuals.</p> <p><b>b.) Benefits:</b> Definition of benefits is required including components that would incentivize appropriate health seeking habits e.g. co-payment, effective referral systems. How do the three funds interact in terms of payment ensuring they pay for the right thing. Furthermore, in paying for benefits, how do private solutions provide complementary and supplementary options to mitigate overburdening of the fund? Where do donor funded related benefits sit relative to this? Fragmentation leads to a lack of strategic purchasing. How will quality control and assurance be done? The biggest obstacle of service delivery is trust and NHIF has built a trusted brand for years despite recent challenges and people still have a generally positive association.</p> <p><b>2. Transitional costs:</b> Who will fund the dismantling of NHIF and the establishment of SHI including people, processes and infrastructures</p> <ul style="list-style-type: none"> <li>- money cannot come from contributions otherwise will not be able to pay for benefits.</li> </ul>		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p><b>3. Role of private sector:</b> There is merit in outsourcing of administration to drive efficiencies and improve capacity to deliver on benefits effectively. There needs to be interaction with private insurance in a complementary or supplementary way otherwise private insurance market will shrink SHI benefits from growing the private sector because ultimately it will be able to generate greater revenues over the years as cost of care increases, hence improving sustainability.</p> <p><b>4. Governance:</b> Regulator and administrator shouldn't be the same entity. How will the legacy governance issues of NHIF not be absorbed?</p>		
	Moi University	Retain the enhanced benefits schemes and packages for public institutions.	The Bill proposes that NHIF shall not provide enhanced benefits schemes and packages on the appointed day pending lapse of existing contracts. This will create uncertainty for the university as there is no comparable alternative for a public institution like Moi University to engage with in the prevailing difficult economic environment. There is an existing contract with NHIF and in the	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			absence and in the absence of viable transitional arrangements, the University is likely to renege on this obligations as an employer.	