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NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE CONSIDERATION OF THE MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023 (SENATE BILL NO. 17 OF 2023)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2025

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LIST OF ABBREVIATIONS AND ACRONYMS

ANC	- African National Congress
COG	- Council of Governors
KANU	- Kenya African National Union
KLRC	-The Kenya Law Reform Commission
LSK	- The Law Society of Kenya
MOH	- Ministry of Health
ODM	- Orange Democratic Movement
OAG and DOJ	- Office of the Attorney General and Department of Justice
UDA	- United Democratic Alliance

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Health on its consideration of the Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) was published on 5th May, 2023.The Bill was sponsored by Sen. Beatrice Ogolla in the Senate and is co-sponsored by the Departmental Committee on Health in the National Assembly

The Bill was read the First Time in the House on 12th November, 2024 and thereafter committed to the Departmental Committee on Health for consideration and reporting to the House pursuant to the provisions of Standing Order 127.

The principal object of the Bill is to make provision for a coordinated system for the provision of quality maternal, newborn and child health services; to provide for response to maternal and child morbidity and mortality in the country and to make provision for a health care system that facilitates the attainment of health rights for mothers and children. The Bill therefore seeks to enhance the health rights and quality of care for mothers, newborns and children across Kenya.

Following the placement of an advertisement in the print media on Wednesday, 4th December, 2024 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received submissions from seven (7) stakeholders including; The Ministry of Health (MOH), State Department for Medical Services, The Office of the Attorney General and Department of Justice (OAG and DOJ, The Kenya Law Reform Commission (KLRC), National Gender and Equality Commission (NGEC), Health NGOs' Network (HENNET),Council of Governors (COG) and Kenya Pediatric Association.

The Committee obtained memoranda from key stakeholders, including the Ministry of Health (MOH), State Department for Medical Services, The Office of the Attorney General and Department of Justice (OAG and DOJ, The Kenya Law Reform Commission (KLRC) and National Gender and Equality Commission (NGEC) and engaged them in meetings held on 25th February 2025 to discuss the Bill. The Committee also held a retreat with some stakeholders, including the Kenya Law Reform Commission (KLRC) and Health NGOs' Network (HENNET) on 11th April 2025 at Hilton Garden Inn, Machakos County.

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

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023)

It is my pleasure to report that the Committee has considered the Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) and has the honour to report back to the National

Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

HON. DR. NYIKAL JAMES WAMBURA, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order 216 of the National Assembly Standing Orders and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee include:

a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;

c) To study and review all legislation referred to it;
d) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
f) Vet and report on all appointments where the constitution or any other law requires the national Assembly to approve, except those understanding Order 204 (Committee on appointments);
g) To examine treaties, agreements and conventions;
h) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
i) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
j) To examine any questions raised by Members on a matter within its mandate.

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

3. In executing its mandate, the Committee oversights the Ministry of Health with its two State Departments namely the State Department for Medical Services and the State Department for Public Health and Professional Standards.

1.2 COMMITTEE MEMBERSHIP

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

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

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

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

Hon. Owino Martin Peters, MP
Ndhiwa Constituency
ODM Party

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

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

Hon. Kipngok Reuben Kiborek , MP
Mogotio Constituency
UDA Party

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

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

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

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

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

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

Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency
ANC Party

1.3 COMMITTEE SECRETARIAT

5. The Committee is supported by the following secretariat:

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

Mr. Timothy Kimathi Samson
Clerk Assistant III

Ms. Gladys Jepkoech Kiprotich
Clerk Assistant III

Ms. Marlene Ayiro
Principal Legal Counsel I

Ms. Sheila Chebotibin
Principal Serjeant-At-Arms II

Ms. Faith Chepkemoi
Legal Counsel II

Mr. Hillary Mageka
Media Relations Officer III

Ms. Rahab Chepkilim
Audio Recording Officer II

Ms. Abigel Muinde
Research Officer III

Mr. Hiram Kimuhu
Fiscal Analyst II

Mr. Eric Lungai
Hansard Officer II

CHAPTER TWO

2.0 MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023 (SENATE BILL NO. 17 OF 2023)

6. The Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) was published on 5th May, 2023. The Bill was sponsored by Sen. Beatrice Ogolla in the Senate and is co-sponsored by the Departmental Committee on Health in the National Assembly.
7. The principal object of the Bill is to make provision for a coordinated system for the provision of quality maternal, newborn and child health services; to provide for response to maternal and child morbidity and mortality in the country and to make provision for a health care system that facilitates the attainment of health rights for mothers and children. The Bill therefore seeks to enhance the health rights and quality of care for mothers, newborns and children across Kenya.

Overview of the Bill

8. **PART I (Clause 1-4)** of the Bill contains preliminary provisions namely the short title, interpretation of terms such as post-partum care as used within the text of the Bill, the objects of the Bill and the principles for service delivery. The principles such as equity and inclusivity in the delivery of health services are intended to guide the performance of the functions set out in the Bill.

9. **PART II (Clause 5-11)** of the Bill provides for the maternal, newborn and child health services to be afforded to mothers and children in the country. These include the healthcare services that are to be accorded to a woman that is not pregnant in relation to the occurrence and course of future pregnancy. The Part also sets out the health services that are to be availed to pregnant woman including those with special needs to ensure optimal health conditions for the woman and every foetus throughout the pregnancy and after the birth of the child. The Part further sets out the health services to be availed to a child from the time of birth to the age of twelve years.

10. **PART III (Clause 12-13)** of the Bill sets out the role of the national government in relation to the provision of maternal, newborn and child health services. The Cabinet Secretary for health shall be responsible for development of the necessary standards and guidelines and a comprehensive national policy and plan of action. The Part also places an obligation on the Cabinet Secretary to submit to the National Assembly and the Senate an annual report on the status of maternal, newborn and child health services including the activities, interventions undertaken and recommendations on legal and administrative measures.

11. **PART IV (Clause 14-19)** of the Bill sets out the role of the county governments in relation to the provision of maternal, newborn and child health services. The Part provides the functions of the respective county executive committee members which include implementation of policy and standards, formulation of programmes to accelerate infant immunization and implementation of strategies to reduce infant mortality rates and maternal mortality ratio in a county. The CEC Member is required to promote public awareness and community participation in the formulation and implementation of policies strategies and community program and to submit an annual report to the County

Assembly on the status of maternal, newborn and child health services in the respective county. Every county government is also obligated in its annual budget, to allocate sufficient funds for the provision of maternal, newborn and child health services in the county.

12. **PART V (Clause 20-22)** of the Bill sets out the monitoring and evaluation provisions. Under this Part, a CEC member is tasked to identify vulnerable and marginalised communities in a respective county based on the existing gaps. The Cabinet Secretary shall also undertake annual monitoring and evaluation of the services rendered and adherence to the standards and guidelines issued for purposes of ensuring quality services. The Cabinet Secretary shall further, in collaboration with the Kenya National Bureau of Statistics, undertake quarterly inquiries into maternal, neonatal and child death and quarterly national maternal mortality data collection and surveillance.

13. **PART VI (Clause 23-28)** of the Bill provides the general provisions including the power of the Cabinet Secretary to make Regulations such as on the notification and reporting of maternal and neonatal deaths. Under this Part, a health facility shall maintain a register for recording the details of the cases reported and handled in the facility. A person offering services shall adhere to the applicable standards and code of ethics, failure to which the person shall pay a fine of five hundred thousand shillings or be imprisoned for a period not exceeding two years. The Part also makes consequential amendments to the Social Assistance Act, Cap. 258A to include the care and welfare of children in the definition of the term "social assistance" and to include "poor women caring for their children" under the category of persons considered as being in need of social assistance. The Part further makes consequential amendments to the Penal Code, Cap. 63 by providing that the offence of attempted suicide shall not apply to a woman undergoing postpartum care under the Maternal, Newborn and Child Health Act.

CHAPTER THREE

3.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

3.1 LEGAL PROVISION ON PUBLIC PARTICIPATION

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

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

15. Standing Order 127(3) provides that—
"The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

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

16. Standing Order 127(3A) further provides that—
"The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House"

3.2 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

17. The Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) sponsored by Sen Beatrice Ogolla in the Senate and co-sponsored by the Departmental Committee on Health in the National Assembly was published on 5th May, 2023 Pursuant to Standing Order 127(1), the Bill was referred to the Departmental Committee on Health, having been read the First Time in the House on 12th November, 2024

18. Pursuant to the aforementioned provisions of the Constitution and Standing Orders on public participation, the Committee, through local daily newspapers (Nation and Standard) of Wednesday, 4th December, 2024, published an advertisement inviting the public to submit memoranda on the Bill

19. The Committee obtained memoranda from key stakeholders, including the Ministry of Health (MOH), State Department for Medical Services, The Office of the Attorney General and Department of Justice (OAG and DOJ, The Kenya Law Reform Commission (KLRC) and National Gender and Equality Commission (NGEC) and engaged them in meetings held on 25th February 2025 to discuss the Bill The Committee also held a retreat with some of the stakeholders, including the Kenya Law Reform Commission (KLRC) and Health NGOs' Network (HENNET) on 11th April 2025 at Hilton Garden Inn, Machakos County

3.2.1 SUBMISSIONS ON THE BILL

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

1. The Ministry of Health (MOH), State Department for Medical Services
2. The Office of the Attorney General and Department of Justice (OAG and DOJ
3. The Kenya Law Reform Commission (KLRC);
4. National Gender and Equality Commission (NGEC)
5. Health NGOs' Network (HENNET)
6. Council of Governors (COG)
7. Kenya Paediatric Association

21. **The Ministry of Health (MOH) State Department for Medical Services** proposed the following amendments:

a) Deletion of the marginal note and substituting therefor the following new marginal note " Right to maternal, newborn and child health services" in clause 5(a) to confine the marginal note to what matters of maternal, newborn and child health services which the Bill is about.

Committee resolution: Adopted. To confine the marginal note to matters of maternal, newborn and child health services.

b) Deletion of clause 5(1)(a),(b), (c), (d) and (e) clause 5(2) as the provisions duplicate the provisions in the Health Act on the rights of an individual in accessing health care services which flows from Article 43 (1)(a) of the Constitution that accords every person with the right to the highest attainable standard of health which includes the right to health care services including reproductive healthcare. Part II of the Health Act provides for the rights and duties of every person in regard to health care services and has addressed the right of persons to access health care services.
Committee resolution: Not Adopted. The clauses buttress the provisions in the Health Act, Cap. 241.

c) Deletion of clause 6 as Part II of the Health Act, which flows from Article 43 (1)(a) of the Constitution, comprehensively provides for the rights and duties of individuals in relation to healthcare services. The provisions under Clause 6 are largely descriptive and may inadvertently create limitations on access to healthcare services for the intended beneficiaries. By prescribing specific services, the clause could be interpreted as restrictive rather than facilitative, potentially excluding other essential healthcare services not explicitly listed. Deleting Clause 6 ensures that access to healthcare remains broad and in line with constitutional and statutory provisions, thereby upholding the fundamental right to health without unnecessary constraints.

Committee resolution: Not Adopted.The clause buttresses the provisions in the Health Act, Cap. 241.

d) Amend the Marginal Note to in clause 7 to: "Health care services during and after pregnancy for both the mother and the child" To ensure a more comprehensive scope of healthcare coverage. This change acknowledges that healthcare needs extend beyond pregnancy to include both maternal and child health after delivery.

Committee resolution: Not Adopted.The clause relates to health services for pregnant women and does not include children and referral to adoption services are included in the health services that ought to be accorded to a pregnant woman.

e) Deletion of Clause 7(1) and substitute the following new clause: "(1) The Cabinet Secretary shall put in place measures to ensure access to health care services during and after pregnancy for both the mother and the child" to ensure a broader and more proactive approach to maternal and child health. The deletions reinforce the commitment to safeguarding maternal and child health by ensuring continued access to necessary healthcare services before, during and after pregnancy.

Committee resolution: Not Adopted.The clause relates to health services for pregnant women and does not include children, and referral to adoption services are included in the health services that ought to be accorded to a pregnant woman.

f) Insertion of a new paragraph (f) in clause 8 as follows:"(f) health care provider shall also refer the special needs child for specialized care if the facility is not able to offer the services needed" this ensures that persons with special needs can access health care services through referral.

Committee resolution: Adopted with amendments. To cover all instances where a child is born with malformations or special needs, which may not be noted at birth.

g) Delete clause 9(1) (d) as based on the legal principle that adolescence is a transitional stage from puberty to adulthood, with legal adulthood recognized at 18 years. Given that individuals in this age group lack the legal capacity to consent to matters including reproductive health, legislating on adolescent pregnancy within this framework is not appropriate. Rather than legislating on adolescent pregnancy, the focus should be on developing comprehensive programs aimed at preventing and addressing adolescent pregnancies. These programs should provide education, support and interventions that align with the best interests of minors while upholding legal and ethical considerations.

Committee resolution: Adopted with Amendments. The term "pregnant adolescent" to be replaced with the term "child in need of care and protection as defined in the Children Act, Cap. 141.

h) Delete clause 11 to align the Bill with the constitutional functions of the national and county governments. Under the devolved system, the national government is responsible for policy formulation and setting standards, while county governments are tasked with implementing these policies and delivering healthcare services. The provisions in Clause 11 mix the functions of both levels of government, creating ambiguity and potential conflict in service delivery. Furthermore, the Bill already provides for the distinct roles of the national and county governments, making this clause redundant. Deleting Clause

11 ensures clarity in governance and reinforces the principle of separation of functions as outlined in the Constitution.

Committee resolution: Not Adopted. Health is a concurrent function between the two levels of government.

i) To align with the functions of the national government, insert the following new paragraphs in clause 12:

"(n) Formulate programs and strategies aimed at reducing maternal, neonatal and child mortality rates.
(p) Develop training packages for skilled health care providers.
(q) Capacity build and train health care providers on various high impact training programs.
(r) Develop and implement training programs for the care of women with special needs for skilled birth attendants. "Adopted to align with the functions of the national government on establishment of programs, capacity building and training.

Committee resolution: Adopted. To align with the functions of the national government on the establishment of programs, capacity building and training.

j) Delete clause 13 as preparation of reports is an administrative action that does not require legislation. Further, the clause is prescriptive, thus may limit the content for reporting to Parliament.

Committee resolution: Not adopted as reporting to Parliament enhances accountability and ensures implementation of the provisions of the Bill.

k) Delete clause 14 (h) as role of the county governments is implementing policies and standards by the national government.

Committee resolution: Adopted. To ensure alignment with the delineation of functions between the two levels of government under the Fourth Schedule to the Constitution since the national government is responsible for the development of training programs.

l) Delete clause 16 as the provisions in clause 16 are undertaken by county governments and therefore cannot be assigned to persons.

Committee resolution: Not Adopted. The functions are assigned to a particular public officer holder for purposes of accountability.

m) Delete clause 17 as the functions of developing, designing, and/or establishing policies and standards are functions under the national government.

Committee resolution: Not Adopted.The clause is aligned with the Fourth Schedule to the Constitution.

n) Delete the term, "County Executive Committee Member" in clause 20(1) and wherever it appears in the Bill and substitute therefor the term, "County Government" to ensure that the functions are placed with the right body (the County Government) and not assigned to individuals

Committee resolution Not Adopted. The functions are assigned to a particular public officer holder for purposes of accountability

o) Delete clause 25 (2) (b) and substitute therefor the following "(b) Notification, surveillance, response and reporting of maternal and neonatal deaths" to align with National Government functions

Committee resolution Adopted To make provision for surveillance, which is crucial in the prevention of maternal and neonatal deaths

22 **The Kenya Law Reform Commission (KLRC)** proposed the following;

a) Align the definition of the term "intersex child" with the definition in the Children Act, Cap. 141 in clause 2(a) as the Children Act is the primary law on matters of children.

Committee resolution· Adopted To ensure statutory harmony since the Children Act, Cap. 141 is the primary law on matters of children

b) Differentiate between healthcare providers and trained health professionals as defined in the Health Act, Cap 241 in clause 2(b) to ensure statutory harmony

Committee resolution: Not Adopted The term "healthcare provider" as used in the Bill is appropriate

c) That the terms "neonatal" and "newborn" are used interchangeably in the Bill in clause 2(b) The commission indicated the adoption of either of the two terms for consistency.

Committee resolution: Noted The two terms mean different things and tare used appropriately within the Bill

d) Merge the objects in Clause 3 (d) and (e) as they are repetitive

Committee resolution: Not Adopted. The sub-clauses are different as one relates to the services being provided while the other relates to the establishment of programs

e) Align the functions of the county executive committee member with the functions of community health promoters under the Primary Health Care Act, 2023 in clause 11 to ensure statutory harmony

Committee resolution Noted The clause is aligned to the Primary Health Care Act, 2023.

f) Merge the following functions of the CEC Member. clause 14(b) and (p), clause 14(f) and (g) and clause 14 (h), (m), (t) and (s) as they are repetitive

Committee resolution: The functions further buttress the role of the CEC for health in the delivery of maternal, newborn, and child health services.

g) Consider expunging Part V as Monitoring, evaluation and quality assurance are usually provided for in policy documents. These aspects are also well covered in clause 13 and 19 on submission of an annual report to Parliament and county assemblies on the status of maternal, newborn and child health services in the country and county respectively.

Committee resolution: Not Adopted. The Part is necessary for purposes of enhancing compliance with the provisions of the Bill.

h) The Committee noted the following general comments submitted by the Commission that;

i. The Bill seeks to create a comprehensive, responsive and structured system for delivering quality healthcare services to mothers, newborns and children. It addresses the issues and challenges raised in policies and by the Courts on maternal, newborn and child health services for instance in:

(a) clause 18 enjoins county governments to allocate funds for the provision of these services
(b) clauses 13(3) and 19(3) acknowledge the progressive realization of socio-economic rights and tasks the Cabinet secretary and each CEC Member to report to parliament on the reason for non-implementation and action taken to implement recommendations on legal and administrative measures taken to address specific concerns identified

ii. The Bill provides for and prioritizes devolved governance as it recognizes the role of the National Government as the policy holder while the county primarily offers healthcare services. This avoids duplication and functionality overlap and promotes the principles of openness, accountability, prudence and responsibility.

iii. The bill establishes accountability mechanisms and clear reporting standards through annual reporting to Parliament and county assemblies on the status of maternal, newborn and child health services.

iv. Highlighted Article 43 of the Constitution which provides for social and economic rights which include the right to the highest attainable standard of health including the right to health care services, including reproductive health care.

v. The health function is devolved and the National Government is tasked with formulation of the Health Policy while the County Governments are assigned the role of managing county health facilities and pharmacies, ambulance services and the promotion of primary health care.

vi. Highlighted section 6 of the Health Act, Cap. 241 which provides as follows:

"6(1)Every person has a right to reproductive health care which includes—

(a) the right of men and women of reproductive age to be informed about, and to have access to reproductive health services including to safe, effective, affordable and acceptable family planning services;

(b) the right of access to appropriate health-care services that will enable parents to go safely through pregnancy, childbirth, and the postpartum period, and provide parents with the best chance of having a healthy infant;

(c) access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened. All such cases shall be regarded as comprising notifiable conditions.

(2)For the purposes of subsection (1)(c), the term "a trained health professional" shall refer to a health professional with formal medical training at the proficiency level of a medical officer, a nurse, midwife, or a clinical officer who has been educated and trained to proficiency in the skills needed to manage pregnancy-related complications in women, and who has a valid license from the recognized regulatory authorities to carry out that procedure.

(3)Any procedure carried out under subsection (1)(a) or (1)(c) shall be performed in a legally recognized health facility with an enabling environment consisting of the minimum human resources, infrastructure, commodities and supplies for the facility as defined in the norms and standards developed under this Act."

vii. Highlighted the international instruments that Kenya has ratified on the protection of mothers and their children during the prenatal and post-natal period which are:

(a) The Convention on the Elimination of all forms of Discrimination (CEDAW), Article 12 states that *"State parties should take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."*

(b) The International Covenant on Economic, Social and Cultural Rights, Article 10 states that *"special protection should be accorded to mothers during a reasonable period before and after child birth".*

viii. Highlighted the applicable policy framework including:

(a) The National Reproductive Health Policy, 2022-2032 that recognizes the significant progress that Kenya has made in improving maternal, newborn and child health based on various indicators. It also notes challenges such as the lack of infrastructure, lack of enough essential maternal and newborn care supplies, lack of skilled personnel and financial constraints leading to delays in reaching and receiving care and weak newborn care interventions. It further observes that marginalized groups face greater reproductive health challenges.

(b) The Newborn and Child Health Strategic Plan (2022-2026) which provides a comprehensive framework for the improvement of maternal and child health The Plan notes the prevailing barriers limited healthcare access, workforce shortages and malnutrition. It then prioritizes quality healthcare, workforce training, disease

prevention and financial accessibility to achieve the SDGs in the health sector thereby reducing child mortality.

ix. Highlighted the case of **JOO (also known as JM) v Attorney General and 6 others [2018] KEHC 7540 (KLR)** which related to issues of resources for the provision for staffing, equipment and basic maternal care by Bungoma County Referral Hospital. The Court held that the National Government and Bungoma County Governments had failed to prioritize maternal health care services by giving dismal percentage of the budget to maternal healthcare, and had not put in place effective measures to implement, monitor and provide minimum acceptable standards of healthcare thus violating the Constitution and International instruments ratified by Kenya. There is need for the two levels of Government to fund and expand health facilities.

x. In relation to the progressive realization of socio-economic rights and especially on the right to housing and health, highlighted the finding of the Constitutional Court of South Africa, in **Government of the Republic of South Africa v Grootboom & Others (2000) 1 SA 466** and **Minister of Health & Others v Treatment Action Campaign (TAC) & Others (2002) (5) SA 721**. The Court gave direction that the government has an ongoing duty to take reasonable measures, within available resources, to continuously improve access to socioeconomic rights. They also noted that where resources allow, the government must act immediately to provide access to life-saving interventions and must remove unnecessary barriers that prevent people from accessing their constitutional rights.

xi. Noted that the need for statutory harmony especially among health-related laws. Proposed that the Bill be aligned with the ongoing reforms in the health sector, in particular the Digital Health Agency's introduction of e-health platforms at the county government level.

23. **The Office of the Attorney General (OAG)** submitted as follows;

a) Cross reference the definition of the term" intersex child" with the definition in the Children Act in clause 2, as the Children Act is the principle Act applicable to children matters.

Committee resolution: Adopted. To ensure statutory harmony since the Children Act, Cap. 141 is the primary law on matters of children.

b) Redraft clause 4(i) to :"(i) ensure that interventions are based on objective information, methods, effective monitoring mechanisms, regular evaluations, transparency and that the needs of the population are taken into account." To bring out the applicable principles explicitly.

Committee resolution: Adopted with amendment. To make the provision explicit and actionable.

c) Insert the word "palliative" immediately after the word "rehabilitative" in clause 5(2). To take care of incidences where a mother, newborn or child may need palliative care. Palliative care is missing and yet it is one of the rights to health and to align with section 5(1) of the Health Act, Cap. 241 which provides:"(1) Every person has the right to the highest attainable standard of health which shall include progressive access for provision of promotive, preventive, curative, palliative and rehabilitative services."

Committee resolution: Adopted to align with section 5(1) of the Health Act, Cap. 241

d) Amend the Marginal Note to "Preconception services to women". And redraft clause 6(1) to: "(1) A woman who intends to become pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy—".as the use of the expression of non-pregnant woman is connoting non-pregnant women in general. The amendment will provide clarity on the targeted group of women

Committee resolution: Not Adopted.The clause is in order as drafted as intention introduces subjectivity in the law.

e) Amend clause 7(1) to:"(1) The Cabinet Secretary shall put in place measures to ensure access, by every pregnant woman, to health services aimed at ensuring optimal health conditions for the woman and the foetus throughout the pregnancy and after the birth of the child" as the amendment will bring clarity that the foetus being referred to in the clause is the foetus carried by the pregnant woman and not any other foetus.

Committee resolution: Not Adopted. The clause as is in order as drafted, as there is clarity that the clause relates to a woman and the foetus being carried by a woman.

f) Amend clause 7(2) (f) to: "(f) free health care services during the postpartum or postnatal period" to conform with section 5(3) of the Act which provides that "the national and county governments shall ensure the provision of *free and compulsory*—

(a) vaccination for children under five years of age; and
(b) *maternity care.*

Committee resolution: Adopted with amendments. To ensure alignment with section 5(3) of the Health Act, Cap. 241.

g) Amend clause 8(2) to provide for referral to a specialized doctor for all abnormalities as the clause makes reference to severely malformed children. The clause ought to cater for all instances where the child is not severely malformed but requires specialized attention.

Committee resolution: Adopted with Amendments. To cover all instances where a child is born with malformations or special needs that may not be noted at birth.

h) Delete the term "community health workers" and substitute therefor the term "community health promoters" in clause 16(2)(b) and 16(2)(f) as the term defined in Clause 2 of the Bill is "community health promoter" in line with the Primary Health Care Act, 2023.

Committee resolution: Adopted. To ensure alignment with the Primary Health Care Act, 2023.

i) Delete the word "approved" in clause 23(1) to ensure consistency in the Bill as other clauses use the term "health facility".

Committee resolution: Adopted with Amendments. To place the obligation on the maintenance of information on maternal, newborn, and childcare cases on registered health facilities or hospitals.

Office of the Attorney General indicated a general comment that the Bill does not have any constitutional issues; however, policy on the Bill lies with MOH. The Committee to seek policy guidance from MOH prior to finalization of the Bill.

Committee resolution: The Committee noted the general Comment on the Bill.

24. **National Gender and Equality Commission (NGEC)** submitted as follows;

a) Substitute the words "National Social Assistance Authority" with the words "the body responsible for Social assistance" in clause 2 as the National Social Assistance Authority has never been established because the Social Assistance Act has never been operationalized. The Ministry of Labour had started the process of repealing the said Act and may propose a different institutional framework.

Committee resolution: Not Adopted. The recognized authority on matters relating to social assistance is the National Social Assistance Authority.

b) Delete Clause 7(2) (d) as adoption services do not generally fit under the enumerated health services because they are premised under a different docket with its own regulatory framework. Allowing the same to be classified under health services has the potential of misplacement, possible abuse and /or misuse.

Committee resolution: Not adopted. Referrals to adoption services are included in the health services that ought to be accorded to a pregnant woman.

c) In clause 8(2) delete the phrase "is Severely malformed at the time of birth" and substitute therefor the phrase "has a malformation, a disability or congenital condition".as the amendments proposed ensure any form of malformation and not only severe ones shall be referred for further intervention. The proposal also introduces children born with

disabilities and congenital conditions who need immediate health intervention Congenital refers to a condition or trait that exists at birth

Committee resolution: Adopted with Amendments. To cover all instances where a child is born with malformations or special needs, which may not be noted at birth

d) In clause 8(2) substitute the word "may" immediately before the word "refer" with "shall" to make it mandatory to refer

Committee resolution: Adopted. To compel a healthcare provider to refer a child born with malformations or special needs to a relevant medical practitioner.

e) Insert the following new subclause immediately after clause 8(2) as follows: "8(2) (A) Every child born with a disability shall be registered with the National Council of Persons with Disability" As registration is crucial to enable the child to access the necessary and crucial services offered by the Council and also for purposes of data capture

Committee resolution: Not Adopted Issues relating to the registration of disability are best handled under the principle law on disability

f) Insert the following new subclause 3(A) immediately after clause 8(3) as follows 3(A) Rights of an intersex child (Protection from discrimination and harmful practices)

"(i) An intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services

(ii) A parent, caregiver, guardian or next of kin, shall not conceal the identity and information regarding any intersex child

(iii) No person shall subject an intersex child to change or removal of an organ or subject them to intrusive and involuntary medical testing, treatments or procedures that may have negative long-term consequences." Adopted with Amendments

The Bill has not included the rights of intersex children To protect this category of children from discrimination, abuse and harmful cultural practice from the time of birth and to allow them to make their own decisions on the attainment of majority age

Committee resolution: Adopted with Amendments. To align with the provisions of the Children Act, Cap 141 The term 'intersex child" is defined in clause 2 however there is no substance clause of the rights of an intersex child The issue of changing or removing organs or medical testing was **not adopted** as the same may be medically necessary

g) Substitute the words "National Social Assistance Authority" with the words "the body responsible for Social assistance" in Clause 14(e) as the National Social Assistance Authority has never been established because the Social Assistance Act has never been operationalized. The Ministry of Labour had started the process of repealing the said Act and may propose a different institutional framework

Committee resolution: Not Adopted The recognized authority on matters relating to social assistance is the National Social Assistance Authority

h) Insert the words "and simple" immediately after the word "clear" in clause 17(3) (b) as the language maybe clear but it also needs to be simple to be understood by the residents to achieve the desired purpose.

Committee resolution: Not adopted. The information that is clear also has to be simple to be understood by the citizens.

i) Delete the phrase "distinguishing between minors from adults; and" and substitute therefor the words "on age, gender, disability status, ethnicity, among others" in clause 17(3) (c) as the proposed bill requires disaggregated data on age only. There is a need to have data on all intersectionality for among other reasons.

j) **Committee resolution:** Adopted with amendments. To provide for other aspects of disaggregation beyond age which will allows for evidence-based decision making.

k) Amend clause 21(3) (c) by substituting the phrase "distinguish between minors from adults" with "on age, gender, disability status, ethnicity, among others".

Committee resolution: Adopted with amendments. To provide for other aspects of disaggregation beyond age which will allow for evidence-based decision-making.

25. **Health NGOs' Network (HENNET)** presented their views and the proposed amendments as follows;

a) Delete the words "as may be prescribed by the Cabinet Secretary" in clause 6(1) (c) as this phrase subjects' access to counseling to government regulations and hence limits its scope, type and availability.

Committee resolution: Adopted to make access to counseling services by a woman who is not pregnant accessible without limitations on what these services comprise of.

b) Delete clause 7(2)(h) and substitute with: "(h) sensitization and education on the benefits of breastfeeding children, proper nutrition aligns with the provisions of clause 8(1)(b) on health services that ensure child survival, growth and development including optimal child nutrition, childhood vaccination, growth promotion and monitoring, developmental promotion and monitoring and child protection services. However, ensuring access to these services does not automatically guarantee their utilization by mothers. Sensitization is crucial to help them understand the benefits and encourage them to seek these essential services for their children, vaccination, growth promotion of children, and any other child beneficial activities.

Committee resolution: Not adopted. Clause 7 relates to health services for a pregnant woman and not the health services for children.

c) Insert the following as clause 9(5) "(5) For purposes of this Act, women with special needs include—Women with chronic illness, and Women in marginalized areas, as the term 'Women with special needs' needs to be defined for clarity and to avoid misinterpretation.

Committee resolution: Not adopted. The Bill cannot use the term pregnant adolescents, the right term is "child in need of care and protection as defined in the Children Act, Cap 141 The other categories of women are defined in clause 2 under the term "person with special needs"

d) To ensure that healthcare providers treat patients with respect and dignity, and that patients also respect healthcare providers, it is important to attach a penalty for violations, therefore, replace clause 10 with the following

i A person seeking maternal, newborn, and child health services is entitled to dignified treatment and respect by employees or persons providing service in a health care facility irrespective of their race, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth

ii A person who violates subsection (1) commits an offence and shall be liable, upon conviction, to a term not exceeding three years or a fine not exceeding one million shillings, or to both

iii Healthcare workers are entitled to considerate and respectful behavior from the patients for whom they care and to be free from harassment, abuse, attack, and verbal and mental abuse

iv The management of a health facility shall ensure that its employees and persons providing healthcare services under this Act are well facilitated to perform their duties

v A health facility that fails to comply with this section commits an offence and shall be liable to deregistration and other fines and penalties as may be assessed

Committee resolution: Adopted with amendments A penalty of one year introduced to deter the mistreatment of persons seeking maternal, newborn and child services Clause 24 amended to provide for a fine of 1 million for a healthcare professional and 5 million for a health facility and to include adherence to referral systems by the Court

e) Add the following clause as subclause (l) in clause 11 "standardized system for the collection, storage, and management of data to inform policy decisions, improve service delivery, track progress on health indicators, and guide resource allocation to enhance maternal and child health outcomes" as data plays a crucial role in healthcare by improving services, guiding decision-making, and enhancing tracking of progress on health indicators.

Committee resolution: Adopted. Effective health data management is necessary for purposes of evidence-based decision making

f) Add the following new clauses in Clause 25 as subclause (4):
Recognition of the National Multi-Stakeholder Platform
a) The Platform shall be chaired by the Director General of Health and co-chaired by the Chair of County Directors of Health
b) Membership of the platform shall include the following:
i. Ministry of Health
ii. Office of the President
iii. National Treasury and Economic Planning
iv. Council of Governors
v. County Governments
vi. Ministries: Agriculture, Education, Gender, Culture and Arts
vii. Development partners
viii. Faith-based organizations (2)
ix. Private sector (2)
x. NGO sector (2)
xi. Professional bodies (2)
xii. Academia (2)

To legally anchor the existing Multi-Stakeholder Platform and define its coordination structure. This facilitates inclusive representation, strategic guidance, and improved health outcomes aligned with PHC and UHC goals. The platform will support implementation and enhance accountability for resources and health outcomes for women, children, and adolescents in Kenya.

Committee resolution: the committee noted and indicated that the Platform is best established administratively as is currently prevailing.

g) To enhance implementation efficiency, coordination, and performance monitoring of RMNCAH-N services, fostering accountability across all stakeholders include the following clauses on the functions of:

i. Set strategic directions on MNCH policy, technical, and financial priorities.
ii. Provide advisory and oversight support for the implementation of this Act
iii. Monitor RMNCAH N progress using data and track investment frameworks.
iv. Coordinate evidence based planning and innovative practices.
v. Foster mutual accountability and alignment with national PHC and UHC targets.

Committee resolution: Noted. The Platform is best established administratively as is currently prevailing.

26. **Council of Governors (COG)** presented their views and the proposed amendments as follows;

a) Delete clause 5(3) (h) as the clause raises issues that have not been addressed to enable smooth implementation, namely, whether the traditional birth attendants will be a new

cadre integrated in the healthcare system and how they will be remunerated. It may also create additional unfunded obligations for county governments.

Committee resolution: Not adopted. The clause is clear that the traditional birth attendants are only being trained and integrated in the provision of services; they are not being incorporated in the formal healthcare system as a cadre.

b) Delete the words "and the provision of prenatal vitamins" appearing in clause 6(1)(b) as no country in the world can afford to offer prenatal vitamins at no cost. It is an entitlement that the country, counties or health facilities cannot afford.

Committee resolution: Not adopted. This is a condition to the provision of prenatal vitamins, which is subject to the direction of the Cabinet Secretary for Health.

c) Insert the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary" to ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

Committee resolution: Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

d) Amend clause 7(1) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'; and replacing the word "measures" with the words "policies and guidelines" to ensure that the policies and guidelines for the activities mentioned in the clause and in prescribing standards are undertaken jointly by the Cabinet Secretary and the county governments in terms of the obligations of cooperative devolved government imposed by article 189 of the Constitution. The clause requires the Cabinet Secretary to put measures in place to ensure service delivery, which is the role of the county CECs. The Constitution prescribes the role of the national government as making policies and monitoring the implementation thereof, but not their implementation.

Committee resolution: The committee noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution. The appropriate term is "measures" in relation to the provisions of this clause.

e) Amend clause 7(3) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'.

Committee resolution: Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution. The appropriate term is "measures" in relation to the provisions of this clause.

f) Amend clause 8(1) by inserting the words "with the requisite training in maternal, newborn and child health services" immediately after the word 'provider' it is not feasible to compel every healthcare provider to offer maternal and child health services. Only those with the requisite training should be required to do so

Committee resolution: Not adopted. The obligation ought to apply to all healthcare providers who treat a child based on the appropriate circumstances.

g) Amend clause 8(6) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary' to ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution

Committee resolution: Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

h) Amend clause 9(1), (2), (3) and (4) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'.to ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

i) **Committee resolution:** Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

j) Amend clause 12 by inserting the words "in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary" to ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

k) **Committee resolution:** Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

l) Amend paragraph (j) of clause 12 by inserting the following words: "prescribing standards for immediately after the words 'database'. To ensure that instead of the Cabinet Secretary prescribing a uniform e-health platform, the Cabinet Secretary should prescribe standards for e-health platforms and ensure all facilities use one that is compatible and interoperable with the national health integrated system.

m) **Committee resolution:** Not adopted. .The intention is not for facilities to use system but to integrate their systems with the national health integrated system.

n) Amend paragraph (k) of clause 12 by inserting the words "by the national government and county governments" immediately after the words "health services" to ensure that resources mobilized by national government including from development partners for delivery of maternal, newborn and child health services are equitably shared between the national government and the county governments.

Committee resolution: Not adopted. The sharing of resources shall be done in accordance with the provisions of the Constitution and the Public Finance Management Act, Cap. 412A.

o) Introduce a new paragraph (kk) as follows:"(kk) ensure annual allocation of additional resources to county governments from the national government equitable share for the delivery of maternal, newborn and child health services either conditionally or unconditionally. To ensure that county governments get adequate resources to invest in maternal, newborn and child health services and to avoid unfunded mandates on their part.

p) Committee resolution: Not adopted. The sharing of resources shall be done in accordance with the provisions of the Constitution and the Public Finance Management Act, Cap. 412A.

q) Insert the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary" in clause 13(1) and (3).To ensure that in preparing the annual report and in reporting to Parliament on the non-implementation of any previous recommendation and the action to be taken, the Cabinet Secretary cooperates, collaborates and coordinates with county governments, in terms of the obligations of cooperative devolved government under Article 189 of the Constitution.

Committee resolution: Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

r) Delete clause 14(d) as the clause is locking all facilities in the country into a prescribed e-health platform, with the danger of locking out innovation, already developed systems, and competition. It is only necessary to ensure that all facilities use an e-health platform that meets the standards set by the national government. This role was delegated to the Digital Health Agency by the Digital Health Act.

s) **Committee resolution**: Not adopted.The intention is not for facilities to use the system but to integrate their systems with the national health integrated system.

t) Amend clause 18 by inserting immediately after the letter "18" and before the word 'Every' the following words:" in addition to additional allocations from the national government's equitable share," to ensure that county governments which receive a very small percentage of the revenue raised nationally are supported by national government to invest more money in maternal, newborn and child health services.

Committee resolution: Not adopted. The sharing of resources shall be done in accordance with the provisions of the Constitution and the Public Finance Management Act, Cap. 412A.

u) Amend clause 21(1), (2) and (4) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary". To ensure that in undertaking annual monitoring and evaluation, undertaking the activities mentioned under clause 22(2) and prescribing procedures and requirements for undertaking the monitoring and evaluation, the Cabinet Secretary cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

v) **Committee resolution**: Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution

w) Amend clause 22(2) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary". To ensure that in undertaking the continuous review of standards and guidelines, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under Article 189 of the Constitution.

Committee resolution: Noted. There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution

x) Amend clause 23(2) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary". To ensure that in making the regulations, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

Committee resolution: The committee noted and indicated that there is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

y) Amend clause 25(2) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary" to ensure that in prescribing the minimum standards through regulations, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under Article 189 of the Constitution.

Committee resolution: The committee noted and indicated that there is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.

z) **Council of Governors (COG)** appreciates the efforts that have gone into putting together the Bill and the noble objective of seeking to establish a legal framework for the delivery of comprehensive and well-coordinated, and structured quality maternal, newborn and child health services in the country, whose strengths lie in the following areas:

(a) Comprehensive Coverage: The bill addresses a wide range of maternal, newborn, and child health services, including prenatal, intrapartum, postpartum, and neonatal care, as well as services for women and children with special needs. It emphasizes equitable access, mental health support, and emergency services, which are critical for reducing morbidity and mortality.

(b) Focus on Vulnerable Populations: Specific provisions for marginalized communities, adolescents, persons with disabilities, and at-risk individuals ensure inclusivity.

(c) Integration of Mental Health: The Bill mandates mental health care for mothers during and after pregnancy, addressing postpartum depression and trauma related to stillbirths or neonatal deaths.

(d) Monitoring and Evaluation: Regular data collection, surveillance, and reporting on maternal and child mortality will help identify gaps and measure progress. Quarterly inquiries into deaths and disparities are particularly valuable for evidence-based interventions.

(e) Community Engagement: Involvement of community health workers, traditional birth attendants, and public awareness campaigns aligns with best practices for grassroots health delivery.

(f) Legal and Ethical Safeguards: Provisions for informed consent, protection against non-consensual treatment, and penalties for violations ensure accountability.

The COG therefore fully supports the Bill but proposes some Amendments that seek to improve the Bill, particularly in funding the proposed interventions to avoid creating additional unfunded mandates without providing additional resources to county governments to enable them to implement the Act and undertake the proposed interventions.

27. **Kenya Paediatric Association** while supporting the Bill submitted as follows;

a) In the marginal note and clause 8(1), replace twelve years with eighteen years so as to align with definition of a child in the Children Act.

Committee resolution: Not adopted. The clause as is specific to the child health services provided in the neonatal period up to twelve years.

b) In clause 8(5), insert the following new paragraph—"(d) in an emergency situation that is life-threatening" to allow a HCP to provide emergency care service without consent in the case where a parent or guardian is not immediately available.

Committee resolution: Not adopted. The same is sufficiently addressed under section 9 of the Health Act, Cap. 241.

c) In clause 8(6) (a), replace twelve years with eighteen years as a child is up to eighteen years.

Committee resolution: Not adopted The clause is specific to the child health services provided in the neonatal period up to twelve years

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

28. The Committee, having considered the Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) and submissions from stakeholders, made the following observations:

a) The Bill offers a robust legislative framework that advances Kenya's commitment to maternal and child health. It promotes the realization of socio-economic rights, strengthens accountability mechanisms, and fosters coordinated collaboration between national and county governments for improved health outcomes.

b) It reinforces the constitutional right to the highest attainable standard of health as enshrined in Article 43(1)(a) of the Constitution and complements the Health Act, 2017 (Cap. 241) by incorporating promotive, preventive, curative, palliative, and rehabilitative services. While many of these rights are already provided for in existing laws, the Bill reaffirms and operationalizes them with specific emphasis on maternal, newborn, and child health.

c) It includes provisions for the protection of vulnerable populations, particularly persons with special needs and children in need of care and protection. It also mandates referral to specialized care and safeguards against discrimination and harmful practices, consistent with the Children Act (Cap. 141) and international standards.

d) The Bill aligns with Kenya's international obligations under instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which call for special protection of mothers and children during the prenatal and postnatal periods.

e) To enhance healthcare quality and service delivery, the Bill provides for capacity building, continuous training of healthcare providers, and the development of policies and guidelines. Amendments have also incorporated the need for palliative care and strengthened referral systems, particularly for marginalized and high-risk groups.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

29. The Committee recommends that the House considers and passes the Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) with the following amendments:

CLAUSE 2
THAT, Clause 2 of the Bill be amended by—

(a) deleting the definition of the term "adolescent"

Justification: The term "pregnant adolescent" has been proposed for deletion since the preferred terminology is a child who is pregnant which comprises one of the aspects of the term "child in need of care and protection" as defined in section 144 of the Children Act, Cap. 141.

(b) deleting the definition of the term "intersex child" and substituting therefor the following new definition—

"intersex child" has the meaning assigned to it under section 2 of the Children Act; Cap. 141.

Justification: To ensure statutory harmony since the Children Act, Cap. 141 is the primary law on matters of children.

CLAUSE 4
THAT, Clause 4 of the Bill be amended by deleting paragraph (i) and substituting therefor the following new paragraph (i) —

"(i) establishment of interventions based on objective information, methods, effective monitoring mechanisms, regular evaluation, transparency and that take into account the needs of the population; and".

Justification: To bring out the applicable principles of service delivery under the Bill explicitly and make them actionable.

CLAUSE 5
THAT, Clause 5 of the Bill be amended —

(a) by deleting the marginal note and substituting therefor the following new marginal note—

"Right to maternal, newborn and child health services".

Justification: To confine the marginal note to matters of maternal, newborn and child health services.

(b) in sub-clause (2) by inserting the word "palliative" immediately after the word "rehabilitative".

Justification: To align with section 5(1) of the Health Act, Cap. 241 which recognizes palliative services besides the promotive, preventive and curative services.

CLAUSE 6

THAT, Clause 6 of the Bill be amended in sub-clause (1) by deleting the words "as may be prescribed by the Cabinet Secretary" appearing in paragraph (c).

Justification: To make access to counseling services by a woman who is not pregnant accessible without limitations on what these services comprises of.

CLAUSE 7

THAT, Clause 7 of the Bill be amended in sub-clause (2) by inserting the words " free and compulsory" immediately before the words "health care" appearing in paragraph (f).

Justification: To align with section 5(3) of the Health Act, Cap. 241 which recognizes the provision of free and compulsory maternity care.

CLAUSE 8

THAT, Clause 8 of the Bill be amended in sub-clause (2) by deleting the words "is severely malformed at the time of birth, the healthcare provider may" and substituting therefor the words "has malformations or special needs, the healthcare provider shall".

Justification: To cover all instances where a child is born with malformations or special needs which may not be apparent at birth.

CLAUSE 9

THAT, Clause 9 of the Bill be amended in—

(a) sub-clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph (d)—

" (d) in the case of a child who is pregnant—

(i) child-friendly health services; and
(ii) counselling and anticipatory guidance with referrals and follow-up of the child who is pregnant or the guardian of that child as may be appropriate;"

(b) Sub-clause (3) by deleting the word "adolescents" and substituting therefor the words "children who are pregnant and are".

Justification: The term "pregnant adolescent" has been proposed for deletion since the preferred terminology is a child who is pregnant which comprises one of the aspects of the term "child in need of care and protection" as defined in section 144 of the Children Act, Cap. 141.

CLAUSE 10
THAT, Clause 10 of the Bill be amended by—

(a) renumbering the existing clause as sub-clause (1); and
(b) inserting the following new sub-clause (2) immediately after the renumbered sub-clause (1)—
"(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both."

Justification: The penalty proposed will serve as a deterrent and ensure that persons seeking or receiving maternal, newborn or child health services are not mistreated or subjected to maltreatment such as obstetric violence.

CLAUSE 11
THAT, Clause 11 of the Bill be amended—

(a) in paragraph (f) by deleting the word "adolescents" and substituting therefor the words "children who are pregnant and are".

Justification: The term "pregnant adolescent" has been proposed for deletion since the preferred terminology is a child who is pregnant which comprises one of the aspects of the term "child in need of care and protection" as defined in section 144 of the Children Act, Cap. 141.

(b) by inserting the following new paragraph immediately after paragraph (k)—

"(l) a standardized mechanism for the collection, storage and management of data to inform policy decisions, improve service delivery, track progress on health indicators and guide resource allocation to enhance maternal and child health outcomes."

Justification: Effective health data management is necessary for purposes of evidence based decision making towards the improvement of maternal, neonatal and child health outcomes

CLAUSE 12
THAT, Clause 12 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (n)—

"(o) formulate programs and strategies aimed at reducing maternal, neonatal and child mortality rates;
(p) develop and implement training programs for skilled health care providers on maternal, neonatal and child health services including on the care of women with special needs;

Justification: To align with the functions of the national government on the development of programs, capacity building and training for the reduction and prevention of maternal, neonatal and child mortality.

CLAUSE 14
THAT, Clause 14 of the Bill be amended by—

(a) deleting paragraph (h) and substituting therefor the following new paragraph (h)—

"(h) implement training programmes for skilled and traditional birth attendants in the county including on the care of women with special needs".

(b) deleting paragraph (i).

Justification: To ensure alignment with the delineation of functions between the two levels of government under the Fourth Schedule to the Constitution since the national government is responsible for the development of training programs.

CLAUSE 16
THAT, Clause 16 of the Bill be amended in sub-clause (2) by—

(a) deleting the term "local community health workers" appearing in paragraph (b) and substituting therefor the term "community health promoters".
(b) deleting the term "community health workers" appearing in paragraph (f) and substituting therefor the term "community health promoters".

Justification: To ensure alignment with the Primary Health Care Act, No. 13 of 2023 which uses the term "community health promoters".

CLAUSE 17
THAT, Clause 17 of the Bill be amended in sub-clause (3) by deleting the words "distinguishing between minors from adults" appearing in paragraph (c) and substituting therefor the words "based on age, gender, ethnic origin and disability".

Justification: To provide for other aspects of disaggregation beyond age which will facilitate evidence-based decision making.

CLAUSE 21
THAT, Clause 21 of the Bill be amended in sub-clause (3) by deleting the words "to clearly distinguish between minors and adults" and substituting therefor the words "based age, gender, ethnic origin and disability".

Justification: To provide for other aspects of disaggregation beyond age which will facilitate evidence-based decision making.

CLAUSE 23
THAT, Clause 23 of the Bill be amended in sub-clause (1) by deleting the words "hospital or approved" and substituting therefor the words "registered hospital or".

Justification: To place the obligation on maintenance of information on maternal, newborn and childcare cases on registered health facilities or hospitals.

CLAUSE 24
THAT, Clause 24 of the Bill be amended in—

(a) sub-clause (1) by inserting the words "referral systems" immediately after the words "code of ethics";

Justification: To make provision for adherence to referral systems by healthcare providers and health facilities.

(b) sub-clause (2) by deleting the words "five hundred thousand" and substituting therefor the words "one million";
(c) sub-clause (4) by deleting the words "one million" and substituting therefor the words "five million".

Justification: To enhance the penal provisions to make them more deterrent so as to ensure compliance with the provisions of the Bill.

CLAUSE 25
THAT, Clause 25 of the Bill be amended —

(a) in sub-clause (1) by deleting the words "and other relevant stakeholders";

Justification: To cure the ambiguity in the delegation of legislative power since it will be difficult for the Cabinet Secretary for health and the Council of Governors to prove that they consulted relevant stakeholders in compliance with Article 259(11) of the Constitution. Article 10 and 232 of the Constitution and the Statutory Instruments Act, Cap. 2A further require stakeholder consultation in the making of subsidiary legislation such as Regulations.

(b) in sub-clause (2) by—

(i) deleting the words "the cabinet secretary may, by regulations, prescribe minimum standards for" appearing in the opening sentence and substituting therefor the words "the regulations shall provide for"; and

Justification: It is superfluous to restate the making of regulations since sub-clause (1) has already specified the nature of the law to be made by the Cabinet Secretary, that is Regulations.

(ii) inserting the word "surveillance" immediately after the word "notification" appearing in paragraph (b).

Justification: To make provision for surveillance which is crucial in the prevention of maternal and neonatal deaths.

CLAUSE 27
THAT, the Bill be amended by deleting Clause 27.

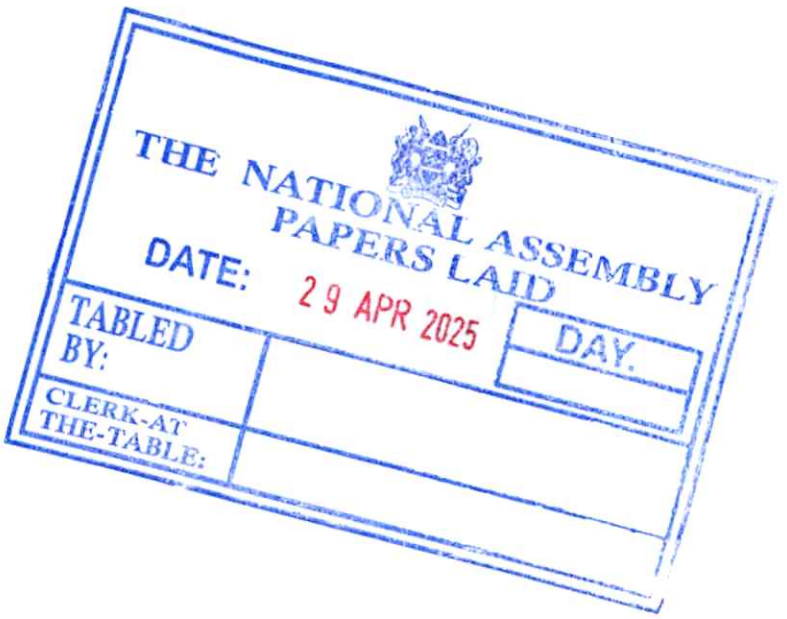
Justification: The term "financial assistance" in the Social Assistance Act, Cap. 285A and which is proposed for consequential amendment makes provision for the payment for health care

services as a form of social assistance. Under section 17 of this law, this social assistance is provided to persons in need who are defined to include orphans and vulnerable children. Section 20 of this Act then defines what it means for a child to be an orphan or to be vulnerable and in that case to qualify for social assistance.

The incorporation of "the care and welfare of children" in the Social Assistance Act, Cap. 285A as contemplated in the Bill is too wide and goes beyond the scope of the Social Assistance Act, Cap. 285A. The best law for incorporation would have been the Children Act, Cap. 241. The latter however sufficiently makes provision for issues relating to the care and welfare of children. In relation to maternal and child health services in particular, a child in need of care and protection which includes a child who is pregnant or who is mentally ill under section 144 of the Children Act, Cap. 141 is to be provided appropriate treatment, care and necessary hospital accommodation (see section 144). The Children Act in section 16 further recognizes that children have a right to the highest attainable standard of healthcare which includes access to age-appropriate information on health promotion and the prevention and treatment of ill-health and disease, mental health and reproductive health.

SIGNED..... **DATE** 29/4/2025

HON. DR. NYIKAL JAMES WAMBURA, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH



ANNEXURE 1:MINUTES OF COMMITTEE SITTINGS

MINUTES OF THE 34th SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN SOCIAL HEALTH AUTHORITY (SHA) BUILDING 10TH FLOOR WITH THE DIGITAL HEALTH AGENCY ON MONDAY, 28TH APRIL 2025, AT 9:40 AM

PRESENT

1.	The. Hon. Dr. Nyikal James Wambura, MP	**-Chairperson**
2.	The Hon. Ntwiga Patrick Munene, MP	**- Vice Chairman**
3.	The Hon. Dr. Pukose Robert, MP	-Member
4.	The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, MP	-Member
5.	The Hon. Prof. Jaldesa Guyo Waqo, MP	-Member
6.	The Hon. Owino Martin Peters, MP	-Member
7.	The Hon. Oron Joshua Odongo, MP	-Member
8.	The Hon. Mary Maingi, MP	-Member
9.	The Hon Wanyonyi Martin Pepela, MP	-Member
10.	The Hon. Cynthia Muge, MP	-Member

ABSENT WITH APOLOGY

1.	The Hon. Kipngor Reuben Kiborek, MP	-Member
2.	The Hon Kibagendi Antoney, MP	-Member
3.	The Hon. Titus Khamala, MP	-Member
4.	The Hon. Lenguris Pauline, MP	-Member
5.	The Hon. Mathenge Duncan Maina, MP	- Member

COMMITTEE SECRETARIAT

1.	Mr. Hassan A. Arale	-Clerk Assistant I
2.	Ms. Gladys Kiprotich	-Clerk Assistant III
3.	Ms. Faith Chepkemoi	-Legal Counsel

IN ATTENDANCE-DIGITAL HEALTH AGENCY (ATTACHED)

1.	Mr. Anthony Lenaiyara	-Ag. Chief Executive Officer
2.	Mr. Silas Simatwo	-DHA chairman
3.	Mr. George Karori	-DHA board members
4.	Mr. Pius Cheruiyot	-DHA board members
5.	Dr. Greory Ganda	-Director DHA
6.	Mr. William Baraza	-Director DHA
7.	Mr. Edith Torotich	- DHA
8.	Dr. Joyce Wamicwe	-Digital Health & Informatics Lead

AGENDA

1. Prayers;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the previous meetings;
4. Matters Arising;
5. **The Operational Dynamics of the Digital Health System, including any Challenges encountered in its Implementation and Daily Use.**
6. **The System's effectiveness in Registering Members and Managing Claims**
7. **Significant accomplishments realized through the Deployment of the Digital Health System.**
8. **Consideration and adoption of the Report on Maternal, Newborn And Child Health Bill, 2023 (Senate Bill No. 17 Of 2023)**
9. **Consideration and adoption of the Report on The Kenya Institute of Primates Research Bill, 2024(National Assembly Bill No. 52 Of 2024)**
10. Any other business; and;
11. Adjournment/Date of the Next Meeting.

MIN. NO. NA/DC-H/2025/263: PRELIMINARIES/INTRODUCTION

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

MIN. NO. NA/DC-H/2025/264: ADOPTION OF AGENDA

The agenda of the meeting was adopted, having been proposed by Hon. Prof. Guyo Jaldesa Peters, MP, and seconded by Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, MP

MIN. NO. NA/DC-H/2025/265:CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

MIN. NO. NA/DC-H/2025/266: MATTERS ARISING

There were no matters arising.

MIN. NO. NA/DC-H/2025/267:THE OPERATIONAL DYNAMICS OF THE DIGITAL HEALTH SYSTEM, INCLUDING ANY CHALLENGES ENCOUNTERED IN ITS IMPLEMENTATION AND DAILY USE.

The Digital Health System (The Digital Health Superhighway/Integrated Health Information Management System) is one of the Pillars of the Universal Health Coverage as below:

i. Health Financing (Commonly known as SHA)
ii. Health Products and Technologies
iii. Human Resource for Health
iv. Integrated Health Information Management Ecosystem

The Digital System is an enabler of the other three pillars of the Universal Health Coverage. It is a combination of 38 Systems & Hardware that support the delivery of Universal Health Coverage. All this system is integrated and support each other in delivery.

The implementation of the Digital Health System has been phased into two key phases namely:

1. Phase 1: Focusing on the Health Financing Pillar and supporting the Social Health Authority operations
2. Phase 2: Focusing on Public Facility digitalization, Human Resource for Health and Health Products and Technologies Pillars

The agency has made great progress in supporting the roll-out of the Social Health Authority, including SHA registration, SHIF Contribution System, and Claims Systems.

a) **SHA registration**

The Registration Systems are complete and integrated to the National Registration Bureau with multiple channels:

i. **Self-registration** – Afya yangu portal to support all online registrations
ii. **Short Mobile Codes *147# -** To support registration of all Kenyans without smart phones but with Simple USSD phone.
iii. **Community Health Promoters & SHA branch offices Assisted Registration System-** To support the registration of Kenyans without Phones or internet in the villages
iv. **Smart Afyangu App** –The Afya yangu app is now available in android and will soon be available in apple store to support registration
v. **The Agency also supported in:** Migrated of 9M NHIF Members that had clean records to SHA Members Database and Integration of SHA registration system to NEMIS school's database to support addition of dependents

b) **SHIF Contribution System**

The SHIF contribution system are complete as below:

i. **SHA Means Testing System** – Gives the ability for SHA members to calculate the annual contribution for self-employed/ unemployed Kenyans
ii. **SHA Employer Portal-** Gives ability to employers to declare employees and make returns to SHA
iii. **Payment's contribution Options** – There are multiple contribution Channels such as M-Pesa, RTGS, online banking, and OTC.

c) **Claims Systems** –These systems manage healthcare benefits and ensure efficiency and transparency in claims management and processing. The systems are integrated with multiple other systems, such as the health workers' registry (For identification of Health workers), the Facility registry (for identification of facilities, the Terminology system, and Shared Health Records, among others

Some of the Challenges faced during the implementation of the systems include:

a. System Stability issues –In the initial stage of implementation, the Systems had some downtime. The agency has improved the stability of the system with very minimal downtime now.
b. OTP delays -The OTP delays were caused by network availability in some areas as well as initial system capacity. The agency has improved the system capacity and has worked with internet providers to optimize connectivity network. The availability for OTP has improved and now stands at 99.67%

c. Manipulation of the means testing system resulting in inaccurate premiums which could threaten the sustainability of the fund. The agency has developed an improved big data driven means testing system that is more accurate to support SHA in its roll out
d. Payment reconciliation – Payment reconciliation using RTGS channel of payment due to users submitting mismatch PRNs (Payment Reference Number) and receiving payments delaying the provision of services

MIN. NO. NA/DC-H/2025/268:THE SYSTEM EFFECTIVENESS IN REGISTERING MEMBERS AND MANAGING CLAIMS.

These system is effective in registration and managing claims. The System runs on advanced high tech big data & AI driven technology to provide service. The system uses several integrated systems to effectively register members and manage claims, eliminating possibility of collision and fraud: Some of the systems benefits so far are:

a. Ease of Registration – SHA members are now able to register from the comfort of their home, office or place of comfort. Reducing need for Kenyans to walk for long distance to register as members of SHA. An average of 50,000 Kenyans registers every day.
b. Identity Verification –All members are now verified with the National Registration Bureau (NRB), eliminating fraud. 3M fake records were removed from the system by this system
c. Automated pre-authorization approval – The system has reduced waiting time at facility for Kenyans from initial 3 days to Minutes
d. Efficient Claims Processing – The system has automated most claim processing and reduced manual verification. This has improved efficiency at SHA, making it possible for SHA to make claims payments monthly
e. Improved visibility and enhancing transparency: This system has enabled real-time tracking of claims status by the facility, enhancing transparency
f. Elimination of Fraud –The system is integrated to many other systems to support it in Fraud detection e, g. Using KMPDC data, the system only allows licensed facilities & Health Workers to provide services as per their license, eliminating fraud that was with NHIF.

MIN. NO. NA/DC-H/2025/269: SIGNIFICANT ACCOMPLISHMENTS REALIZED THROUGH THE DEPLOYMENT OF THE DIGITAL HEALTH SYSTEM.

There has been significant accomplishment realized through deployment of the digital health system as below:

a. A total of 21,755,721 Members have registered through the digital system with an average of 50,000 members registering everyday
b. Automated Pre-Authorization & Claims verification -improving provision of services. 2.435 Million Claims worth 48.55B has been processed through the system
c. 6,000 devices have been distributed across the country to support digitalization and claims in public facilities
d. Digitalization of Public facilities ongoing in 6 counties .8 more counties to start next week.
e. 24/7 Taifa care center call center established. With less than 20 seconds waiting time
f. The Health Information Exchange has been completed, providing centralized services through unique identification registries
g. Continued training and support of health workers on digitalization

Members Concerns

1. On why Out of the 20 million members registered, only 4 Million registered members are paying yet 9 million migrated from NHIF. The Ag. CEO Mr. Lenaiyara clarified that many of the 9 million NHIF members were dormant or non-contributing, and some NHIF members had defaulted, stopped paying, or only paid occasionally common among informal sector members. He further indicated that many of the 20 million are newly registered but have not yet started paying, especially informal workers who are difficult to enroll in regular contributions.

2. On whether the critical ICU is sh. 28,000 per day on selected facilities or across all the facilities; the CEO indicated that the Ksh 28,000 / day tariff for ICU (and HDU) under the Emergency, Chronic and Critical Illness Fund is not limited to a selected hospitals it is a uniform rate paid to all empanelled SHA facilities.

3. On the digitalization of health facilities; the CEO informed the meeting that, they are currently rolling out digitalization across public health facilities and the aim is to ensure that hospitals can manage claims and patient records electronically under the new Social Health Authority (SHA) system, he further indicated that they are also providing training to the health facility staff and users and the training will continue until staff can competently use the new digital systems for registration, service delivery, and claims processing.

4. On claim processing, the CEO informed the meeting that claim processing under the SHA system is fully automated for most services, except that surgical cases still require manual review before payment is approved. This means that for outpatient, inpatient (non-surgical), maternity, and other routine services, claims are automatically processed through the digital system once the service is entered and verified and for surgical procedures, additional manual checks and approvals are needed likely due to the complexity and higher cost of surgical claims, requiring extra validation to avoid fraud or errors.

5. The committee recommended that the agency obtain detailed records directly from the National Social Protection Registry maintained by the Ministry of Labour and Social Protection for all indigent groups fully subsidized by the SHA, including: Orphans, Elderly individuals without caregivers, and Street families.

6. In cybersecurity, the Committee was informed on the Health Cloud solutions, which are highly secure cloud platforms designed to protect healthcare information with strong encryption, compliance, monitoring, and disaster recovery features built in.

MIN. NO. NA/DC-H/2025/270: CONSIDERATION AND ADOPTION OF THE REPORT ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023 (SENATE BILL NO. 17 OF 2023)

The report on Maternal, Newborn and Child Health Bill, 2023 (Senate Bill No. 17 of 2023) was adopted by the committee, having been proposed by the Hon. Oron Joshua Odongo, MP, and seconded by the Hon. Prof. Jaldesa Guyo Waqo, MP as the true record of the Committee proceedings.

MIN. NO. NA/DC-H/2025/271: CONSIDERATION AND ADOPTION OF THE REPORT ON THE KENYA INSTITUTE OF PRIMATES RESEARCH BILL, 2024(NATIONAL ASSEMBLY BILL NO. 52 OF 2024)

The report on the Kenya Institute of Primate Research Bill, 2024 (National Assembly Bill No. 52 of 2024) was adopted by the committee, having been proposed by the Hon. Dr. Robert Pukose, MP, and seconded by the Hon. Julius Sunkuli Lekakeny Ole, EGH, EBS, MP as the true record of the Committee proceedings.

MIN. NO. NA/DC-H/2025/272: ANY OTHER BUSINESS

There were no matters arising.

MIN. NO. NA/DC-H/2025/273: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past one o'clock. The next meeting will be held by notice.

Sign.....**Date**29/4/2025.....

HON. DR. NYIKAL JAMES WAMBURA, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – FOURTH SESSION (2025)

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE CONSIDERATION OF THE MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023 (SENATE BILL NO. 17 OF 2023)

We, the undersigned Members of the Departmental Committee on Health do hereby append our signatures to adopt this Report **Date:** 28/4/2025

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

ANNEXURE 2: REPORT ADOPTION SCHEDULE

ANNEXURE 3: ANALYSIS OF SUBMISSIONS BY STAKEHOLDERS ON THE BILL

MATRIX ON STAKEHOLDER VIEWS ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023 (SENATE BILLS NO. 17 OF 2023)

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
	Clause 2	Kenya Law Reform Commission (KLRC)	(a) Align the definition of the term "intersex child" with the definition in the Children Act, Cap. 141.	The Children Act is the primary law on matters of children.	**Adopted.** To ensure statutory harmony since the Children Act, Cap. 141 is the primary law on matters of children.
			(b) Differentiate between healthcare providers and trained health professionals as defined in the Health Act, Cap. 241.	To ensure statutory harmony.	**Not adopted.** The term "healthcare provider" as used in the Bill is appropriate.
			(c) The Bill uses the terms "neonatal" and "newborn" interchangeably in the Bill.	Adopt either of the two terms for consistency.	**Noted.** The two terms mean different things and tare used appropriately within the Bill.

		Office of the Attorney General (OAG)	Cross reference the definition of the term "intersex child" with the definition in the Children Act.	The Children Act is the principle Act applicable to children matters.	**Adopted.** To ensure statutory harmony since the Children Act, Cap. 141 is the primary law on matters of children.
		National Gender and Equality Commission (NGEC)	Substitute the words "National Social Assistance Authority" with the words "the body responsible for Social assistance".	The National Social Assistance Authority has never been established because the Social Assistance Act has never been operationalized. The Ministry of Labour had started the process of repealing the said Act and may propose a different institutional framework.	**Not Adopted;** the recognized authority on matters relating to social assistance is the National Social Assistance Authority.
	Clause 3	KLRC	Merge the objects in Clause 3 (d) and (e).	They are repetitive.	**Not Adopted.** The sub-clauses are different as one relates to the services being provided while the other relates to the establishment of programs.
	Clause 4	OAG	Redraft clause 4(i) to: "(i) ensure that interventions are based on objective information, methods, effective monitoring mechanisms, regular evaluations, transparency and that the needs of	To bring out the applicable principles explicitly.	**Adopted with amendment.** To make the provision explicit and actionable.

			the population are taken into account."		
	Clause 5	OAG	Insert the word "palliative" immediately after the word "rehabilitative" in clause 5(2)	.To take care of incidences where a mother, newborn or child may need palliative care. Palliative care is missing and yet it is one of the rights to health. To align with section 5(1) of the Health Act, Cap. 241 which provides: "(1) Every person has the right to the highest attainable standard of health which shall include progressive access for provision of promotive, preventive, curative, **palliative** and rehabilitative services."	**Adopted.** To align with section 5(1) of the Health Act, Cap. 241.
		MOH	(a) Delete the marginal note and substituting therefor the following new marginal note" Right to maternal, newborn and child health services".	To confine the marginal note to what matters of maternal, newborn and child health services which the Bill is about.	**Adopted.** To confine the marginal note to matters of maternal, newborn and child health services.
			(b) Delete clause 5(1)(a),(b), (c), (d) and (e) and clause 5(2).	The provisions duplicate the provisions in the Health Act on the rights of an individual in accessing health care services which flows from Article 43 (1)(a) of the Constitution that accords every person with the right to the highest attainable standard of health which includes the right to health care services including reproductive healthcare. Part II of the	**Not Adopted.** The clauses buttresses the provisions in the Health Act, Cap. 241.

				Health Act provides for the rights and duties of every person in regard to health care services and has addressed the right of persons to access health care services.	
		Council of Governors (COG)	Delete clause 5(3)(h).	The clause raises issues that have not been addressed to enable smooth implementation namely whether the traditional birth attendants will be a new cadre integrated in the healthcare system and how they will be remunerated. It may also create additional unfunded obligations for county governments.	**Not Adopted.** The clause is clear that the traditional birth attendants are only being trained and integrated in the provision of services; they are not being incorporated in the formal healthcare system as a cadre.
	Clause 6	OAG	(a) Amend the Marginal Note to "Preconception services to women". (b) Redraft clause 6(1) to: "(1) A woman who intends to become pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy—".	The use of the expression of non-pregnant woman is connoting non-pregnant women in general The amendment will provide clarity on the targeted group of women.	**Not Adopted.** The clause is in order as drafted as intention introduces subjectivity in the law.

		MOH	Delete clause 6.	Part II of the Health Act, which flows from Article 43 (1)(a) of the Constitution, comprehensively provides for the rights and duties of individuals in relation to healthcare services. The provisions under Clause 6 are largely descriptive and may inadvertently create limitations on access to healthcare services for the intended beneficiaries. By prescribing specific services, the clause could be interpreted as restrictive rather than facilitative, potentially excluding other essential healthcare services not explicitly listed. Deleting Clause 6 ensures that access to healthcare remains broad and in line with constitutional and statutory provisions, thereby upholding the fundamental right to health without unnecessary constraints.	**Not Adopted.** The clause buttresses the provisions in the Health Act, Cap. 241.
		Health NGOs' Network (HENNET)	Delete the words "as may be prescribed by the Cabinet Secretary" in clause 6(1)(c).	This phrase means that access to counseling is subject to government regulations, potentially limiting the scope, availability, or type of counseling services based on policy decisions rather than individual needs.	**Adopted.** To make access to counseling services by a woman who is not pregnant accessible without limitations on what these services comprises of.

		COG	(a) Delete the words "and the provision of prenatal vitamins" appearing in clause 6(1)(b).	No country in the world can afford to offer prenatal vitamins at no cost. It is an entitlement that the country, counties or health facilities cannot afford.	**Not Adopted.** This is a condition to the provision of pre-natal vitamins which is subject to the direction of the Cabinet Secretary for Health.
			(b) Insert the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary".	To ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
	Clause 7	OAG	(c) Amend clause 7(1) to: "(1) The Cabinet Secretary shall put in place measures to ensure access, by every pregnant woman, to health services aimed at ensuring optimal health conditions for the woman and the foetus throughout the pregnancy and after the birth of the child". (d) Amend clause 7(2)(f) to:	The amendment will bring clarity that the foetus being referred to in the clause is the foetus carried by the pregnant woman and not any other foetus.	**Not Adopted.** The clause is in order as drafted as there is clarity that the clause relates to a woman and the foetus being carried by a woman. **Adopted with amendments.** To ensure alignment

			"(f) free health care services during the postpartum or postnatal period".	To conform with section 5(3) of the Act which provides that "the national and county governments shall ensure the provision of *free and compulsory*— (a) vaccination for children under five years of age; and *(b) maternity care.*	with section 5(3) of the Health Act, Cap. 241.
		MOH	(a) Amend the Marginal Note to: "Health care services during and after pregnancy for both the mother and the child". (b) Delete Clause 7(1) and substitute the following new clause: "(1) The Cabinet Secretary shall put in place measures to ensure access to health care services during and after pregnancy for both the mother and the child". (c) Delete clause 7(2)(d).	To ensure a more comprehensive scope of healthcare coverage. This change acknowledges that healthcare needs extend beyond pregnancy to include both maternal and child health after delivery. To ensure a broader and more proactive approach to maternal and child health. The deletions reinforce the commitment to safeguarding maternal and child health by ensuring continued access to necessary healthcare services before, during and after pregnancy.	**Not Adopted.** The clause relates to health services for pregnant women and does not include children. Referral to adoption services are included in the health services that ought to be accorded to a pregnant woman.
		NGEC	Delete Clause 7(2)(d).	Adoption services do not generally fit under the enumerated health services because they are premised under a different docket with its own regulatory framework. Allowing the same to be classified under health services has the potential of misplacement, possible abuse and /or misuse.	**Not Adopted.** Referral to adoption services are included in the health services that ought to be accorded to a pregnant woman.

		HENNET	Delete clause 7(2)(h) and substitute with: "(h) sensitization and education on the benefits of breastfeeding children, proper nutrition, vaccination, growth promotion of children and any other child beneficial activities".	To align with the provisions of clause 8(1)(b) on health services that ensure child survival, growth and development including optimal child nutrition, childhood vaccination, growth promotion and monitoring, developmental promotion and monitoring and child protection services. However, ensuring access to these services does not automatically guarantee their utilization by mothers. Sensitization is crucial to help them understand the benefits and encourage them to seek these essential services for their children.	**Not Adopted.** Clause 7 relates to health services for a pregnant woman and not the health service for children.
		COG	• Amend clause 7(1) by— (a) inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'; and (b) replacing the word "measures" with the words "policies and guidelines". • Amend clause 7(3) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'.	To ensure that the policies and guidelines for the activities mentioned in the clause and in prescribing standards are undertaken jointly by the Cabinet Secretary and the county governments in terms of the obligations of cooperative devolved government imposed by article 189 of the Constitution. The clause requires the Cabinet Secretary to put measures in place to ensure service delivery, which is the role of the county CECs. The Constitution prescribes the role of the national government as making policies and monitoring the implementation thereof but not their implementation.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution. The appropriate term is "measures" in relation to the provisions of this clause.

	Clause 8	OAG	Amend clause 8(2) to provide for referral to specialized doctor for all abnormalities.	The clause makes reference to severely malformed children. The clause ought to cater for all instances where the child is not severely malformed but requires specialized attention.	**Adopted with Amendments.** To cover all instances where a child is born with malformations or special needs which may not be noted at birth.
		MOH	Insert a new paragraph (f) in clause 8 as follows: "(f) health care provider shall also refer the special needs child for specialized care if the facility is not able to offer the services needed".	This ensures that persons with special needs are able to access health care services through referral.	
		NGEC	(a) In clause 8(2): • Delete the phrase "is Severely malformed at the time of birth" and substitute therefor the phrase "has a malformation, a disability or congenital condition".	The amendments proposed ensure any form of malformation and not only severe ones shall be referred for further intervention. The proposal also introduces children born with disabilities and congenital conditions who need immediate health intervention. Congenital refers to a condition or trait that exists at birth.	**Adopted with Amendments.** To cover all instances where a child is born with malformations or special needs which may not be noted at birth.
			• substitute the word "may" immediately before the word "refer" with "shall".		**Adopted.** To compel a healthcare provider to refer a child born with malformations or special needs to a relevant medical practitioner. **Not Adopted.** Issues relating to

			(b) Insert the following new subclause immediately after clause 8(2) as follows: "8(2)(A). Every child born with a disability shall be registered with the National Council of Persons with Disability".	Registration is crucial to enable the child to access the necessary and crucial services offered by the Council and also for purposes of data capture.	registration of disability are best handled under the principle law on disability.
			(c) Insert the following new subclause 3(A) immediately after clause 8(3) as follows: **3(A).Rights of an intersex child** (Protection from discrimination and harmful practices) "(i) An intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services. (ii) A parent, caregiver, guardian or next of kin, shall not conceal the identity and information regarding any intersex child.	The Bill has not included the rights of intersex children. To protect this category of children from discrimination, abuse and harmful cultural practice from the time of birth and to allow them to make their own decisions on the attainment of majority age.	**Adopted with Amendments.** To align with the provisions of the Children Act, Cap. 141. The term 'intersex child" is defined in clause 2 however there is no substance clause of the rights of an intersex child. The issue of changing or removing organs or medical testing was **not adopted** as the same may be medically necessary.

			(iii) No person shall subject an intersex child to change or removal of an organ or subject them to intrusive and involuntary medical testing, treatments or procedures that may have negative long-term consequences."		
		Kenya Paediatric Association	(a) In the marginal note and clause 8(1), replace twelve years with eighteen years.	To align with definition of a child in Children Act.	**Not Adopted.** The clause is specific to the child health services provided in the neonatal period upto twelve years.
			(b) In clause 8(5), insert the following new paragraph— "(d) in an emergency situation that is life threatening".	To allow a HCP to provide emergency care service without consent in the case where a parent or guardian is not immediately available.	**Not Adopted.** The same is sufficiently addressed under section 9 of the Health Act, Cap. 241.
			(c) In clause 8(6)(a), replace twelve years with eighteen years.	A child is upto eighteen years.	**Not Adopted.** The clause is specific to the child health services provided in the neonatal period upto twelve years.

		COG	(a) Amend clause 8(1) by inserting the words "with the requisite training in maternal, newborn and child health services" immediately after the word 'provider".	It is not feasible to compel every healthcare provider to offer maternal and child health services. Only those with the requisite training should be required to do so.	**Not Adopted.** The obligation ought to apply to all healthcare providers that a treat a child based on the appropriate circumstances.
			(b) Amend clause 8(6) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'.	To ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
	Clause 9	MOH	Delete clause 9(1)(d).	Based on the legal principle that adolescence is a transitional stage from puberty to adulthood, with legal adulthood recognized at 18 years. Given that individuals in this age group lack the legal capacity to consent to matters including reproductive health, legislating on adolescent pregnancy within this framework is not appropriate. Rather than legislating on adolescent pregnancy, the focus should be on developing comprehensive programs aimed at preventing and addressing adolescent pregnancies.	**Adopted with Amendments.** The term "pregnant adolescent" to be replaced with the term "child in need of care and protection as defined in the Children Act, Cap. 141.

				These programs should provide education, support and interventions that align with the best interests of minors while upholding legal and ethical considerations.	
		HENNET	Insert the following as clause 9(5): "(5) For purposes of this Act, women with special needs include— (a) Women with chronic illness; and (b) Women in marginalized areas.	The term "Women with special needs" needs to be defined for clarity and to avoid misinterpretation.	**Not Adopted.** The Bill cannot use the term pregnant adolescents, the right term is "child in need of care and protection as defined in the Children Act, Cap. 141. The other categories of women are defined in clause 2 under the term "person with special needs".
		COG	Amend clause 9(1), (2), (3) and (4) by inserting the words "'in cooperation, collaboration, and coordination with county governments' immediately after the words 'Cabinet secretary'.	To ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
	Clause 10	HENNET	Replace clause 10 with the following:	To ensure that healthcare providers treat patients with respect and dignity, and that patients also respect	**Adopted with amendments.** A penalty of one

			(1) A person seeking maternal, newborn, and child health services is entitled to dignified treatment and respect by employees or persons providing service in a health care facility irrespective of their race, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. (2) A person who violates subsection (1) commits an offence and shall be liable, upon conviction, to a term not exceeding three years or a fine not exceeding one million shillings, or to both. (3) Healthcare workers are entitled to considerate and respectful behavior from the patients for whom they care and to be free from harassment, abuse, attack, and verbal and mental abuse. (4) The management of a health facility shall ensure that its employees and persons providing healthcare services under this Act are well facilitated to perform their duties.	healthcare providers, it is important to attach a penalty for violations.	year introduced to deter the mistreatment of persons seeking maternal, newborn and child services. **Clause 24 amended** to provide for a fine of 1 million for a healthcare professional and 5 million for a health facility and to include adherence to referral systems.

			(5) A health facility that fails to comply with this section commits an offence and shall be liable to deregistration and other fines and penalties as may be assessed by the Court.		
			Introduce the following clauses: 1. A person seeking maternal, newborn, and child health services is entitled to dignified treatment and respect by healthcare providers, irrespective of race, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language, or birth. 2. A person who violates subsection (1) commits an offense and shall be liable, upon conviction, to a term not exceeding 1 year or a fine not exceeding ksh 500, 000, or both.		
	Clause 11	KLRC	Align the functions of the county executive committee member with the functions of community health promoters under the Primary Health Care Act, 2023.	To ensure statutory harmony.	**Noted.** The clause is aligned to the Primary Health Care Act, 2023.
		MOH	Delete clause 11.	To align the Bill with the constitutional functions of the national and county governments. Under the devolved system, the national government is responsible for policy formulation and setting standards, while county governments are tasked with	**Not Adopted.** Health is a concurrent function between the two levels of government.

				implementing these policies and delivering healthcare services. The provisions in Clause 11 mix the functions of both levels of government, creating ambiguity and potential conflict in service delivery. Furthermore, the Bill already provides for the distinct roles of the national and county governments, making this clause redundant. Deleting Clause 11 ensures clarity in governance and reinforces the principle of separation of functions as outlined in the Constitution.	
		HENNET	Add the following clause as subclause (l) in clause 11 "standardized system for the collection, storage, and management of data to inform policy decisions, improve service delivery, track progress on health indicators, and guide resource allocation to enhance maternal and child health outcomes."	Data plays a crucial role in healthcare by improving services, guiding decision-making, and enhancing tracking of progress on health indicators.	**Adopted.** Effective health data management is necessary for purposes of evidence based decision making.
	Clause 12	MOH	Insert the following new paragraphs in clause 12: "(n)Formulate programs and strategies aimed at reducing maternal, neonatal and child mortality rates. (p) Develop training packages for Skilled health care providers.	To align with the functions of the national government.	**Adopted.** To align with the functions of the national government on establishment of programs, capacity building and training.

			(q) Capacity build and train health care providers on various high impact training programs. (r) Develop and implement training programs for the care of women with special needs for Skilled birth attendants."		
		COG	(a) Amend clause 12 by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary".	To ensure that the county governments are fully and adequately involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
			(b) Amend paragraph (j) of clause 12 by inserting the following words: "prescribing standards for immediately after the words 'database'.	To ensure that instead of the Cabinet Secretary prescribing a uniform e-health platform, the Cabinet Secretary should prescribe standards for e-health platforms and ensure all facilities use one that is compatible and interoperable with the national health integrated system.	**Not Adopted.** The intention is not for facilities to use system but to integrate their systems with the national health integrated system.
			(c) Amend paragraph (k) of clause 12 by inserting the words "by the national government and county governments"	To ensure that resources mobilized by national government including from development partners for delivery of maternal, newborn and child health services are equitably shared between	**Not Adopted.** The sharing of resources shall be done in accordance with

			immediately after the words "health services".	the national government and the county governments.	the provisions of the Constitution and the Public Finance Management Act, Cap. 412A.
			(d) Introduce a new paragraph (kk) as follows: "(kk) ensure annual allocation of additional resources to county governments from the national government equitable share for the delivery of maternal, newborn and child health services either conditionally or unconditionally.	To ensure that county governments get adequate resources to invest in maternal, newborn and child health services and to avoid unfunded mandates on their part.	**Not Adopted.** The sharing of resources shall be done in accordance with the provisions of the Constitution and the Public Finance Management Act, Cap. 412A.
	Clause 13	MOH	Delete clause 13.	Preparation of reports is an administrative action which does not require legislation. Further, the clause is prescriptive, thus may limit the content for reporting to Parliament.	**Not Adopted.** Reporting to Parliament enhances accountability and ensures implementation of the provisions of the Bill.
		COG	Insert the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary" in clause 13(1) and (3).	To ensure that in preparing the annual report and in reporting to Parliament on the non-implementation of any previous recommendation and the action to be taken, the Cabinet Secretary cooperates, collaborates and	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is

				coordinates with county governments, in terms of the obligations of cooperative devolved government under Article 189 of the Constitution.	sufficiently provided for under the Constitution.
	Clause 14	KLRC	Merge the following functions of the CEC Member: • clause 14(b) and(p) • clause 14(f) and (g) • clause 14 (h),(m),(i) and (s).	They are repetitive.	**Noted.** The functions further buttress the role of the CEC for health in the delivery of maternal, newborn and child health services.
		COG	Delete clause 14(d).	The clause is locking all facilities in the country into a prescribed e-health platform, with the danger of locking out innovation, already developed systems, and competition. It is only necessary to ensure that all facilities use an e-health platform that meets the standards set by the national government. This role was delegated to the Digital Health Agency by the Digital Health Act.	**Not Adopted.** The intention is not for facilities to use system but to integrate their systems with the national health integrated system.
		MOH	Delete clause 14 (h).	The role of the county governments is implementing policies and standards by the national government.	**Adopted.** To ensure alignment with the delineation of functions between the two levels of government under the Fourth

					Schedule to the Constitution since the national government is responsible for the development of training programs.
		NGEC	Substitute the words "National Social Assistance Authority" with the words "the body responsible for Social assistance" in Clause 14(e) .	The National Social Assistance Authority has never been established because the Social Assistance Act has never been operationalized. The Ministry of Labour had started the process of repealing the said Act and may propose a different institutional framework.	**Not Adopted;** the recognized authority on matters relating to social assistance is the National Social Assistance Authority.
	Clause 16	OAG	Delete the term "community health workers" and substitute therefor the term "community health promoters" in clause 16(2)(b) and 16(2)(f).	The term defined in Clause 2 of the Bill is "community health promoter" in line with the Primary Health Care Act, 2023.	**Adopted.** To ensure alignment with the Primary Health Care Act, 2023.
		MOH	Delete clause 16.	The provisions in clause 16 are undertaken by county governments and therefore cannot be assigned to persons.	**Not Adopted.** The functions are assigned to a particular public officer holder for purposes of accountability.
	Clause 17	MOH	Delete clause 17.	The functions of developing, designing and/or establishing policies and standards are functions under the national government.	**Not Adopted.** The clause is aligned with the Fourth Schedule to the Constitution.

		NGEC	(a) Insert the words "and simple" immediately after the word "clear" in clause 17(3)(b).	The language maybe clear but it also needs to be simple to be understood by the residents to achieve the desired purpose.	**Not Adopted.** Information that is clear also has to be simple so as to be understood by the citizens.
			(b) Delete the phrase "distinguishing between minors from adults; and" and substitute therefor the words "on age, gender, disability status, ethnicity, among others" in clause 17(3)(c).	The proposed bill requires disaggregated data on age only. There is a need to have data on all intersectionality for among other reasons.	**Adopted with amendments.** To provide for other aspects of disaggregation beyond age which will allows for evidence based decision making.
	Clause 18	COG	Amend clause 18 by inserting immediately after the letter "18" and before the word 'Every' the following words: "in addition to additional allocations from the national government's equitable share,"	To ensure that county governments which receive a very small percentage of the revenue raised nationally are supported by national government to invest more money in maternal, newborn and child health services.	**Not Adopted.** The sharing of resources shall be done in accordance with the provisions of the Constitution and the Public Finance Management Act, Cap. 412A.
	PART V	KLRC	Consider expunging Part V.	Monitoring, evaluation and quality assurance are usually provided for in policy documents. These aspects are also well covered in clause 13 and 19 on submission of an annual report to Parliament and county assemblies on	**Not Adopted.** The Part is necessary for purposes of enhancing compliance with

				the status of maternal, newborn and child health services in the country and county respectively.	the provisions of the Bill.
	Clause 20	MOH	Delete the term, "County Executive Committee Member" in clause 20(1) and wherever it appears in the Bill and substitute therefor the term, "County Government".	To ensure that the functions are placed with the right body (the County Government) and not assigned to individuals.	**Not Adopted.** The functions are assigned to a particular public officer holder for purposes of accountability
	Clause 21	NGEC	Amend clause 21(3)(c) by substituting the phrase "distinguish between minors from adults" with "on age, gender, disability status, ethnicity, among others".	For monitoring and evaluation purposes.	**Adopted with amendments.** To provide for other aspects of disaggregation beyond age which will allows for evidence based decision making.
		COG	Amend clause 21(1), (2) and (4) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary".	To ensure that in undertaking annual monitoring and evaluation, undertaking the activities mentioned under clause 22(2) and prescribing procedures and requirements for undertaking the monitoring and evaluation, the Cabinet Secretary cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
	Clause 22	COG	Amend clause 22(2) by inserting the words "'in cooperation, collaboration, and coordination	To ensure that in undertaking the continuous review of standards and guidelines, the Cabinet Secretary,	

			with county governments" immediately after the words "Cabinet Secretary".	cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under Article 189 of the Constitution.	
	Clause 23	OAG	Delete the word "approved" in clause 23(1).	To ensure consistency in the Bill as other clauses use the term "health facility".	**Adopted with Amendments.** To place the obligation on maintenance of information on maternal, newborn and childcare cases on registered health facilities or hospitals.
		COG	Amend clause 23(2) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary".	To ensure that in making the regulations, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
	Clause 25	MOH	Delete clause 25 (2)(b) and substituting therefor the following: "(b)Notification, surveillance, response and reporting of maternal and neonatal deaths".	To align with National Government functions.	**Adopted.** To make provision for surveillance which is crucial in the prevention of maternal and neonatal deaths.

		COG	Amend clause 25(2) by inserting the words "'in cooperation, collaboration, and coordination with county governments" immediately after the words "Cabinet Secretary".	to ensure that in prescribing the minimum standards through regulations, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under Article 189 of the Constitution.	**Noted.** There is no need to restate that Counties are to be consulted in each clause since consultation is sufficiently provided for under the Constitution.
		HENNET	Add the following new clauses in Clause 25 as subclause (4): Recognition of the National Multi-Stakeholder Platform a) The Platform shall be chaired by the Director General of Health and co-chaired by the Chair of County Directors of Health b)Membership of the platform shall include the following: • Ministry of Health • Office of the President • National Treasury and Economic Planning • Council of Governors • County Governments • Ministries: Agriculture, Education, Gender, Culture and Arts • Development partners • Faith-based organizations (2) • Private sector (2) • NGO sector (2) • Professional bodies (2)	To legally anchor the existing Multi-Stakeholder Platform and define its coordination structure. This facilitates inclusive representation, strategic guidance, and improved health outcomes aligned with PHC and UHC goals. The platform will support implementation and enhance accountability for resources and health outcomes for women, children, and adolescents in Kenya.	**Noted.** The Platform is best established administratively as is currently prevailing.

			• Academia (2) Include the following clauses on the functions of: (1) Set strategic directions on MNCH policy, technical, and financial priorities. (2) Provide advisory and oversight support for the implementation of this Act 3) Monitor RMNCAH N progress using data and track investment frameworks. (4) Coordinate evidence based planning and innovative practices. (5) Foster mutual accountability and alignment with national PHC and UHC targets	To enhance implementation efficiency, coordination, and performance monitoring of RMNCAH-N services, fostering accountability across all stakeholders.	
GENERAL COMMENTS ON THE BILL					
		OAG	The Bill does not any constitutional issues however policy on the Bill lies with MOH. The Committee to seek policy guidance from MOH prior to finalization of the Bill.		The Committee noted the general comments on the Bill.
		COG	Appreciates the efforts that have gone into putting together the Bill and the noble objective of seeking to establish a legal framework for the delivery of comprehensive and well-coordinated and structured quality maternal, newborn and child health services in the		

			country, whose strengths lie in the following areas: (a) Comprehensive Coverage: The bill addresses a wide range of maternal, newborn, and child health services, including prenatal, intrapartum, postpartum, and neonatal care, as well as services for women and children with special needs. It emphasizes equitable access, mental health support, and emergency services, which are critical for reducing morbidity and mortality. (b) Focus on Vulnerable Populations: Specific provisions for marginalized communities, adolescents, persons with disabilities, and at-risk individuals ensure inclusivity. (c) Integration of Mental Health: The Bill mandates mental health care for mothers during and after pregnancy, addressing postpartum depression and trauma related to stillbirths or neonatal deaths. (d) Monitoring and Evaluation: Regular data collection, surveillance, and reporting on maternal and child mortality		

			will help identify gaps and measure progress. Quarterly inquiries into deaths and disparities are particularly valuable for evidence-based interventions. (e) Community Engagement: Involvement of community health workers, traditional birth attendants, and public awareness campaigns aligns with best practices for grassroots health delivery. (f) Legal and Ethical Safeguards: Provisions for informed consent, protection against non-consensual treatment, and penalties for violations ensure accountability. The COG therefore fully supports the Bill but proposes some Amendments that seek to improve the Bill, particularly in funding the proposed interventions to avoid creating additional unfunded mandates without providing additional resources to county governments to enable them to implement the Act and undertake the proposed interventions.		
		KLRC	• Noted that the Bill seeks to create a comprehensive, responsive and structured system for delivering quality healthcare services to mothers,		

			newborns and children. It addresses the issues and challenges raised in policies and by the Courts on maternal, newborn and child health services for instance in: (a) clause 18 enjoins county governments to allocate funds for the provision of these services (b) clauses 13(3) and 19(3) acknowledge progressive realization of socio-economic rights and tasks the Cabinet secretary and each CEC Member to report to parliament on the reason for non-implementation and action taken to implement recommendations on legal and administrative measures taken to address specific concerns identified. • Noted that the Bill provides for and prioritizes devolved governance as it recognizes the role of the National Government as the policy holder while the county primarily offers healthcare services. This avoids duplication and functionality		

			overlap and promotes the principles of openness, accountability, prudence and responsibility. • Noted that the Bill establishes accountability mechanisms and clear reporting standards through annual reporting to Parliament and county assemblies on the status of maternal, newborn and child health services. • Highlighted Article 43 of the Constitution which provides for social and economic rights which include the right to the highest attainable standard of health including the right to health care services, including reproductive health care. • Noted that the health function is devolved and the National Government is tasked with formulation of the Health Policy while the County Governments are assigned the role of managing county health facilities and pharmacies, ambulance services and the promotion of primary health care. • Highlighted section 6 of the Health Act, Cap. 241 which provides as follows:		

			"6(1)Every person has a right to reproductive health care which includes— *(a) the right of men and women of reproductive age to be informed about, and to have access to reproductive health services including to safe, effective, affordable and acceptable family planning services;* *(b) the right of access to appropriate health-care services that will enable parents to go safely through pregnancy, childbirth, and the postpartum period, and provide parents with the best chance of having a healthy infant;* *(c) access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened. All such cases shall be regarded as comprising notifiable conditions.*		

			(2)For the purposes of subsection (1)(c), the term "a trained health professional" shall refer to a health professional with formal medical training at the proficiency level of a medical officer, a nurse, midwife, or a clinical officer who has been educated and trained to proficiency in the skills needed to manage pregnancy-related complications in women, and who has a valid license from the recognized regulatory authorities to carry out that procedure. *(3)Any procedure carried out under subsection (1)(a) or (1)(c) shall be performed in a legally recognized health facility with an enabling environment consisting of the minimum human resources, infrastructure, commodities and supplies for the facility as defined in the norms and standards developed under this Act."* • Highlighted the international instruments that Kenya has ratified on the protection of mothers and their children during the prenatal and post-natal period which are: (a) the Convention on the Elimination of all forms of Discrimination (CEDAW), Article 12 states that *"State parties should take all*		

			appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." (b) The International Covenant on Economic, Social and Cultural Rights, Article 10 states that *"special protection should be accorded to mothers during a reasonable period before and after child birth".* • Highlighted the applicable policy framework including: (a) The National Reproductive Health Policy, 2022-2032 that recognizes the significant progress that Kenya has made in improving maternal, newborn and child health based on various indicators. It also notes challenges such as the lack of infrastructure, lack of enough essential maternal and newborn care supplies, lack of skilled personnel and financial constraints leading to delays in reaching and receiving		

			care and weak newborn care interventions. It further observes that marginalized groups face greater reproductive health challenges. (b) The Newborn and Child Health Strategic Plan (2022-2026) which provides a comprehensive framework for the improvement of maternal and child health The Plan notes the prevailing barriers limited healthcare access, workforce shortages and malnutrition. It then prioritizes quality healthcare, workforce training, disease prevention and financial accessibility to achieve the SDGs in the health sector thereby reducing child mortality. • Highlighted the case of **JOO(also known as JM) v Attorney General and 6 others [2018]KEHC 7540(KLR)** which related to issues of resources for the provision for staffing, equipment and basic maternal care by Bungoma County Referral Hospital. The Court		

			held that the National Government and Bungoma County Governments had failed to prioritize maternal health care services by giving dismal percentage of the budget to maternal healthcare, and had not put in place effective measures to implement, monitor and provide minimum acceptable standards of healthcare thus violating the Constitution and International instruments ratified by Kenya. There is need for the two levels of Government to fund and expand health facilities. • In relation to the progressive realization of socio-economic rights and especially on the right to housing and health, highlighted the finding of the Constitutional Court of South Africa, in **Government of the Republic of South Africa v Grootboom & Others (2000) 1 SA 466** and **Minister of Health & Others v Treatment Action Campaign (TAC) & Others (2002) (5) SA 721**. The Court gave direction that the government has an ongoing duty to take reasonable measures, within available resources, to continuously		

			improve access to socioeconomic rights. They also noted that where resources allow, the government must act immediately to provide access to life-saving interventions and must remove unnecessary barriers that prevent people from accessing their constitutional rights. • Noted that the need for statutory harmony especially among health related laws. • Proposed that the Bill be aligned with the ongoing reforms in the health sector, in particular the Digital Health Agency's introduction of e-health platforms at the county government level.		

ANNEXURE 4:COPY OF THE NEWSPAPER ADVERTISEMENT ON PUBLIC PARTICIPATION ON THE BILL

casualties as IEBC cannot carry out continuous voter registration

polls agency is a ticking time bomb

From left: British Deputy High Commissioner to Kenya Dr Ed Barnett, IEBC Chief Executive Officer Marjan Hussein, Wiper leader Kalonzo Musyoka, Deputy Chief of Staff for Performance and Delivery Management Eliud Owalo and David Gosney, Mission Director, Usaid Kenya Mission, during the regional conference on the use of Artificial Intelligence(AI), Digital and Social Media in Elections in Kenya at Villa Rosa Kempinski in Nairobi yesterday. PHOTOS | WILFRED NYANGARESI | NATION

n these continuous processes and reparations. Without the commissioners, we are sitting on a time bomb.

It is reckless of the leadership from the presidency to the courts to have the country in this situation. They have to make an urgent decision," said Mr Letangule.

Mr Kalonzo, while speaking during a conference on the use of AI, digital and social media in elections in Nairobi yesterday, raised concerns about the crisis.

"We are holding this very important conference with a malformed IEBC. I urge those who are standing in the way of reconstituting IEBC to see the bigger picture. They should set aside their narrow selfish interests for the greater good of the nation," he said.

He further lamented on the delays by the government to implement the recommendations of the NADCO that listed the reconstitution of the IEBC as one of its key pillars.

"The matters relating to electoral justice have not been implemented, including the evaluation of the 2022 elections. The constitutional and legal reforms to ensure credible elections are still pending," he said.

Mr Kalonzo cited the constitutional timelines for boundary delimitation and the reconstitution of the IEBC. "The regime is already breaching the Constitution by failing to meet constitutional deadlines for boundary delimitation. We are already facing a constitutional crisis," he said.

He went on: "We have a simple question for the Judiciary: Did the Constitution envisage a situation where commissioners of the IEBC are not in office? Did the framers of the Constitution contemplate a situation where the courts can allow for a dysfunctional commission?"

In an advisory to the IEBC on boundary review, the Kenya National Commission on Human Rights said the delay will "inevitably lead to a constitutional crisis".

"KNCHR observes that the timelines given in the Constitution for the review will lapse in March 2024, yet the country does not have a fully constituted IEBC. . . the delay in the appointment of commissioners continues to stall the boundary review and delimitation process and will inevitably lead to a constitutional crisis," part of the advisory said.

Mr David Gosney, the chargé d'affaires at the US Embassy, said there is need for the Kenyan government to win the trust of its people and utilise technology to tackle challenges in the election sector.

British Deputy High Commissioner to Kenya Dr. Ed Barnett addresses participants during the regional conference.

"Another fundamental pillar in the use of technology is the strengthening of institutions. In this case, the IEBC which manages elections. There is a need to bring in the commissioners now because the preparations begin very early," he said.

Deputy Chief of Staff in the Executive Office of the President responsible for Performance and Delivery Management in Government, Mr Eliud Owalo, who delivered the keynote address on behalf of Prime Cabinet Secretary Musalia Muvadadi, steered clear of the topic.

Instead, he spoke about the crucial role of technology in the electoral process. "Increasingly, we find ourselves at the intersection of technology and democracy, particularly in electoral processes globally. AI's involvement in elections has both positive and negative implications. It is important to harness the benefits of AI while mitigating the risks," said Mr Owalo.

ANNEXURE 5: LETTER INVITING STAKEHOLDERS TO SUBMIT VIEWS ON THE BILL

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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When replying, please quote

Ref: NA/DDC/DC-H/2025/08 **11th February, 2025**

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

Ms. Mary Muthoni Muriuki, CBS
Principal Secretary
State Department for Public Health and Professional Standards
Ministry of Health
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Hon. Shadrack J. Mose
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Mr. Joash Dache, MBS
Secretary /Chief Executive Officer
Kenya Law Reform Commission (K.L.R.C)
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Ms. Purity Ngina, PhD, MBS
Commission Secretary/CEO
The National Gender and Equality Commission (NGEC)
Solution Tech Place, 1st Floor Longonot, Road Upper hill
NAIROBI

Dear

RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON HEALTH ON THE CONSIDERATION OF THE MATERNAL, NEWBORN AND CHILD HEALTH BILL (SENATE BILL NO. 17 OF 2023)

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

Pursuant to the cited mandate, the Committee is in the process of considering the Maternal, Newborn and Child Health Bill (Senate Bill No. 17 of 2023) Sponsored by Sen. Beatrice Ogola, MP (*copy attached*) which seeks to establish a legal framework to enhance the delivery, coordination, accountability, and funding of quality maternal, newborn and child health services while fostering engagements between national and county governments.

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

In this regard, the Committee invites you to a meeting to present your views and comments on the Bill. The meeting will be held on **Tuesday, 25th February, 2025** at **10.00 am**. The venue for the meeting will be communicated in due course.

Kindly provide fifteen (15) copies of your submission and send a soft copy to the Office of the Clerk via email: cna@parliament.go.ke.

Our Liaison Officers on this subject are **Mr. Hassan A. Arale,** who may be contacted on **Tel No. 0721480578** or email: **hassan.arale@parliament.go.ke** , Mr. **Timothy Kimathi, Tel No. 0725650878** or email: **timothy.kimathi@parliament.go.ke** and **Ms. Gladys Kiprotich,** Tel No. 0718721253 or email: **gladys.kiprotich@parliament.go.ke.**

Yours

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

Copy to: **Dr. Deborah Mulongo Barasa**
Cabinet Secretary
Ministry of Health.
Afya House
NAIROBI

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

ANNEXURE 6: LETTER INVITING STAKEHOLDERS FOR A MEETING WITH THE COMMITTEE ON THE BILL

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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

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

When replying, please quote

Ref2.5: NA/DDC/DC-H/2025/30

3rd April 2025

Ms. Mary Muthoni Muriuki, HSC
Principal Secretary
State Department for Public Health and
Professional Standards
Ministry 0f Health
Afya House
NAIROBI
ps.publichealth@health.go.ke

Ms. Purity Ngina, PhD, MBS
Commission Secretary/CEO
The National Gender and Equality
Commission (NGEC)
Solution Tech Place, 1st Floor Longonot, Road
Upperhill
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Dr. Supa Tunje
Chairperson
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Dr. Kireki Omanwa
President
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Chief Executive Officer
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Ms. Rosemarie Muganda
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Prof. George Osanjo
Dean
Faculty of Health Sciences
University of Nairobi
P.O Box 19676-00202
Kenyatta National Hospital
NAIROBI

Dear

RE: STAKEHOLDER ENGAGEMENT ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL (SENATE BILL NO.17 OF 2023)

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

Pursuant to the provisions of Standing Order 127(1), the Maternal, Newborn, and Child Health Bill (Senate Bill No. 17 of 2023) was committed to the Committee for consideration. Copies of the Bill are available at the **National Assembly Table Office, Main Parliament Buildings** and on **www.parliament.go.ke/the-national-assembly/house-business/bills**.

In line with the above mandate and in compliance with the provisions of Article 118 (1) (b) of the Constitution, the Committee during its sitting held on **Tuesday 1st April, 2025**, resolved to invite you for deliberations on the Bill. The Meeting is scheduled for **Friday, 11th April 2025, at 9:00** am at **Argyle Grand Hotel, Machakos County.**

Kindly provide fifteen (15) copies of your submission and send a soft copy to the Office of the Clerk via email: cna@parliament.go.ke. In your submission kindly state in respect of each clause, proposed amendment and the justification.

Our Liaison Officers on this subject are **Mr. Hassan A. Arale**, who may be contacted on **Tel No. 0721480578** or email: hassan.arale@parliament.go.ke and Mr. **Timothy Kimathi, Tel No. 0725650878** or email: timothy.kimathi@parliament.go.ke. or **Ms. Gladys Kiprotich, Tel No.** 0718721253 or email: gladys.kiprotich@parliament.go.ke.

Yours

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

Copy to: **Hon. Aden Barre Duale, E.G.H**
Cabinet Secretary
Ministry of Health.
Afya House
NAIROBI

Dr. Simon Kigondu
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ANNEXURE 7:STAKEHOLDER SUBMISSIONS

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

THE MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023

Bill	Proposed amendment	Justification
Clause 5 5. **Right to health services** (1) Every person has the right to the highest attainable standard of maternal, newborn and child health services including the right to — (a) timely and appropriate healthcare; (b) treatment with dignity, respect and privacy; (c) be free from non-consensual medical treatment and experimentation; (d) emergency treatment and essential medicines; and (e) the best attainable state of physical and mental health. (2) The right to health shall include the progressive access to promotive, preventive, rehabilitative and curative care.	Amend Clause 5 by: a) deleting the marginal notes and replacing with the following " Right to maternal, newborn and child health services" b) deleting paragraphs (a),(b), (c), (d) and (e) c) deleting Sub clause (2)	• The bill addresses maternal, newborn and child health services matters and therefore the amendment to the marginal note is to ensure that the provisions are confined to the said matters. • Article 43 (1) (a) accord every person with the right to the highest attainable standard of health which include the right to health care services including reproductive healthcare. The Health Act PART II provides for the rights and duties of every person in regard to health care services. The Act has addressed the right of persons to access health care services. The provisions therefore under the bill duplicates the provisions under the Health Act on the rights of an individual in accessing health care services. Thus the proposal to delete the same.
6. (1) A woman who is not pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy— (a) family planning services;	Amend Clause 6 by deleting	• Article 43 of the Constitution guarantees every person the right to the highest attainable standard of health, including access to healthcare services, which encompasses reproductive healthcare. Additionally, Part II of the Health Act comprehensively

(b) preconception care services as may be prescribed from time to time; (c) appropriate counselling services; Services for a non-pregnant woman. (d) health information and education; (e) referral to adoption services agencies. (2) The Cabinet Secretary may prescribe standards for the effective delivery of services regarding the safe occurrence of future pregnancy.		provides for the rights and duties of individuals in relation to healthcare services. • The provisions under Clause 6 are largely descriptive and may inadvertently create limitations on access to healthcare services for the intended beneficiaries. By prescribing specific services, the clause could be interpreted as restrictive rather than facilitative, potentially excluding other essential healthcare services not explicitly listed. Deleting Clause 6 ensures that access to healthcare remains broad and in line with constitutional and statutory provisions, thereby upholding the fundamental right to health without unnecessary constraints.
Clause 7 **Services for pregnant woman**	Amend clause 7 by: - a)deleting the marginal notes and replacing with the following marginal notes "Health care services during and after pregnancy for both the mother and the child" b)deleting Clause 7 (1) and replacing with the new Clause 7 (1) as follows:- "the Cabinet Secretary shall put in place measures to ensure access to health care services during and after pregnancy for both the mother and the child" c)deleting clause 7 (2) (d)	The amendment replaces the marginal note "Services for pregnant women" with "Health care services during and after pregnancy for both the mother and the child" to ensure a more comprehensive scope of healthcare coverage. This change acknowledges that healthcare needs extend beyond pregnancy to include both maternal and child health after delivery. Additionally, replacing Clause 7(1) with a provision requiring the Cabinet Secretary to put in place measures for access to healthcare services during and after pregnancy ensures a broader and more proactive approach to maternal and child health. The deletion of Clause 7(2)(d) further aligns the provision with this objective.

		These amendments reinforce the commitment to safeguarding maternal and child health by ensuring continued access to necessary healthcare services before, during, and after pregnancy.
Clause 8	Amend by inserting a new paragraph (f) as follows; "health care provider shall also refer the special needs child to refer for specialized care if the facility is not able to offer the services needed" Amend clause 8 by renumbering the paragraphs.	This is to ensure persons with special needs are able to access health care services through referral.
Clause 9 (1) The Cabinet Secretary shall put in place mechanisms to ensure that women, who are pregnant and who have special needs, receive (d) in the case of pregnant adolescents— (i) adolescent friendly health services; and (ii) counselling and anticipatory guidance with referrals and follow-up of the adolescent woman or guardian as may be appropriate;	Amend clause 9 (1) by deleting paragraph (d)	The proposed deletion of paragraph (d) is based on the legal principle that adolescence is a transitional stage from puberty to adulthood, with legal adulthood recognized at 18 years. Given that individuals in this age group lack the legal capacity to consent to matters, including reproductive health, legislating on adolescent pregnancy within this framework is not appropriate. Rather than legislating on adolescent pregnancy, the focus should be on developing comprehensive programs aimed at preventing and addressing adolescent pregnancies. These programs should provide education, support, and interventions that align with the best interests of minors while upholding legal and ethical considerations.
Clause 11. The National Government and county governments shall, in respect of maternal, neonatal and child health care, put in place measures to facilitate the provision of—	Amend clause 11 by deleting.	The proposed deletion of Clause 11 is necessary to align the Bill with the constitutional functions of the national and county governments. Under the devolved system, the national government is responsible for policy formulation and setting standards, while county governments are tasked with

(a)reasonable maternal, neonatal, and child healthcare services; (b)prenatal, intrapartum and postpartum health services; Courteous treatment. Access to health services. (c)emergency or ambulance services; (d)human resource for maternal, newborn, and child health services; (e)essential supplies, commodities and equipment for maternal, newborn, and child health services; (f)facilities that promote the safety of newborn children in health institutions; (g)lifesaving commodities for maternal, neonatal and child health services; and (h)the infrastructure necessary to support the delivery of basic and comprehensive emergency obstetric and neonatal care services.		implementing these policies and delivering healthcare services. The provisions in Clause 11 mix the functions of both levels of government, creating ambiguity and potential conflict in service delivery. Furthermore, the Bill already provides for the distinct roles of the national and county governments, making this clause redundant. Deleting Clause 11 ensures clarity in governance and reinforces the principle of separation of functions as outlined in the Constitution.
Clause 12.	Amend clause 12 by inserting the following new paragraphs ; (n)Formulate programs and strategies aimed at reducing maternal, neonatal and child mortality rates. (p) Develop training packages for Skilled health care providers.	The proposed amendment is to align with the functions of the national government.

	(q) Capacity build and train health care providers on various high impact training programs. (r) Develop and implement training programs for the care of women with special needs for Skilled birth attendants.	
Clause 13. (1) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and submit to the National Assembly and the Senate an annual report on the status of maternal, newborn and child health services in Kenya. (2) A report under subsection (1) shall include— (a) a description of the activities and interventions undertaken by the Ministry in respect of maternal, newborn and child health services; (b) recommendations on legal and administrative measures required to address specific concerns identified by the Ministry; and (c) such other information relating to its functions that the Ministry considers relevant. (3) Where any recommendation contained in any previous report has not been implemented, the	Amend clause 13 by deleting.	Preparation of reports is an administrative action which does not require legislation. Further, the clause is prescriptive, thus may limit the content for reporting to the Parliament.

Cabinet Secretary shall report to Parliament on the reason for non-implementation and action to be taken to implement the recommendation. (4) The Cabinet Secretary shall publish the report in the Gazette and in at least one newspaper with national circulation. (5) The National Assembly or the Senate may at any time require the Cabinet Secretary to submit a report on a maternal, newborn and child health issue.		
Clause 14.	Amend clause 14 by deleting paragraph (h)	The role of the county governments is implementing policies and standards by the national government thus the proposed deletion
Clause 16. (1) The county executive committee member shall promote public awareness and community participation in the formulation and implementation of policies, strategies, plans and community programs on the provision of maternal, newborn and child health services. (2) The county executive committee member shall, for purposes of subsection (1), — (a) develop the human resources in the field of maternal, newborn and child health services through education and training activities;	Amend clause 16 by deleting.	The provisions in clause 16 are undertaken by county governments and therefore cannot be assigned to persons. Thus the proposed deletion.

(b) facilitate the participation of county and community health force in the provision of human resources development activities and improving the capability of the local community health workers in the provision of maternal, newborn and child health care services; (c) stimulate and direct the participation of professional associations and organizations in the field of maternal, newborn and child health care services; (d) promote the cooperation of health workers and community social workers and community health workers in the provision of maternal, newborn and child health care services; (e) monitor and evaluate the implementation and effectiveness of policies, strategies, programs and plans under this Act; and (f) ensure diversification in the conduct of maternal, new born and child health care services Awareness and public participation. sensitization programs to ensure the widest		

reach to women in the whole county. providers, hospitals, public health departments, and medical organizations within the county.		
Clause 17. (1) The county executive committee member shall design civic education programs and, using the most appropriate means, publish information regarding maternal, newborn and child health. (2) The civic education programs and information under subsection (1) shall include — (a) health complications occurring in new-borns and mothers and during pregnancy, labour, childbirth and the postnatal period; (b) causes of maternal, newborn and child morbidity and mortality and the danger signs; (c) emergency preparedness and complication readiness; (d) the unique health issues affecting infants born prematurely; (e) needs and proper care for premature babies including methods, vaccines and other preventative measures for protecting premature new-borns from infectious diseases;	Amend clause 17 by deleting.	The functions of developing, designing and or establishing policies and standards are functions under the national government. Thus the proposed deletion.

(f) information on successful breastfeeding, weaning of infants and nutritional needs of mothers, infants and children; and (g) the management of emotional, financial and other challenges experienced by parents and family members of premature infants and those with palliative care needs and information about community resources available for their support. (3) The information under subsection (1)shall- (a) be easily accessible; (b) written in clear language to educate the public of maternal, newborn and child health issues across all residents of the county regardless of their socio-economic status; (c) contain disaggregated data distinguishing between minors from adults; and Publication of information on maternal, newborn and child health. (d) where necessary, translated to the local language and disseminated in outreach programs that cater to illiterate people within the county. (4) In determining the information that is most beneficial to the public, the county executive		

committee member may consult with maternal, newborn and child health service healthcare providers, community organizations and other relevant experts. (5) The county executive committee member shall ensure that the information is accessible to children's health providers, maternal care		
Clause 20. (1) Each county executive committee member shall identify vulnerable and marginalized communities in the respective county to — (a) identify the unique needs of the identified persons; (b) determine the gaps that exist in the provision of health services to the marginalized and vulnerable persons in the county; (c) formulate the most appropriate interventions necessary to address the needs identified under paragraph (a); (d) establish a mechanism to ensure continuous service delivery of maternal, newborn and child health services during a pandemic to the identified persons; and (e) generate the information necessary to develop and strengthen the capacity of health	Amend clause 20 by deleting the term, "County Executive Committee Member" by replacing with the term, "County Government" (b) Amend the bill by deleting the term "County Executive committee member" in the entire bill and replace with County government.	The amendment is to ensure that the functions are placed with the right body (County Government) and not assigned to individuals.

workers in the county to respond and address the health needs of vulnerable and marginalized persons under this Act. (2) In performing the functions under subsection (1), the county executive committee member shall — (a) collaborate with the Cabinet Secretary and the Cabinet Secretary responsible for social development; (b) systematically undertake disaggregated analysis on the existing gaps in the delivery of maternal, newborn and child health services, the levels of need and vulnerability of different groups in the county, with particular attention to assessing any form of discrimination that may manifest itself in lack of access to or marginalization the delivery of health services among specific population groups; identification and interventions for vulnerable groups. (c) develop and identify corrective measures for the purpose of addressing and preventing causes of poor health amongst pregnant women, newborns, lactating		

women and children under this Act; (d) establish systems to ensure the feedback of information in such formats as it may consider appropriate on the delivery of health services under this Act to priority groups at the national, county and community level through the appropriate media; (e) establish risk management and vulnerability mapping systems; (f) establish and coordinate sector specific roles and mandates related to vulnerability and emergency response; and (g) undertake a baseline and impact assessment at all levels of governance to guide vulnerability and emergency response.		
Clause 25 (2) (b) notification response and reporting of maternal deaths;	Amend clause 25 (2) by deleting paragraph (b) and substituting thereof with the following new paragraph (b) "Notification, surveillance, response and reporting of maternal and neonatal deaths"	The amendment to clause 25 is to align with National Government functions

I hereby submit,

Harry Kimtai, CBS
PRINCIPAL SECRETARY

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: **AG/LDD/119/1/107** **24th February, 2025**
Your Ref: **NA/DDC/DC-H/2025/08**

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

RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON HEALTH ON THE CONSIDERATION OF THE MATERNAL, NEWBORN AND CHILD HEALTH BILL (SENATE BILL NO. 17 OF 2023)

Reference is made to your letter dated the 11th February, 2025 under Ref. NA/DDC/DC-H/2025/ (08) requesting this Office to submit comments on the Maternal, Newborn and Child Health Bill (Senate Bill No. 17 of 2023).

The principal object of the Bill is to provide for a coordinated system to facilitate the delivery of quality maternal, newborn and child health services. The Bill seeks to provide a legal framework for the delivery of comprehensive quality health care services to meet the health needs of mothers, newborns and children in order to prevent child morbidity and mortality.

The legislative proposal does not raise any constitutional issues. However, the policy on the matter lies with the Ministry of Health hence there is need to seek policy guidance prior to finalization.

1. Meanwhile, we have scrutinized the Bill and we note the following—

CLAUSE	COMMENT	RECOMMENDATION	JUSTIFICATION
2	Defines the term **"intersex child"** as follows: "intersex child" means a child with a congenital condition in which the biological sex characteristics cannot be exclusively categorised in the common binary of female or male due to inherent and mixed anatomical patterns which could be apparent prior to, at birth or in childhood.	Cross reference with the definition under the Children Act.	The Children Act is the principle Act applicable to children matters.
4	The principles set out under this clause are not clear; for example, the principle under clause 4(i) states: ...(i) ensure that interventions are based on objective information and methods, and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the public management and social audit and that the needs of the population are taken into account.	Redraft to read: ensure that interventions are based on objective information, methods, effective monitoring mechanisms, regular evaluations, transparency and that the needs of the population are taken into account.	To bring out the applicable principles explicitly.
5(2)	Palliative care is missing which is one of the rights to health. The clause states: 5(2) The right to health shall include the progressive access to promotive, preventive, rehabilitative and curative care.	Insert the word "palliative" after the word "rehabilitative".	To take care of incidences where a mother, newborn or child may need palliative care and to align with section 5(1) of the Health Act which provides: 5(1) Every person has the right to the highest attainable standard of health which shall

			include progressive access for provision of promotive, preventive, curative, **palliative** and rehabilitative services.
6	Amend the marginal note which reads: "Services for non-pregnant woman." Amend Clause 6(1) which reads: (1) A woman who is not pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy—...	Amend the marginal note to read: "Preconception services to women." Amend the clause to read: (1) A woman who intends to become pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy—..	The use of the expression non-pregnant woman is connoting non-pregnant women in general. The amendment will provide clarity on the targeted group of women.
7(1)	The Clause provides: (1) The Cabinet Secretary shall put in place measures to ensure access, by every pregnant woman, to health services aimed at ensuring optimal health conditions for the woman and *every foetus* throughout the pregnancy and after the birth of the child. Delete the words *"every foetus"* and substitute therefor the words *"the foetus".*	Amend to read": (1) The Cabinet Secretary shall put in place measures to ensure access, by every pregnant woman, to health services aimed at ensuring optimal health conditions for the woman and *the foetus* throughout the pregnancy and after the birth of the child.	The amendment will bring clarity that the foetus being referred to in the clause is the foetus carried by the pregnant woman and not any other foetus.
7(b)	Clause 7(2)(b) provides health services for pregnant woman to include: ....*(b) free prenatal care as may be prescribed by the Cabinet Secretary.* ....*(f) health care services during the postpartum or postnatal period.*	Amend (f) to read include ....*(f) free health care services during the postpartum or postnatal period.*	To conform with the section 5 (3) of the Health Act which provides: 5(3) The national and county governments shall ensure the provision of *free and compulsory*— (a) vaccination for children under five years of age; and

			(b) maternity care.
8(2)	The clause makes reference to severely malformed children. It provides as follows: (2) Where the child under subsection (1) is **severely malformed** at the time of birth, the health care provider may refer the child to a relevant medical practitioner for comprehensive assessment, diagnosis and treatment.	Amend the section to provide for referrals to specialised doctor for all abnormalities.	The section should cater for all instances where the child is not severely malformed but require specialised attention.
16 (2)(b)	The role of the County Executive Committee Member under clause 16 (2)(b) is to: ..(b)facilitate the participation of county and community health force in the provision of human resources development activities and improving the capability of the local **community health workers** in the provision of maternal, newborn and child health care services.	Delete the term **"community health workers"** and insert **"community health promoters"** to read: ....(b)facilitate the participation of county and community health force in the provision of human resources development activities and improving the capability of the local **community health promoters** in the provision of maternal, newborn and child health care services.	The term defined in clause 2 of the Bill is "Community Health Promoters" in line with the Primary Health Care Act.
16 (2)(f)	The role of the County Executive Committee Member under clause 16 (2)(f) is to: ...(f) promote the cooperation of health workers and community social workers and **community health workers** in the provision of	Delete the term **"community health workers"** and insert **"community health promoters"** to read: ...(f) promote the cooperation of health workers and community social workers and **community health promoters** in the	The term define in clause 2 of the Bill is "Community Health Promoters" in line with the Primary Health Care Act.

	maternal, newborn and child health care services;	provision of maternal, newborn and child health care services;	
24	The term "approved health facility" has been used in clause 24(1) as follows "Every hospital or **approved health facility** shall maintain a register, in a prescribed form, for recording the details of the maternal, newborn and childcare cases reported and dealt with in the hospital or facility."	In other clauses, the term used is "health facility". Delete the word "approved" for consistency in the Bill.	To keep consistency in the Bill.

We trust this is in order.

Hon. Shadrack J. Mose, CBS
SOLICITOR-GENERAL

PRE-PUBLICATION SCRUTINY OF THE PROPOSED MATERNAL, NEWBORN AND CHILD HEALTH BILL (SENATE BILL NO. 17 OF 2023) BY SEN. BEATRICE OGOLA

A. Introduction

The Kenya Law Reform Commission (KLRC) is a body corporate established under the Kenya Law Reform Commission Act, Cap. 3 of the laws of Kenya. KLRC has both a constitutional and statutory mandate under Section 5(6)(b) of the Sixth Schedule to the Constitution, the Kenya Law Reform Commission Act and the County governments Act, respectively.

The core mandate of the KLRC is to review the law and recommend for its reform to ensure that the law conforms to the letter and spirit of the Constitution, taking into account the socio-economic, political and technological developments.

Pursuant to this mandate, the KLRC *vide* a letter dated 11th February, 2025 and referenced as NA/DDC/DC-H/2025/08 received a request from the Clerk of the National Assembly to submit comments on the proposed Bill.

B. Background

Article 43 of the Constitution provides for social and economic rights which include the right to the highest attainable standard of health including the right to health care services, including reproductive health care. The health function is devolved, with functions distributed between the National Government and County Governments in the Fourth Schedule. The National Government is tasked with formulation of the Health Policy while the County Governments are assigned the role of managing county health facilities and pharmacies, ambulance services and the promotion of primary health care.

The Health Act, Cap. 241, which seeks to implement the Constitutional provisions on health matters stipulates further on the right to reproductive health in Section 6, which states;-

"6(1)Every person has a right to reproductive health care which includes—

(a) the right of men and women of reproductive age to be informed about, and to have access to reproductive health services including to safe, effective, affordable and acceptable family planning services;

(b) the right of access to appropriate health-care services that will enable parents to go safely through pregnancy, childbirth, and the postpartum period, and provide parents with the best chance of having a healthy infant;

(c) access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened. All such cases shall be regarded as comprising notifiable conditions.

(2)For the purposes of subsection (1)(c), the term "a trained health professional" shall refer to a health professional with formal medical training at the proficiency level of a medical officer, a nurse, midwife, or a clinical officer who has been educated and trained to proficiency in the skills needed to manage pregnancy-related complications in women, and who has a valid license from the recognized regulatory authorities to carry out that procedure.

(3)Any procedure carried out under subsection (1)(a) or (1)(c) shall be performed in a legally recognized health facility with an enabling environment consisting of the minimum human resources, infrastructure, commodities and supplies for the facility as defined in the norms and standards developed under this Act."

International instruments that Kenya has ratified also speak to the protection of mothers and their children during the prenatal and post natal period. These include-

(a) the Convention on the Elimination of all forms of Discrimination (CEDAW) at Article 12 states that –

"State parties should take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."

(b) Article 10 of the International Covenant on Economic, Social and Cultural Rights states that

"special protection should be accorded to mothers during a reasonable period before and after child birth".

The National Reproductive Health Policy, 2022-2032 recognises the significant progress Kenya has made in improving maternal, newborn and child health. According to the policy, the status of maternal, newborn and child health and the target improvement is as provided below taking into consideration various indicators-

Indicator	Status	Target
Maternal Mortality Rate (MMR)	362 per 100,000 live births	Reduce to <140 per 100,000 by 2030
Neonatal Mortality Rate (NMR)	22 per 1,000 live births	Reduce to <12 per 1,000 by 2030
Under-5 Mortality Rate (U5MR)	52 per 1,000 live births	Reduce to <25 per 1,000 by 2030
Institutional Delivery Rate	61%	Increase to 80%+
Antenatal Care (ANC) Coverage (4+ Visits)	58%	Increase to 90%
Postnatal Care Utilization (within 48hrs of birth)	52%	Increase to 80%
Skilled Birth Attendance	61%	Increase to 90%
Family Planning Contraceptive Prevalence Rate (CPR)	60%	Increase to 75%

The major challenges noted in the policy are lack of infrastructure, skilled personnel and financial constraints leading to delays in reaching and receiving care and weak newborn care interventions. It also observes that marginalized groups face greater reproductive health challenges. As well as the fact that there is limited trained health personnel and lack of enough essential maternal and newborn care supplies.

The Newborn and Child Health Strategic Plan (2022-2026) provides a comprehensive framework to improve maternal and child health in Kenya. While significant progress has been made, barriers such as limited healthcare access, workforce shortages, and malnutrition remain critical challenges. The strategy prioritizes quality healthcare, workforce training, disease prevention, and financial accessibility to achieve Sustainable Development Goals in the health sector thereby reducing child mortality.

The Courts have had occasion to speak to some of these challenges. In JOO(also known as JM) v Attorney General and 6 others [2018]KEHC 7540(KLR) the challenges of resources to provide for staffing, equipment and basic maternal care by Bungoma County Referral Hospital came to the fore. It was contended that the National and Bungoma County Governments had failed to prioritize maternal health care services giving dismal percentage of the budget to maternal healthcare, and that there is need for the two levels of Government to fund and expand the healthcare facilities.

The Court concurred and held-

> "From recent reports on healthcare services in the country, it cannot be gainsaid that the National and County Governments have not devoted adequate resources to healthcare services, have not put in place effective measures to implement, monitor and provide minimum acceptable standards of healthcare, thus violating our own very Constitution and International instrument that we have acceded to as a country.
> Consequently, therefore based on the above I hereby grant the following orders;
> a.....
> b. I declare that the neglect the Petitioner suffered was as a result of the National and County Government's failure to ensure healthcare services are of quality and are available.
> c. I further declare that the National Government & County Government of Bungoma failed to develop and/or implement policy guidelines on healthcare thus denying the petitioner her right to basic healthcare.
> d. I declare that the National Government & the County Government of Bungoma failed to implement and/or monitor the standards of free maternal health care and services thus resulting in the mistreatment of the Petitioner and violation of her right to dignity, and treatment that is devoid of cruelty, inhuman and not degrading."

The Constitutional Court of South Africa, in Government of the Republic of South Africa v Grootboom & Others (2000) 1 SA 466 and Minister of Health & Others v Treatment Action Campaign (TAC) & Others (2002) (5) SA 721, also provided critical guidance on the progressive realization of socio-economic rights and especially on the right to housing and health. The Court gave direction that the government has an ongoing duty to take reasonable measures, within available resources, to continuously improve access to socioeconomic rights. They also noted that where resources allow, the

government must act immediately to provide access to life-saving interventions. It was their submission that progressive realization must be based on evidence and feasibility, not arbitrary limitations. They equally observed that the government must remove unnecessary barriers that prevent people from accessing their constitutional rights.

C. Analysis

The Maternal, Newborn and Child Health Bill (the Bill), seeks to create a comprehensive, responsive and structured system for delivering quality healthcare services to mothers, newborns and children.

The Bill addresses the issues and challenges raised in policies and by the Courts on maternal, newborn and child health services. For example, in clause 18 of the Bill, county governments are enjoined to allocate funds for the provision of these services in the county. Clauses 13(3) and 19(3) of the Bill similarly acknowledge the progressive realisation of socio-economic rights and tasks the Cabinet secretary and each County Executive Committee Member to report to parliament on the reason for non-implementation and action taken to implement recommendations on legal and administrative measures taken to address specific concerns identified in this sector.

The Bill has also provided for and prioritized devolved governance as it recognizes the role of the National Government as the policy holder while the county primarily offers the healthcare services. This avoids duplication and functionality overlap between the national and county governments, it promotes the principles of openness, accountability, prudence and responsibility. The Bill establishes accountability mechanisms and clear reporting standards through annual reporting to Parliament and county assemblies on the status of maternal, newborn and child health services in Kenya.

However, some suggestions on how to improve the Bill include;-

1. There is need to ensure there is statutory harmony especially among health related laws. For example;-
    a. the definition of intersex child should align to the definition in the Children Act, Cap. 141 as the Children Act is the primary law on matters of children;
    b. need to differentiate between healthcare providers and trained health professionals as defined in the Health Act;

c. align the functions proposed for the county executive committee member with those of the community health promoters under the Primary Health Care Act, 2023.
d. align the Bill with the ongoing reforms in the health sector by the Digital Health Agency to introduce e-health platforms at the county government level.

2. Consider expunging Part V of the Bill as monitoring, evaluation and quality assurance as these are usually provided for in policy documents and they are well covered in clause 13 and 19 on submission of an annual report to Parliament and county assemblies on the status of maternal, newborn and child health services in the country and county respectively.

3. Consider combining some objects, functions of Cabinet Secretary and County Executive Committee Member as they are repetitive. For example, clause 3 (d) and (e), clause 14 (b) and (p), clause 14(f) and (g), clause 14 (h),(m),(i) and (s).

4. The use of neonatal and newborn interchangeably in the Bill. There is need to adopt either of the two for consistency.

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NATIONAL GENDER AND EQUALITY COMMISSION

NGEC/CS/NAS/VOL. I (26) **17th February, 2025**

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

cna@parliament.go.ke

Dear Mr. Njoroge,

SUBMISSION OF THE MEMORANDA ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL (SENATE BILL NO. 17 OF 2023

Reference is made to your call for the submission of memoranda on the Maternal, Newborn, and Child Health Bill (Senate Bill No 17 of 2023).

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

Yours

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

MEMORANDA: THE MATERNAL, NEWBORN, AND CHILD HEALTH BILL (SENATE BILL No. 17 OF 2023)

S/No	Clause	Provisions of the clause	Proposed Amendment	Rationale
1.	Interpretations National Social Assistance Authority	"National Social Assistance Authority" means the National Social Assistance Authority established under section 3 of the Social Assistance Act;	Amend by substituting "National Social Assistance Authority" with "the body responsible for Social assistance"	The National Social Assistance Authority has since establishment never been established because the Social Assistance Act has never been operationalized. The Ministry of Labour had started the process of repealing the said Act and may propose a different institutional framework Clause 14(e) - Function of County Governments (e). Liaise with the National Social Assistance Authority established under the Social Assistance Act and such other entities as may be necessary for the identification of, and implementation of maternal, new born and child health

				programs amongst, marginalised and vulnerable groups in the county;
2.	Clause 7 Services for pregnant woman	7. (1) The Cabinet Secretary shall put in place measures to ensure access, by every pregnant woman, to health services aimed at ensuring optimal health conditions for the woman and every foetus throughout the pregnancy and after the birth of the child. (2) The health services under subsection (1) shall include— (a) early detection of pregnancy; (b)free prenatal care; (c) referral to childbirth preparation classes as desired; (d)referral to adoption services at licensed agencies if indicated;	Amend by deleting Clause 7(d) without replacement.	Adoption services do not generally fit under the enumerated health services because they are premised under a different docket with its own regulatory framework. Allowing the same to be classified under health services has the potential of misplacement, possible abuse and /or misuse.
3.	Clause 8(2) Services in the neonatal period and children up to twelve years.	(2) Where the child under subsection (1) is severely malformed at the time of birth, the health care provider may refer the child to a relevant medical practitioner for comprehensive assessment, diagnosis and treatment.	Amend by substituting the phrase "is Severely malformed' at the time of birth with "has a malformation, a disability or congenital condition' and further substitute the word "may" before the word "refer" with "shall" The amended provision to read as follows-; Where the child under subsection (1) **has a malformation, a disability**	The amendments proposed ensure any form of malformation and not only severe ones shall be referred for further intervention. The proposal also introduces children born with disabilities and congenital conditions who need immediate health intervention. Congenital refers to a condition or trait that exists at birth

			or congenital condition' at the time of birth, the health care provider **shall** refer the child to a relevant medical practitioner for comprehensive assessment, diagnosis and treatment. Amend further by inserting a new sub clause as follows-; 8(2)(A). Every child born with a disability shall be registered with the National Council of Persons with Disability	Registration is crucial to enable the child to access the necessary and crucial services offered by the Council and also for purposes of data capture.
	Clause 8 **New Proposal** **Rights of an intersex child** Protection from discrimination and harmful practices	The Bill has not included the rights of intersex children	Amend by inserting an additional sub-clause 3(A) as follows-; (i)An intersex child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services. (ii) A parent, caregiver, guardian or next of kin, shall not conceal the identity and information regarding any intersex child	To protect this category of children from discrimination, abuse and harmful cultural practice from the time of birth and to allow them to make their own decisions on the attainment of majority age.

			(iii) No person shall subject an intersex child to change or removal of an organ or subject them to intrusive and involuntary medical testing, treatments or procedures that may have negative long-term consequences.	
4.	**Clause 14** Functions of the county executive committee member.	(e) liaise with the National Social Assistance Authority established under the Social Assistance Act and such other entities as may be necessary for the identification of, and implementation of maternal, newborn and child health programs amongst, marginalised and vulnerable groups in the county	Amend by substituting the phrase " National Social Assistance Authority established under the Social Assistance Act" with " body responsible for social assistance"	The Social Assistance Act has not been operationalised.
5.	**Clause 17** Publication of information on maternal, newborn and child health.	17(3) The information under subsection (1) shall- (b)written in clear language to educate the public of maternal, newborn and child health issues across all residents of the county regardless of their socio-economic status; (c) contain disaggregated data distinguishing between minors from adults; and	Amend 17(3) (b) by inserting after the word "clear" the following "and simple" Amend 17(3) (c) by substituting the phrase "distinguishing between minors from adults; and" with "on age, gender, disability status, ethnicity, among others"	The language maybe clear but it also needs to be simple to be understood by the residents to achieve the desired purpose. The proposed bill requires disaggregated data on age only. There is a need to have data on all intersectionality for among other reasons

6.	**Clause 21** Monitoring and evaluation.	(3) The Cabinet Secretary shall ensure that the data collected under subsection (2) is disaggregated to clearly distinguish between minors and adults	Amend 21(3) (c) by substituting the phrase "distinguish between minors from adults" with "on age, gender, disability status, ethnicity, among others"	monitoring and evaluation.

Hennet
Health NGOs' Network

HENNET CSO Memoranda 2025
On the Maternal, Newborn and child Health Bill 2023

To,
The Clerk of the National Assembly
P. O. Box 41842-00200 NAIROBI

AMENDMENTS TO THE MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2023

This memo outlines proposed amendments to the Maternal, Newborn, and Child Health Bill, 2023, aimed at enhancing the scope, effectiveness, and inclusivity of the Bill. These amendments are designed to address key gaps and ensure that maternal, neonatal, and child healthcare services are comprehensive, accessible, and sustainable. The proposed changes emphasize the importance of data-driven decision-making, improved healthcare delivery systems, community-based education, and stronger coordination among stakeholders involved in maternal and child health.

By aligning the Bill with global best practices, the proposed amendments aim to reduce maternal and child mortality, improve healthcare outcomes, and ensure that vulnerable populations, including women with special needs, are adequately supported. The revisions also advocate for greater accountability, better funding mechanisms, and the establishment of a multi-stakeholder platform to oversee the effective implementation of the Bill at both national and county levels.

These changes reflect a commitment to advancing maternal and child health in Kenya, ensuring equitable access to essential health services, and promoting a holistic approach to care that prioritizes both the well-being of mothers and their children.

Clause	**Proposed Amendment**	**Rationale/Justification for Amendment**
Clause 6. (1) A woman who is not pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy. (c) appropriate counselling services as may be prescribed by the Cabinet Secretary;	Delete the words "as may be prescribed by the Cabinet Secretary;"	The phrase **"as may be prescribed by the Cabinet Secretary"** means access to counseling is subject to government regulations, potentially limiting the scope, availability, or type of counseling services based on policy decisions rather than individual needs.

Clause 7(2) The health services under subsection (l) shall include (h) training in the feeding and care of infants including breastfeeding support practices;	Replace clause 7 (2) (h) with the below: "sensitization and education on the benefits of breastfeeding children, proper nutrition, vaccination, growth promotion of children and any other child beneficial activities;"	The bill, under Clause 8(b), mandates that healthcare providers deliver health services that promote child survival, growth, and development, including optimal child nutrition, childhood vaccination, growth promotion and monitoring, developmental promotion and monitoring, and child protection services. However, ensuring access to these services does not automatically guarantee their utilization by mothers. Sensitization is crucial to help them understand the benefits and encourage them to seek these essential services for their children.
Clause 9	Add the following as clause 9 (5) For purposes of this Act, women with special needs include— a) women with chronic illnesses; and b) women in marginalized areas.	For clarity and avoidance of misinterpretation, it is necessary to define the term "women with special needs."
Clause 10 A person seeking maternal, newborn, and child health services in any health care facility is entitled to be treated with courtesy and respect irrespective of	Replace clause 10 with the below provision Clause 10 (1) A person seeking maternal, newborn, and child health services is entitled to dignified treatment and respect by employees or persons providing service in a health	To ensure that healthcare providers treat patients with respect and dignity, and that patients also respect healthcare providers, it is important to attach a penalty for violations.

their race, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."	care facility irrespective of their race, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth (2) A person who violates subsection (1) commits an offence and shall be liable, upon conviction, to a term not exceeding three years or a fine not exceeding one million shillings, or to both. (3) Healthcare workers are entitled to considerate and respectful behavior from the patients for whom they care and to be free from harassment, abuse, attack, and verbal and mental abuse. (4) The management of a health facility shall ensure that its employees and persons providing healthcare services under this Act are well facilitated to perform their duties. (5) A health facility that fails to comply with this section	

	commits an offence and shall be liable to deregistration and other fines and penalties as may be assessed by the Court.	
Clause 11	Add the following clause as subclause (l) in clause 11 "standardized system for the collection, storage, and management of data to inform policy decisions, improve service delivery, track progress on health indicators, and guide resource allocation to enhance maternal and child health outcomes."	Data plays a crucial role in healthcare by improving services, guiding decision-making, and enhancing tracking of progress on health indicators.
Clause 25	Add the following new clauses as Clause 25 subclause(4) Recognition of the National Multi-Stakeholder Platform a) The Platform shall be chaired by the Director General of Health and co-chaired by the Chair of County Directors of Health	To legally anchor the existing Multi-Stakeholder Platform and define its coordination structure. This facilitates inclusive representation, strategic guidance, and improved health outcomes aligned with PHC and UHC goals. The platform will support implementation and enhance accountability for resources and health outcomes for women, children, and adolescents in Kenya

	b) Membership of the platform shall include the following Ministry of Health • Office of the President • National Treasury and Economic Planning • Council of Governors • County Governments • Ministries: Agriculture, Education, Gender, Culture and Arts • Development partners • Faith-based organizations (2) • Private sector (2) • NGO sector (2) • Professional bodies (2) • Academia (2)	
	Include the following clauses on the functions of ; a) | (1) Set strategic directions on MNCH policy, technical, and financial priorities. (2) Provide advisory and oversight support for the implementation of this	To enhance implementation efficiency, coordination, and performance monitoring of RMNCAH-N services, fostering accountability across all stakeholders.

	Act. (3) Monitor RMNCAH-N progress using data and track investment frameworks. (4) Coordinate evidence-based planning and innovative practices. (5) Foster mutual accountability and alignment with national PHC and UHC targets	

1. A person seeking maternal, newborn, and child health services is entitled to dignified treatment and respect by healthcare providers, irrespective of race, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language, or birth.
2. A person who violates subsection (1) commits an offense and shall be liable, upon conviction, to a term not exceeding 1 year or a fine not exceeding ksh 500, 000, or both.

4 Conclusion:

In conclusion, the proposed amendments to the **Maternal, Newborn, and Child Health Bill, 2023,** represent a critical step towards strengthening maternal and child healthcare services in Kenya. By addressing gaps in coverage, enhancing the protection and dignity of healthcare recipients and providers, ensuring sustainable funding, and establishing a robust coordination mechanism, these amendments will significantly improve the delivery of essential health services.

The proposed changes aim to reduce maternal and neonatal mortality, promote health equity, and create a more responsive and accountable healthcare system. These amendments align with international best practices and WHO recommendations, providing a framework for improving healthcare outcomes through effective policy, community engagement, and data-driven decision-making.

The successful implementation of these amendments will not only improve health outcomes but also contribute to the broader goal of achieving universal health coverage and ensuring that every mother and child in Kenya has access to the care they deserve.

Yours faithfully,

Dr. Margaret Lubaale
Executive Director, ED
Health NGO's Network (HENNET)
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This memo is submitted on behalf of Registered HENNET Member Organizations

COUNCIL OF GOVERNORS

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CJDDC
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23/4/25

Ref: COG/6/40 Vol. 104(3)

22nd April 2025

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

(2) Hon. Adan Gindicha, HoD
To bring to the attention of the Dept. Comm on Health.
24/04/25

(3) Mr. Hassan Arale
Pls. facilitate Consideration by the Committee.
24/04/25

Dear Mr. Njoroge

SUBMISSIONS ON THE MEMORANDUM ON MATERNAL, NEWBORN AND CHILD HEALTH BILL NO 17 OF 2023

Reference is made to your letter **Ref. NA/DDC/DC-H/2025/33 dated 10th April 2025.**

The Council of Governors appreciates the existing collaboration with the National Assembly through the Standing Committee on Health, which considers all matters relating to medical services, public health, and sanitation. The Council further notes that the Departmental Committees established under National Assembly Standing Order 216(1) including health are mandated pursuant to *Standing Order 216 (4)* to study and review all the legislation referred to it.

In view of the above, the Council has reviewed and prepared submissions on the Maternal newborn and Child Health Bill No 17 of 2023 which seeks to establish a legal framework for the delivery of comprehensive, well-coordinated and structured quality maternal, newborn and child health services in the country.

The purpose of this letter, therefore, is to submit the attached memorandum for your consideration. The Council remains available for further discourse on the subject.

Please be assured of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti, EBS
Chief Executive Officer

COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL NO 17 OF 2023

To: THE SENATE

From: THE COUNCIL OF GOVERNORS
16/04/2023

MEMORANDUM ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL NO 52 OF 2021

The Council of Governors,

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

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

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

The Council hereby notes as follows on the **Maternal, Newborn and child health Bill No 17 of 2023** (the Bill) pending before the National Assembly:

1) The Council of Governors appreciates the efforts that have gone into putting together the Bill and the noble objective of seeking to establish a legal framework for the delivery of comprehensive and well-coordinated and structured quality maternal, newborn and child health services in the country, whose strengthens lie in the following areas:

    a. **Comprehensive Coverage:** The bill addresses a wide range of maternal, newborn, and child health (MNCH) services, including prenatal, intrapartum, postpartum, and neonatal care, as well as services for women and children with special needs. It emphasizes equitable access, mental health support, and emergency services, which are critical for reducing morbidity and mortality.

b. **Focus on Vulnerable Populations:** Specific provisions for marginalized communities, adolescents, persons with disabilities, and at-risk individuals ensure inclusivity. Recognition of cultural sensitivity and tailored interventions (e.g., adolescent-friendly services) is commendable.

c. **Integration of Mental Health:** The bill mandates mental health care for mothers during and after pregnancy, addressing postpartum depression and trauma related to stillbirths or neonatal deaths.

d. **Monitoring and Evaluation:** Regular data collection, surveillance, and reporting on maternal and child mortality will help identify gaps and measure progress. Quarterly inquiries into deaths and disparities are particularly valuable for evidence-based interventions.

e. **Community Engagement:** Involvement of community health workers, traditional birth attendants, and public awareness campaigns aligns with best practices for grassroots health delivery.

f. **Legal and Ethical Safeguards:** Provisions for informed consent, protection against non-consensual treatment, and penalties for violations ensure accountability.

2) The Council of Governors therefore fully supports the Bill but proposes some Amendments that seek to improve the Bill, particularly in funding the proposed interventions to avoid creating additional unfunded mandates without providing additional resources to county governments to enable them to implement the Act and undertake the proposed interventions.

3) The proposals by the Council of Governors are informed by several issues relating to the constitutional assignment of health function to the two levels of government.

   a. First, the greater part of the delivery of health services including maternal, newborn and child health care which are provided in county health facilities as well as promotion of primary health care which includes community health services are assigned to county governments, while national government is assigned national referral health facilities.

   b. Secondly, health policy, legislation and regulation are concurrent functions of the national government and county governments. While the Fourth Schedule assigns to national government, health policy which in terms of the provisions on rule of law by implication includes legislative and regulatory functions since policies must first be reduced into legislation and/or regulations before implementation; Article 185 of the constitution assigns to county governments legislative functions in all the functional areas assigned to county governments under the Fourth Schedule which also by implication include policy and regulatory functions in those functional areas including the health functional area, since legislations and regulations must be preceded by policy.

   c. The obligations of cooperative devolved government imposed on both levels of government under Article 189 of the Constitution require a higher level of involvement of county governments in policy, legislative and regulatory functions that goes beyond mere consultation based on the requirements of

public participation, and require cooperation, collaboration and coordination between the two levels of government.

A. Comments on Specific Provisions:

Section of the Bill	Provision of Section in the Bill	Proposed COG Amendment	Justification
S.5 Right to health services	S.5(3)(h) For the enjoyment of the right to maternal, newborn and child health, the National and County Governments shall— (h) train traditional birth attendants and integrate them in the delivery of prenatal, postpartum and neonatal health care.	The Maternal, Newborn and Child Health Bill, 2023 hereafter referred as 'the Bill' is amended by deleting the entire S.5(3)(h).	The proposed amendments are necessary since the provisions raises the following issues that are not addressed to enable smooth implementation: One, the bill seeks to train traditional birth attendants and integrate them into service delivery. Will this be a new cadre and how will they be remunerated? Two, it is unclear if these attendants will be recognized as a formal part of the healthcare system and the financial implications of their integration. Three, this may create additional unfunded obligations for county governments.
S.6 Services for a non-pregnant woman	S.6(1)(b) A woman who is not pregnant is entitled to the following services that relate to the occurrence and course of future pregnancy— (b) preconception care services, including hormonal profiling and the provision of prenatal vitamins, as may be prescribed from time to time.	The Maternal, Newborn and Child Health Bill, 2023 hereafter referred as 'the Bill' is amended by deleting the following words from S.6(1)(b) **'and the provision of prenatal vitamins"**	The proposed Amendment is necessary since as no country in the world can afford to offer prenatal vitamins at no cost. It is an entitlement that the country, counties, or health facilities cannot afford.

S.6 Services for a non-pregnant woman	S. 6(2) The Cabinet Secretary may prescribe standards for the effective delivery of services regarding the safe occurrence of future pregnancy.	The Bill is amended by inserting immediately after the words 'Cabinet Secretary' and before the word 'may' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed Amendments are necessary since as noted above— first, health policy, legislative and regulatory functions are concurrent functions of both national and county governments. Secondly, the obligations of cooperative devolved government under Article 189 of the Constitution require a higher level of county governments' involvement in the health policy, legislative and regulatory functions and processes that go beyond consultation and require cooperation, collaboration, and coordination between the two levels of government.
S. 7(1) Services for a pregnant woman.	**S. 7.** (1) The Cabinet Secretary shall put in place measures to ensure access, by every pregnant woman, to health services aimed at ensuring optimal health conditions for the woman and every foetus throughout the pregnancy and after the birth of the child.	The Bill is amended in section 7(1) by inserting immediately after the words 'Cabinet secretary' and before the word 'shall' the following words: **'in cooperation, collaboration, and coordination with county governments'** and replacing the word "measures" with the words **"policies and guidelines"**	The proposed amendments are necessary first, to ensure that the policies and guidelines for the activities mentioned in the section are undertaken jointly by the Cabinet Secretary and the county governments in terms of the obligations of cooperative devolved government imposed by article 189 of the Constitution. Secondly, the proposed amendments are necessary because the section asks the cabinet secretary to put measures in place to ensure service delivery, which is the role of the county CECs. The constitution prescribes the role of the national government as making

			policies and monitoring the implementation thereof but not their implementation.
S. 7(3) Services for a pregnant woman.	S. 7(3) The Cabinet Secretary may, for purposes of subsection (1), prescribe standards and guidelines for the provision of maternity healthcare services to pregnant women.	The Bill is amended in section 7(3) by inserting immediately after the words 'Cabinet Secretary' and before the word 'may' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed Amendments are necessary since as noted above— first, health policy, legislative and regulatory functions are concurrent functions of both national and county governments. Secondly, the obligations of cooperative devolved government under Article 189 of the Constitution require a higher level of county governments' involvement in the health policy, legislative and regulatory functions and processes that go beyond consultation and require cooperation, collaboration, and coordination between the two levels of government.
S. 8(1) Services in the neonatal period and children up to twelve years.	Every health care provider shall provide to a child from the time of birth to the age of twelve years—	The Bill is amended in section 8(1) by inserting immediately after the word 'provider" and before the word 'shall' the following words: **"with the requisite training in maternal, newborn and child health services"**	The proposed amendments are necessary since it is not feasible to compel every healthcare provider to offer maternal and child health services. Perhaps only those with the requisite training should be required to do so.
S. 8(6) Services in the neonatal period and children up to twelve years.	S. 8(2). The Cabinet Secretary shall— (a) prescribe standards for the	The Bill is amended in section 8(6) by inserting immediately after	The proposed amendments are necessary to ensure that the county governments are fully and adequately

	delivery of the neonatal and child care services to the various categories of children up to the age of twelve years; and (b) prescribe guidelines and standards for the provision of the highest standards of health services that are responsive to the needs of children with special needs.	the words 'Cabinet Secretary' and before the word 'shall' the following words: **'in cooperation, collaboration, and coordination with county governments'**	involved in the prescribing of standards for the neonatal and child services in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S.9(1) Services for women with special needs.	S. 9(1). The Cabinet Secretary shall put in place mechanisms to ensure that women, who are pregnant and who have special needs, receive—	The Bill is amended in section 9(1) by inserting immediately after the words 'Cabinet secretary' and before the word 'shall' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that the county governments are fully and adequately involved in the putting in place of mechanisms to ensure that women, who are pregnant and who have special needs, receive— in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 9(2) Services for women with special needs.	S. 9(2) The Cabinet Secretary shall for purposes of subsection (1) put in place strategies and plans to—	The Bill is amended in section 9(2) by inserting immediately after the words 'Cabinet secretary' and before the word 'shall' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that the county governments are fully and adequately involved in the putting in place strategies and plans, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

S. 9(3) Services for women with special needs.	S. 9(3) The Cabinet Secretary shall put in place mechanisms to ensure that adolescents undergoing postpartum care receive counselling services to encourage them to maintain and care for their children.	The Bill is amended in section 9(2) by inserting immediately after the words 'Cabinet secretary' and before the word 'shall' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that the county governments are fully and adequately involved in the putting in place strategies and plans, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 9(4) Services for women with special needs.	S. 9(4) The Cabinet Secretary may prescribe guidelines and standards for the provision of the highest available standards of health services that are responsive to the needs of women with special needs.	The Bill is amended in section 9(3) by inserting immediately after the words 'Cabinet Secretary' and before the word 'may' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that the county governments are fully and adequately involved in the prescribing of guidelines and standards, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 12 Role of the Cabinet Secretary	12 The Cabinet Secretary shall, for the effective performance of the functions of the National Government under section 11—	The Bill is amended in section 12 by inserting immediately after the words 'Cabinet secretary' and before the word 'shall' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that in performing these functions the Cabinet Secretary cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

S. 12(j) Role of the Cabinet Secretary	S. 12(j) collaborate with county governments in establishing a database and e-health platform to facilitate the delivery of, and access to, health services by all persons requiring maternal, newborn and child health care services.	The Bill is amended in section 12(j) by inserting immediately after the words 'database' and before the word 'e-health' the following words: **"prescribing standards for"**	The proposed amendments are necessary to ensure that instead of the cabinet secretary prescribing a uniform e-health platform, he should prescribe standards for e-health platforms and ensure all facilities use one that is compatible and interoperable with the national health integrated system.
S. 12(k) Role of the Cabinet Secretary	S. 12(k) mobilize resources for the effective and efficient delivery of maternal, newborn and child health services;	The Bill is amended in section 12(1)(k) by inserting immediately after the words 'health services' the following words: **'by the national government and county governments'**	The proposed amendments are necessary to ensure that resources mobilized by national government including from development partners for delivery of maternal, newborn and child health services are equitably shared between the national government and the county governments.
S. 12(1)(k) Role of the Cabinet Secretary	S. 13(1) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and submit to the National Assembly and the Senate an annual report on the status of maternal, newborn and child health services in Kenya.	The Bill is amended in section 12(1)(k) by introducing a new item number as S. 9(1)(kk) immediately after the end of S.9(1)(k) reading as following: **(kk) ensure annual allocation of additional resources to county governments from the national government equitable share for the delivery of maternal, newborn**	The proposed amendments are necessary to ensure that county governments get adequate resources to invest in maternal, newborn and child health services and to avoid unfunded mandates on their part.

		and child health services either conditionally or unconditionally.	
S. 13(1) Report to Parliament.	S. 13(1) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and submit to the National Assembly and the Senate an annual report on the status of maternal, newborn and child health services in Kenya.	The Bill is amended in section 13(1) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'prepare' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that in preparing the annual report the Cabinet Secretary cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 13(3) Report to Parliament.	S. 13(3) Where any recommendation contained in any previous report has not been implemented, the Cabinet Secretary shall report to Parliament on the reasons for non-implementation and action to be taken to implement the recommendation.	The Bill is amended in section 13(3) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'report' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that in reporting to Parliament the non-implementation of any previous recommendation and the action to be taken to implement it, the Cabinet Secretary cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 14(d) Functions of the Executive Committee Member	S. 14(d) Each Executive Committee members shall— (d) establish, in collaboration with the Cabinet Secretary, an e-	The Bill is amended in section 14(d) by deleting the entire s. 14(d).	The proposed amendments are locking all facilities in the country into a prescribed e-health platform, with the danger of locking out innovation, already developed systems, and competition. It is only

	health platform in the respective county for the effective delivery of maternal, newborn and child health care services in the county.		necessary to ensure that all facilities use an e-health platform that meets the standards set by the national government. This role was delegated to the Digital Health Agency by the Digital Health Act.
S. 18 Financing of maternal, newborn and child health services.	S. 18 Every county government shall, in its annual budget, allocate sufficient funds for the provision of maternal, newborn and child health services in the county.	The Bill is amended in section 18 by inserting immediately after the letter "18" and before the word 'Every' the following words: **'in addition to additional allocations from the national government's equitable share,"**	The proposed amendments are necessary to ensure that county governments which receive a very small percentage of the revenue raised nationally are supported by national government to invest more money in maternal, newborn and child health services.
S. 21(1) Monitoring and evaluation.	S. 21(1) The Cabinet Secretary shall undertake annual monitoring and evaluation—	The Bill is amended in section 21(1) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'undertake' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that in undertaking annual monitoring and evaluation, the Cabinet Secretary cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 21(2) Monitoring and evaluation.	S. 21(2) In addition to the monitoring and evaluation under subsection (1), the Cabinet Secretary shall, in collaboration with the Kenya National	The Bill is amended in section 21(2) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'in' the following words:	The proposed amendments are necessary to ensure that in undertaking the activities mentioned under this section, the Cabinet Secretary, in addition to collaborating with the Kenya National Bureau of

	Bureau of Statistics, undertake—	**'in cooperation, collaboration, and coordination with county governments and'**	Statistics, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 21(4) Monitoring and evaluation.	S. 21(4) The Cabinet Secretary shall prescribe the procedure and requirements for undertaking the monitoring and evaluation.	The Bill is amended in section 21(4) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'prescribe' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that in prescribing the procedures, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 22 Quality Assurance.	S. 22(2) The Cabinet Secretary shall undertake continuous review of the standards and guidelines under subsection (1).	The Bill is amended in section 22(2) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'undertake' the following words: **'in cooperation, collaboration, and coordination with county governments'**	The proposed amendments are necessary to ensure that in undertaking the continuous review of standards and guidelines, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.
S. 23 Maintenance of register.	S. 23(2) The Cabinet Secretary shall make regulations on the form of the register to be kept and maintained under subsection (1).	The Bill is amended in section 23(2) by inserting immediately after the words 'Cabinet secretary shall' and before the word 'make' the following words: **'in cooperation,**	The proposed amendments are necessary to ensure that in making the regulations, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved

		collaboration, and coordination with county governments'	government under article 189 of the Constitution.
S. 25(2) Regulations.	S. 25(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may, by regulations, prescribe minimum standards for—	The Bill is amended in section 25(2) by inserting immediately after the words 'Cabinet secretary may' and before the word 'by' the following words: **'in cooperation, collaboration, and coordination with the Council of Governors, county governments and other stakeholders'**	The proposed amendments are necessary to ensure that in prescribing the minimum standards through regulations, the Cabinet Secretary, cooperates, collaborates, and coordinates with county governments, in terms of the obligations of cooperative devolved government under article 189 of the Constitution.

Recommendation

1. For the National Assembly to incorporate the above proposals into the Bill before passing it.

① DDC 14/04/25

KENYA PAEDIATRIC ASSOCIATION

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DIRECTORATE OF DEPARTMENTAL COMMITTEES RECEIVED 15 APR 2025

REF/KPA/01/15/04/2025

15th April 2025

Clerk of National Assembly,
Parliament Building,
Nairobi.

ATTN: COMMITTEE OF HEALTH

② Adan Gindicha
pls facilitate
16/4/25

RE: Kenya Paediatric Association Memorandum on maternal, newborn and child health Bill 2023

The Kenya Paediatric Association (KPA) is a non-profit, non-partisan body of paediatric practitioners committed to professional excellence and timely, quality service delivery to the children they serve. KPA was established in 1968 with a mission to provide leadership in health and well-being of children through advocacy, research, capacity building and sharing best practice for care, children's rights, policy formulation and implementation. Pursuant to this mission, KPA engages regularly with policy makers at all levels of government to ensure optimal environment for the well being of all children in Kenya.

KPA proposes the following amendments to the Bill. KPA is available to explain when called upon to.

Section	Proposed changes	Rationale
8: services in neonatal period and child up to 12 years	Change from 12 years to 18 years	To align with definition of a child in Children's Act
8 (5)	Add (d) in an emergency situation that is life threatening	To allow HCP provide emergency care service without consent in the case where a parent or guardian is not immediately available
8 (6) (a)	Prescribe standards for the delivery of the neonatal and child health care service of children up to age of **18 years** and,	Child is up to 18 years

Yours Sincerely,

Dr. Supa Tunje
President | Kenya Paediatric Association

NATIONAL ASSEMBLY RECEIVED 15 APR 2025 CLERK'S OFFICE P.O. Box 41842, NAIROBI

③ Mr Arale H.
Please deal
16/4/25