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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON

THE CONSIDERATION OF THE HEALTH BILL, 2015

DIRECTORATE OF COMMITTEE'S SERVICES,  
CLERK'S CHAMBER,  
PARLIAMENT BUILDINGS,  
NAIROBI.

OCTOBER, 2015

*SNA  
27/10/15  
paper laid  
by the vice  
champion  
Hon. Robert  
on Tuesday  
27/10/2015*

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## **ACRONYMS**

AHPCSA – Allied Health Professions Council of South Africa  
CIC –Commission of the Implementation of the Constitution  
CS – Cabinet Secretary  
COFEK – Consumer Federation of Kenya  
COVAC- Coalition of Women Against Violence  
DG – Director General  
HPSA - Health Professions Council of South Africa  
KCPF- Kenya Christian Professional Forum  
KEPSA – Kenya Private Sector Association  
KHPOA – Kenya Health Professions Oversight Authority  
KHF- Kenya Health Federation  
KHPS – Kenya Health Professional Society  
KMA- Kenya Medical Association  
LSK- Law Society of Kenya  
PSK- Pharmaceutical Society of Kenya  
WHO- World Health Organization

## **1.0 PREFACE**

I wish to table the report of the Departmental Committee on Health on its consideration of the Health Bill, 2015 pursuant to Standing Order 127. The Health Bill seeks to establish a unified Health System to coordinate the inter-relationship between the National Government and County Government health systems to provide for regulation of health care services, health care service providers, health products and health technologies.

The specific objects which the Bill seeks to achieve include the following:-

- i) Establishment of National Health System with an aim of progressive realization of the rights to the highest standards of health, which includes the right to health care services, including reproductive health care as enshrined in Article 43(1)(a) of the Constitution.
- ii) To define the functions of national government and devolved functions of the County government.
- iii) To establish the Office of the Director-General of Health as the national technical advisor on all health matters
- iv) Establish a Kenya Health Professions Oversight Authority (KHPOA) to provide regulatory role within the health sector as well as supervise the activities of other specialized health regulatory bodies.
- v) Establish a single regulatory body for regulation of health products and technologies
- vi) Establish National Research for Health Committee as advisory body for research for health and Kenya National Blood Transfusion Services.
- vii) To provide for e-Health and use of technological approaches to advance health objectives.

## **1.1 Committee Mandate**

The Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia;

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

## **1.2 Committee Membership**

The Committee comprises of the following Members:-

1. The Hon. Dr. Rachel Nyamai, M.P. - Chairperson
2. The Hon. Dr. Robert Pukose, MP -Vice Chairperson
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. David Karithi, M.P.
6. The Hon. Dr. Dahir Duale Mohamed, M.P.
7. The Hon. Dr. David Eseli, M.P.
8. The Hon. Dr. Enoch W. Kibunguchy, M.P.
9. The Hon. Dr. James Murgor, M.P.
10. The Hon. Dr. James Nyikal, M.P.
11. The Hon. Dr. James O. Gesami, M.P.
12. The Hon. Dr. Naomi Shaban, M.P.
13. The Hon. Dr. Patrick Musimba, M.P.
14. The Hon. Dr. Stephen Wachira, M.P.
15. The Hon. Dr. Susan Musyoka, M.P.
16. The Hon. Eng. Stephen Mule, M.P.

17. The Hon. Fred Outa, M.P.
18. The Hon. Hassan Aden Osman, M.P.
19. The Hon. James Gakuya, M.P.
20. The Hon. John Nyaga Muchiri, M.P., HSC
21. The Hon. Joseph O. Magwanga, M.P.
22. The Hon. Kamande Mwangi, M.P.
23. The Hon. Leonard Sang, M.P.
24. The Hon. Masoud Mwachima, M.P.
25. The Hon. Michael Onyura, M.P.
26. The Hon. Mwinga Gunga, M.P.
27. The Hon. Paul Koinange, MP
28. The Hon. Raphael Milkau Otaalo, M.P.
29. The Hon. Zipporah Jesang Kering, M.P.

### **1.3 Consideration of the Health Bill, 2015**

On 30<sup>th</sup> April 2015, The Health Bill, 2015 was read a First Time and thereafter committed to the Departmental Committee on Health for consideration, pursuant to Article 118 of the Constitution and Standing Order No. 127.

The Committee held 35 meetings to consider the Bill. The Committee held meetings with the Ministry of Health and the Commission on the Implementation of the Constitution on 7<sup>th</sup> and 9<sup>th</sup> July 2015 respectively. It further held a public hearing session on 15<sup>th</sup> July, 2015 with various stakeholders in the health sector at the Main Chamber, Parliament Buildings. The Committee also held a consultative retreat from 30<sup>th</sup> July to 1<sup>st</sup> August, 2015 with the Senate Standing Committee on Health, the Ministry of Health; the Commission on the Implementation of the Constitution and the Office of the Deputy President (Legislative and Inter-Governmental Liaison Office) on the contentious issues in the Bill.

The Committee further held a follow up consultative retreat with the Council of Governors on 16<sup>th</sup> to 19<sup>th</sup> September, 2015 aimed at building consensus on the provisions of the Bill that were deemed contentious. The recommendations arising from the deliberations are included in the Report.

#### **1.4 Public Memoranda and Views**

On 8<sup>th</sup> May, 2015 and on 9<sup>th</sup> July, 2015, the Committee placed advertisements on the Local Dailies (the Star and the Daily Nation newspapers) calling for views from the general public on the Bill. The Committee received submissions from the following stakeholders;

- a) Pharmaceutical Society of Kenya;
- b) KELIN;
- c) Public Health Society of Kenya;
- d) Kenya National Commission on Human Rights;
- e) Council of Governors;
- f) IPAS Africa Alliance/Coalition on Violence Against Women (COVAW);
- g) Kenya Health Professional Society;
- h) Kenya Health and Palliative Care Association;
- i) Kenya Medical Association;
- j) Kenya National Union of Nurses;
- k) Kenya Dental Association;
- l) Kenya Pharmaceutical Association;
- m) Health System Management Association;
- n) Health Action International;
- o) Kenya Christians Professionals Forum;
- p) National Technical Working Group on Quality Management;
- q) The Health Sector Board for KEPISA; and
- r) Various individual health care workers.

#### **1.5 Committee Observations and Recommendations**

While considering the Bill, the Committee made the following observations that;

- i. The Health Bill, 2015 is timely and if enacted, it would provide the much needed overarching legal framework, guidelines and direction that would help in integrating the National and County health systems given the concurrent nature of health in line with the Constitution.
- ii. The objects of the Bill including the rights provided therein provide for the highest attainable standard of health including progressive access for provision of promotive, preventive, curative and rehabilitative services in line with the provision of Article 43(1) (a) of the Constitution.

- iii. The Bill provides clear provisions for the protection of the rights of the patients, ensuring their well-being in both private and public sectors particularly in relation to emergency health care services in Kenya by providing for the establishment of the Emergency Medical Treatment Fund. However, the Committee felt the need to protect the service providers pending the implementation of the Fund.
- iv. The Bill outlines the respective functions of the National and County Government in line with Schedule Four of the Constitution. However, it was felt that the provisions ought to be harmonized to provide for consultation where applicable, pursuant to Article 6(2) of the Constitution.
- v. Health is one of the core service sectors, with its uniqueness and complexities. As such the Committee acknowledged the provisions in the Bill to strengthen the Office of the Director General (DG). Taking into consideration that the Bill provides that the DG is the technical advisor on all matters relating to health in the sector, it was felt that there is need to ensure that the person holding the office of the DG is competitively selected, vetted and appointed by the different existing institutions. This would guarantee independence and accountability.
- vi. There is an emerging trend in the health sector where majority of the Professional bodies are championing for the establishment of regulatory bodies for each individual profession through legislation, a situation the Committee felt was not standard practice. To this end, the Committee observed the need to strengthen the envisaged Kenya Health Professions Oversight Authority for regulatory purposes among other functions.
- vii. Given the distinctness and the inter-dependence of the two levels of Government and bearing in mind that health is a concurrent function, hence the unique roles assigned to each level of government, the Committee was of the opinion that there is need for an intergovernmental mechanism under the Bill charged with coordinating and harmonizing National and County health

policies, systems, legislations, norms and standards. Further, the Bill ought to provide for a framework for intergovernmental consultation between the technocrats at both levels of government on matters of health.

- viii. There seems to be a lack of clear strategy and approach on how resources meant for health service delivery at County level can be ring-fenced for provision of health services. As such the Committee has proposed amendments to provide for that.
  - a) Majority of the stakeholders presenting submissions highlighted the issues of health workers welfare. The Committee further noted that the Bill does not expressly address the foregoing issue and as such was of the opinion that issues relating to Health workers ought to be addressed as much as possible through the Bill. The Committee therefore has proposed amendments to the Bill to provide for an intergovernmental advisory forum geared towards developing policy and standards for health workers in areas including but not limited to:- (a) postings, transfers, training and scheme of service (b) establishment of welfare mechanisms among others.

The Committee will therefore be proposing various amendments to the Bill during the Committee Stage in the House to address the foregoing observations but not limited to these broad provisions:

- i. The objects of the Act;
- ii. Provisions on emergency treatment;
- iii. Duties of National Government and the duties of the County government;
- iv. The appointment of the Director General of Health;
- v. The composition and functions of the Kenya Health Professional Authority;
- vi. Health financing;
- vii. Establishing Intergovernmental coordinating mechanisms; and
- viii. Providing for intergovernmental mechanisms to address health workers welfare.


## 1.6 Acknowledgement

The Committee extends its gratitude to the Office of the Deputy President (Legislative and Inter-Governmental Liaison Office) and the Ministry of Health who appeared before the Committee on several occasions when called upon to clarify on issues relating to the Bill. The Committee is also grateful to CIC, and all the stakeholders who took time to appear before the Committee and present their written submissions and those who sent their submissions through the Office of the Clerk of the National Assembly. The Committee also appreciates the Senate Standing Committee on Health and the Council of Governors for accepting to work together with the Committee on the Bill.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its numerous sittings. Finally, I wish to express my appreciation to the Honorable Members of the Committee who have continued to sacrifice their time to participate in the activities of the Committee and preparation of this Report.

**Mr. Speaker, Sir,**

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Health, to table this Report in the House on the consideration of the Health Bill, 2015 for consideration pursuant to Standing Order 127

Signed..........Date.....26/10/2015.....

(HON. DR. RACHAEL NYAMAI, MP)

CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON HEALTH

## **2.0 BACKGROUND**

2.1 The journey to develop legal framework to guide the implementation of the health service delivery in the Country following devolution of specific health functions as outlined in the Fourth Schedule began over three years ago. The process has been painstakingly slow and with its fair share of challenges. The Health Bill, 2015 if enacted into law will provide the much needed guidelines and framework for the enactment of other health related laws proposed by both Government and Members of Parliament.

2.2 The Health Bill, 2015 provides a framework for the development and management of an integrated health system, to coordinate the inter-relationship between health systems, to provide for the regulation of health care service and health care service providers, health products and health technologies. According to the Bill, the system among others would regulate health services nationally and at County level and the members of the system include both private and public sectors. The need for an overarching Health Act is informed by the following important reasons:-

- i) First, the enactment of the Constitution in 2010 required that the health care service delivery system in the Country be revised to take into account devolution of health and County health system and more specifically create an integrated health system for the country;
- ii) Secondly, the need to harmonize the formulation, implementation and coordination of national health policy between the two levels of Government;
- iii) The need to restructure and rearrange health institutions to better serve a devolved health system;

2.3 The Constitution, in the Fourth Schedule provides for the functions between the National and County government. Among the key functions of the National Government is the development of the health policy, financing and management of national referral hospitals. The Constitution further bestows upon the County Government to take charge of County health facilities and pharmacies, disease surveillance and response among others.

2.4 To be able to address these, the Bill proposes an integrated National Health system which shall progressively realize the right to the highest attainable standard of Health including the right to reproductive health. The Bill stipulates that the National health system will protect, respect, promote and fulfill the rights of all Kenyans to the highest attainable standards including reproductive health and emergency medical services. This is the first Kenyan law with clear provisions for the protection of the rights of the patients, ensuring their wellbeing in both private and public sectors.

2.5 Even with existing pieces of legislation guiding the public health in the country, The Health Bill 2015 is expected to redefine and bring clarity to the duties and the responsibilities of the National and County Governments. For example, while the National Government through the Ministry of Health is expected to ensure the development and regular updating of a national health policy and development of legal framework, the Bill provides that the County Government will implement the national health policy and standards as laid down by the national Government among other duties.

2.6 To streamline and address the technical challenges in the health sector, the Bill proposes to strengthen the office of the Director General of Health who is the equivalent of the Director of Medical Services (DMS) in the current case. The Director General will be the technical advisor on all the matters relating to health within the sector and will also be expected to advise the two levels of Government on matters of national security on public health.

2.7 The Bill further seeks to clarify and unbundle the functions of the National and County Government as provided for in the Fourth Schedule of the Constitution in so far as health functions are concerned. For purposes of clarity on what is regarded as a national function, the proposed Bill has outlined the functions of the National Government and the duties of the County Executive Department for Health. This is in addition to providing for the office of the County Director of Health under the County Health system. It is therefore expected that the County Director of Health who will be competitively recruited by the County Service Board and answerable to the Governor and County Assembly will ensure that Counties have the capacity to implement the National health policies at County level in addition to being the technical advisor on matters of health to the County Health Executive and the Governor. It is also expected that this would be the link between the County Health system and the National health system. However, the concerns are being raised whether the Bill has exhaustively addressed the foregoing and whether there is need to provide for a platform where national and County technocrats can meet and deliberate on matters of policy.

2.8 The Bill is introducing a paradigm shift to emergency health care services in Kenya. Prior to the introduction of the Bill, individuals seeking emergency treatment at public and private healthcare facilities often had to make payments before healthcare services are provided leading to numerous deaths. The Bill however mandates the healthcare providers and health care establishments not to deny a person emergency treatment for whatever reason. The Bill goes further to provide for reimbursement for the emergency services provided by such institutions through the creation of the Emergency Medical Treatment Fund and penalties for anyone who contravenes this section of the law.

2.9 For the avoidance of any doubt, the Bill provides for the specific functions not explicitly defined in the Constitution as either functions of either government or functions within the concurrent jurisdiction and which in this case are functions or powers of the National Government pursuant to Article 186(3). Among the most notable ones are the health facilities engaged in such specialized health activities as

can only be provided effectively by the National Government such as the spinal injury, any institution or service dependent for its functions on expertise that is a shared resource, regulation of health products and health technologies among other functions.

2.10 Arising out of the complexity of the Health sector where the health sector boasts of over thirty (30) different professions, it is important to note that in the last one year, the following proposed pieces of legislation have been committed to the Committee on Health for consideration. The In Vitro Fertilization Bill, 2014, Traditional Health Practitioners Bill 2014, Physiotherapists Bill 2013, Counselors, Psychologist and Psychotherapists Bill 2013, The Biomedical Engineers Bill 2014, the Health Records and Information Managers Bill 2015. These are among others which have already been enacted like the Kenya Medical Laboratory Technicians and Technologists Act or were not allowed to proceed for publication.

2.11 The trend in the sector is that each and every health profession is proposing to establish a regulatory body without due consideration on their relationship with other regulatory bodies. Professions with almost similar inclinations have been seen to establish separate regulatory bodies. With the foregoing trend, there is need for an overarching body to coordinate the joint activities of the regulatory bodies within the health sector which will ensure that the interest of the consumers and users of health services remain paramount. To this end, the Bill if passed establishes the Kenya Health Professions Oversight Authority. The Authority will promote and regulate inter-professional liaison between statutory regulatory bodies while ensuring the necessary standards for health professional are not compromised by the respective regulatory bodies.

2.12 The Bill further seeks to provide for the establishment of a single regulatory body for health products and technologies through an Act of Parliament. For a long time, regulation of health products and technologies has been done by some key regulatory bodies like Pharmacy and Poisons Board, the Nursing Council of Kenya among other institutions, in terms of pharmaceuticals and non-

pharmaceuticals. However, there exist gaps in relation to other non-pharmaceuticals and health equipment which are currently not regulated. As such, there is need to consolidate these efforts and streamline the regulation of these products and technologies through the establishment of a single regulatory body in a bid to sustain and improve health service delivery.

2.13 Traditional and herbal medicine has been part of Kenyan health system with reports indicating conventional medicine caters for only 30 percent of the population, with the balance being catered for by alternative medicine. This implies that more than two thirds of Kenyans rely on herbal and alternative medicine for their primary health care needs. Given that herbal and alternative medicine continue to flourish unrecognized and unregulated by the Government, concerns on their safety cannot be ignored. The Bill makes a radical shift to accommodate alternative medicine alongside the conventional medicine by compelling the National Government Department of Health to formulate policies to guide the practice of traditional medicine and alternative medicine.

### **3.0 COMPARATIVE ANALYSIS: THE CASE OF SOUTH AFRICA**

3.1 In considering the Bill, the Committee compared legal frameworks from other jurisdictions. The law governing health in South Africa was a key reference. The governance structure of the Republic of South Africa and that of Kenya under the Constitution of Kenya 2010 mirror each other in terms of the devolution of health care functions. In South Africa, health care function is devolved to the Provinces while in Kenya it is a concurrent function. South Africa has the following overarching laws to address the coordination of its national health system including regulation of health care professionals.

3.2 **National Health Act 61 of 2003**:-This law provides a framework for a structured uniform health system within the Republic of South Africa, taking into account the obligations imposed by the Constitution and other laws on the national, provincial and local governments with regard to health services. It also establishes a National Health Council for coordination of national health functions and

national health forum for sharing of information among the national and provincial stakeholders.

**3.3 Health Professions Act 56 of 1974:-** This law establishes the Health Professions Council of South Africa and professional boards; to provide for control over the education, training and registration for and practicing of health professions registered under this Act. Health Professions Council of South Africa as a statutory body mandated to protect the public and guiding the professions in the mainstream health sector, that is, health professions practicing contemporary/modern medicine. The Council guides and regulates the health professions in the country in aspects pertaining to registration, education and training, professional conduct and ethical behavior, ensuring continuing professional development, and fostering compliance with healthcare standards. Within the structure of the Council, there are twelve boards (See annex 1), which represent the specific Health professions regulated by the Council. The Professional Boards act as co-coordinating bodies established for specific professions and deals with any matters relating to that specific profession. The Council, in conjunction with the 12 professional Boards, is mandated to promote the health of the population, determining standards of professional education and training and setting and maintaining excellent standards of ethical and professional practice in the health sector. In order to safeguard the public and indirectly the professions, registration is a prerequisite for practicing any of the health professions which Councils regulate. All individuals who practice any of the health care professions incorporated in the scope of HPCSA and AHPCSA are obligated to register with the respective Councils. Failure to do so constitutes a criminal offence.

**3.4 Allied Health Professions Act, 1982:-** This law establishes the Allied Health Professions Council of South Africa (AHPCSA) which is a statutory health body established to regulate all allied health professions who offer patients complementary and alternative health care. The AHPCSA is mandated in terms of the Act to:-

- i) Promote and protect the health of the public;

- ii) Manage, administer and set policies relating to the professions registered with the AHPCSA;
- iii) Investigate complaints relating to the professional conduct of practitioners, interns and students;
- iv) Administer the registration of health professions governed by the AHPCSA; and
- v) Set standards for the education and training of intending practitioners.

#### 4.0 SUBMISSIONS BEFORE THE COMMITTEE

4.1 While considering the Bill, the Committee held several sittings to consider the Bill so as to be able to articulate the concepts being proposed by the Bill. This was against a background of a myriad of reports by several stakeholders in the sector, the latest one having been published in the Daily Nation of 18<sup>th</sup> June 2015. Prior to the meeting with the various stakeholders, the Committee had considered the Health Bill 2015 alongside the proposed Commission on the Implementation of the Constitution (CIC) version of the health Bill, *dubbed Health Bill 2014*. The Committee noted the following differences in the two Bills;

##### COMPARISON BETWEEN THE MOH BILL WITH THE CIC VERSION

| Health Bill (MOH)                      | Health Bill (CIC)                                       |
|--|---|
| <b>PART 1—PRELIMINARY</b>              | <b>PART 1—PRELIMINARY</b>                               |
| 1—Short title and commencement.        | 1—Short title.  |
| 2—Interpretation.                      | 2—Interpretation.                                       |
| 3—Objects of Act.                      | 3—Objects of Act.                                       |
| 4— Responsibility for health           | 4— Values and principles                                |
| 5—Standard of Health                   | 5—Protection of vulnerable groups in the health sector. |
| <b>PART II-HEALTH RIGHTSAND DUTIES</b> | <b>PART II-HEALTH RIGHTSAND DUTIES.</b>                 |
| 6—Reproductivehealth.                  | 6— Right to Health                                      |
| 7— Emergency treatment.                | 7—Emergencymedicaltreatment.                            |
| 8 – Health information.                | 8 – Reproductivehealth.                                 |

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| 9—Consent  | 9—Pubic health information.                                   |
| 10—Information dissemination   | 10—Information Dissemination                                  |
| 11 – Confidentiality.  | 11 – Provisionof health information to users.                 |
| 12 –Health care providers  | 12 –Informed Consent  |
| 13—duty of users   | 13—Confidentiality.   |
| 14— Complaints.  | 14— Rights and duties of Healthcareproviders.                 |
| 15— Duties ofthe NationalGovernment.   | 15— Duties ofthe Nationalgovernment.                          |
| 16—Officeof theDirector-General.   | 16— Duties ofthe CountyGovernments.                           |
| 17—Functions of theDirector–General  | 17—Intergovernmentalcollaboration for health servicedelivery. |
| 18— Directorates.  | 18— Partnerships with other actors.                           |
| 19—County health system  | <b>PART III-DIRECTOR GENERAL</b>                              |
| 20-Duties of County Executive Department of Health                           | 19—Officeof theDirector-General.                              |
| 21—Coordination  | 20—Functions of theDirector–General                           |
|  | <b>PART IV-KENYA HEALTH PROFESSIONS AUTHORITY</b>             |
| 22— Public health facilities.  | 21— Establishment of the Authority.                           |
| 23— Public private partnerships.   | 22— Composition of theAuthority.                              |
| 24— Devolution.  | 23— Functions of theAuthority.                                |
| 25 – Retention of service provision.   | 24 – Powers ofthe Authority                                   |
| 26— Classification of healthcare delivery                                    | 25— Repeal of certain Acts andregulatorybodies                |
| <b>PART IV- ESTABLISHMENT OF KENYAHEALTH PROFESSIONS OVERSIGHT AUTHORITY</b> | 26—Funds of theAuthority.                                     |
| 27— Establishment of the Authority.  | 27 – Annual Estimates   |
| 28— Composition of theAuthority.   | 28 – Financial Year   |

|   |   |
|---|---|
| 29— Funds of the Authority.   | 29 – Accounts and Audits  |
| 30 – Functions of the Authority   | 30— Complaints.   |
| 31— Relationship with other Authorities                                     | <b>PART V-HEALTH PROFESSIONS TRIBUNAL</b>   |
| <b>PART VI -REGULATION OF HEALTH PRODUCTS AND HEALTH TECHNOLOGIES</b>       | 31— Health tribunal.  |
| 32— Establishment of a single health products and technologies body.        | 32— Jurisdiction of the Tribunal  |
| 33— Functions of the single regulatory body.                                | <b>PART VI -REGULATION OF HEALTH PRODUCTS AND HEALTH TECHNOLOGIES</b>                 |
| 34— Conditions.   |   |
| 35— Licenses.   | 33— Establishment of the Agency.  |
| 36— Standards.  | 34— Functions of the Agency.  |
| 37— Procurement of health products and technologies                         | 35— Licenses.   |
| <b>PART VI-PROMOTION AND ADVANCEMENT OF PUBLIC AND ENVIRONMENTAL HEALTH</b> | 36— Procurement of health products and technologies.                                  |
| 38— Public and environmental health.  | 37— Register of traditional and alternative medicines.                                |
| 39— Policies.   | <b>PART VII -HUMAN ORGANS, HUMAN BLOOD, BLOOD PRODUCTS, OTHER TISSUES AND GAMETES</b> |
| 40— Amendment of Cap.242  | 39— Kenya Blood Service.  |
| <b>PART VII-MENTAL HEALTH</b>   | 40 – Functions of the Service   |
| 41— Mental Health   | 41 – Director   |
| <b>PART VIII-TRADITIONAL AND COMPLEMENTARY MEDICINE</b>                     | 42 – Appointment of Staff   |
| 42 – Promotion of practice.   | 43 – Terms and Conditions of Service  |
| 43— Regulation of practice.   | 44— Removal of tissue, blood, blood products or                                       |

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|   | gametes from living persons.                                   |
| 44— Documentation and mapping.  | 45— Use of tissue, blood, etc. removed from living person.     |
| 45 – Standardization.   | 46 – Offences  |
| 46— Charges.  | 47— Prohibition of reproductive cloning of human beings.       |
| 47— Referral.   | 48— Purposes of donation.                                      |
| <b>PART IX – HUMAN ORGANS, HUMAN BLOOD, BLOOD PRODUCTS, OTHER TISSUES AND GAMETES</b> | 49— Revocation of donation.                                    |
| 48— Human organs transplantation.   | 50— Post mortem examination of bodies.                         |
| 49— Making of wills.  | 51 – Disposal of dead bodies                                   |
| 50 – Donation purposes.   | 52— Health financing.  |
| 51— Revocation of donation by a donor.  | <b>PART IX-HEALTH INFORMATION SYSTEM</b>                       |
| 52— Post-mortem   | 53— Health Information System.                                 |
| 53— Kenya National Blood Transfusion Service  | 54— National and County government Health Information Systems. |
| <b>PART X – HEALTH FINANCING</b>  | 55— E-Health.  |
| 54— Private Health Services.  | <b>PART X -PROMOTION AND CONDUCT OF RESEARCH FOR HEALTH</b>    |
| 55— Bank Account  | 56— State Research for Health Committee.                       |
| <b>PART XI –ROLE OF PRIVATE SECTOR PARTICIPATION</b>                                  | 57— Composition of the Committee.                              |
| 56— Private health services   | 58— Term of office.  |
| 57— licensing of private entities to operate hospitals                                | 59— Functions of the Committee.                                |
| 58— Private health workers  | 60— Consent to research.                                       |
| 59— duty of licensees.  | 61— Research on minors.  |

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| 60— Partnership Agreements.                               | 62— Funding for research.  |
| 61— Contravention of the Part.                            | 63— Contravention of the Part.   |
| <b>PART XI—PROMOTION OF HEALTH RESEARCH</b>               | <b>PART XI—HEALTH PROMOTION AND PREVENTION</b>   |
| 61— National Research for Health Committee.               | 64 – Classification of health establishments   |
| 62 – Membership.  | 65 – Regulations   |
| 63— Term of office.                                       | <b>PART XII: TRANSITIONAL AND</b>  |
| 64— Functions of the Committee.                           | <b>MISCELLANEOUS PROVISIONS</b>  |
| 66— Institute.  | 66— Existing laws.   |
| 67 – Procedure.   | 67 – Transitional Provision  |
| 68 – Minors.  | 68 – Repeal of Laws and Saving Clause  |
| 69— Research budget.                                      | <b>FIRST SCHEDULE—TECHNICAL CLASSIFICATION OF THE LEVELS OF HEALTHCARE DELIVERY</b>            |
| 70— Donor support and collaborative arrangements          | <b>SECOND SCHEDULE – PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY</b> |
| <b>PART XIII: E HEALTH</b>                                |  |
| 71— E-health delivery                                     |  |
| 72— E-legislation   |  |
| 73— Health Information System                             |  |
| <b>PART XIV: INTER DEPARTMENTAL COLLABORATION</b>         |  |
| 74— Collaboration   |  |
| 75— Training  |  |
| 76— Fields of collaboration                               |  |
| <b>PART XV: TRANSITIONAL AND MISCELLANEOUS PROVISIONS</b> |  |

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| 77—Existing laws.  |  |
| 78—Public service.   |  |
| 79—Regulations.  |  |
| <b>FIRST SCHEDULE—TECHNICAL CLASSIFICATION OF THE LEVELS OF HEALTHCARE DELIVERY</b>            |  |
| <b>SECOND SCHEDULE – PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY</b> |  |
| <b>SECOND SCHEDULE – PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY</b> |  |

| <b>BODIES/ADMINISTRATIVE OFFICES CREATED</b>                   |   |  |
|--|---|--|
| <b>Health Bill 2015 ( Published Bill )</b>                     | <b>Health Bill 2014 (CIC)</b>             |  |
| Office of the Director-General.                                | ✓   |  |
| Directorates ( Power to create lies with CS)                   | ✓   |  |
| County Executive Department of Health                          | ✓   |  |
| Kenya Health Professions Oversight Authority                   | Kenya Health Professions Authority        |  |
| X  | Health Professions Tribunal               |  |
| A Single Health Products And Technologies Body (to be created) | A Health Products And Technologies Agency |  |

|  |                                      |  |
|--|--------------------------------------|--|
| Kenya National Blood Transfusion Service | KenyaBlood Service.                  |  |
| National Research for Health Committee.  | State Research for Health Committee. |  |

## 5.0 PUBLIC HEARINGS

### 5.1 COMMITTEE MEETING WITH MINISTRY OF HEALTH AND CIC

5.1.1 On Tuesday, 7<sup>th</sup> July 2015 and Thursday, 9<sup>th</sup> July 2015, the Committee met with The Ministry of Health and the Commission for the Implementation of the Constitution (CIC) respectively. During the meeting with the Ministry of Health it was resolved that additional provisions and further amendments will be required to ensure clarity in the following areas:

- i. Sections relating to the quality of care
- ii. Functions of the Director General following the need to strengthen the powers of the office of the Director General. The Ministry's concerns arose from the experiences arising from cholera outbreak earlier in the year and the need for co-ordination across the Country. Further it was the opinion of the Committee that the Office of the Director General ought to be consulted at all times when decisions on matters of health are made.
- iii. Assigning levels to the health facilities; there was consensus that there is need for a definite criterion and the modalities to assign levels to all health facilities for purposes of maintaining standards.
- iv. Clarification on the alignment of the Health Bill to other health related legislation and as such provide a schedule showing how other pieces of legislation within the sector are likely to be impacted by the passage of the Health Bill 2015.
- v. Compensation mechanism for emergency treatment and the modalities to operationalize the fund as provided in Section 15(w) was discussed at length with the Committee position to have the Bill clearly outline the modalities of compensation to service providers.

- vi. The delinking of the regulation of products and the professions
- vii. Matters relating to the welfare of the health workers and the possibility of providing for a body albeit non-constitutional that will provide the requisite policy and advisory role on matters human resources

5.1.2 Following a similar discussion with the CIC, The Committee was keen to seek the opinion from CIC on the best way to address the challenges facing the health workers through the legal instrument without contradicting the Constitution. The Committee was informed of the existence of the intergovernmental mechanism already provided for under the Intergovernmental Relations Act of 2012. CIC was therefore of the opinion that any institution provided for in the Bill should not usurp the roles of the Public Service Commission and the County Service Boards.

## **5.2 COMMITTEE MEETING WITH VARIOUS HEALTH STAKEHOLDERS**

5.2.1 The Committee organized a public hearing on the Bill on the 15<sup>th</sup> of July 2015 where at least 16 representatives from various organizations were in attendance in addition to others who were present in individual capacities. Among the institutions represented were Pharmaceutical Society of Kenya (PSK), KELIN, Kenya Health Professional Society (KHPS), Kenya Palliative Care Association, Kenya National Union of Nurses, Kenya Medical Association (KAM), Kenya Association on Emergency services, Kenya Private Sector Association (KEPSA), World Bank Consortium, Article 19 – Kenya/ East Africa, COVAC- Kenya/ IPAS Alliance, World Youth Alliance, Kenya Christians Professional Forum (KCPF), Kenya Conference of Catholic Bishops, Union of Kenya Civil Servants, Nursing Council of Kenya, Law Society of Kenya (LSK) and Rafiki ya Mwananchi.

5.2.2 Additionally, the Committee received and deliberated on memoranda received and which formed part of its recommendations. Among the submissions received were from Kenya National Commission on Human Rights, Council of Governors, Kenya Medical Women Association and Kenya Healthcare Federation (KHF).

5.2.3 The following are therefore the key themes arising from the presentations and consequent submissions from the various stakeholder and which were considered by the Committee and form the basis of the amendments:-

- a. **Aligning the Interpretation of the Bill to WHO definitions:** It was the opinion of KELIN, KHF, World Youth Alliance that some of the technical definitions provided for under the interpretation needed to be aligned to the WHO definitions so as to ensure clarity. Among the definitions are; abortion, death, reproductive health, informed consent, therapeutic services. Other phrases that needed to be clarified in the Bill to avoid ambiguity and offer clarity are health care provider, health personnel, medical personnel, health care worker, health care provider, health system.
- b. **Implementation of emergency provisions as provided for in the Bill:** The various stakeholders welcomed the provisions of Section 7 that gives every person a right to emergency treatment and as such imposes penalties to any health care provider or medical institution that fails to provide emergency treatment while having the ability to do so. Further, Section 15 (w) which provides for the functions of the national government bestows upon the national government the responsibility of establishing an emergency medical treatment fund for emergencies.

However, the Kenya Health Care Federation identified a gap that the Bill fails to clearly highlight on how private health service providers who render services in emergency situations shall be reimbursed for expenses incurred. The Committee agreed with this position and further argued that there was lack of a clear mechanism to re-reimburse while penalties have been provided

- c. **The Role of Palliative care in the National Health Care System:** The Kenya Palliative Association in its bid to ensure every Kenyan has a right to palliative care was of the opinion that Section 5(1) should include the

progressive access to provision of 'palliative care' alongside promotive, preventive, curative and rehabilitative services under the standards of health.

- d. **The Qualification of the Director General, the County Director of Health and other officers in Charge under the level Four, level five and level six health facilities:** The Bill in Section 17, 19(4), and the First schedule provide for the qualification for one to be a Director General, County Director of Health and the in-charge of level four, five and six health facilities as one who must possess other qualifications including being a medical practitioner. The KHF, KCPF and the PSK were of the contrary opinion indicating that the provisions were old fashioned and unconstitutional and as such the positions should be open to other professions e.g. pharmacists, dentists with the requisite qualifications since the foregoing amounts to discrimination.

This however was negated by KMA who gave examples of best practices in other jurisdiction, for instance; Surgeon General is the national leading spokesman on matters public health in the Federal Government of the United States and is a Medical practitioners by profession. Additionally, there were proposals to further descriptively provide for the procedure for appointment and terminating the duties of the Director General and County Director of Health including provisions of the Office being an office in the Public service and County Service respectively.

- e. While deliberating on the office of the County Director of Health as provided in Section 19(4) and section 20 on the duties of County executive department of Health, the opinion of CIC was that the National Government does not have the jurisdiction to prescribe how the County government ought to organize its health system. According to CIC the justification for this was that Article 6(2) of the Constitution

which expressly provides that 'the Governments at the national and County levels are distinct and inter-dependent and all conduct their mutual relations on the basis of consultations and cooperation. Basing their argument on the Fourth Schedule of the Constitution on the function of the National Government as health policy and standards and Section 186(4), the Committee however felt otherwise and support the need to provide for the said institutions at County level with an aim to ensure uniformity as relates to service delivery at County level.

- f. **The Creation of a Health Directors Forum.**The proposal to create an inter-governmental collaboration forum for County Health Directors was championed by the Kenya Health Professional Society who felt the need to operationalize a platform that will promote and facilitate interactions, communication and sharing of information on national health issues between representatives of the National and County government and among the County Governments.

The foregoing view was supported by the Committee whose suggestion was to create a Kenya Health Sector Intergovernmental Consultative forum which according to the Committee was to be aligned to the provisions of the Inter-Governmental Relations Act. The foregoing proposals however were opposed by CIC whose opinion was that such inter-governmental frameworks have already been provided for under the inter-governmental Relations Act.

- g. **The Composition of the Kenya Health Professional Oversight Authority:** The Kenya Private Sector Association (KEPSA) noted the need to restrict the membership to 15. The Bill proposes a membership of over 10 given the provisions of section 28(e) which provides for one member nominated by each of the health regulatory bodies established under an Act. KEPSA further urged the need for public representation from organizations like COFEK, representative of trade unions, Faith Based Organization.

It was also proposed that representation should be rotational with the slots provided for the health regulatory bodies to be a representation from the Kenya Health Professional Society (*an umbrella body of the professional bodies*). As to whether the Bill should provide for the already existing regulatory bodies following the establishment of an overarching oversight Authority, stakeholder like the CIC and the 'Rafiki wa Mwananchi' were of the opinion that the Act establishing the regulatory bodies of the various professions should be repealed. The justification for these was that the functions currently undertaken by the professional bodies have been and ought to be taken up by the Authority, including registration and licensing.

- h. The Management of Health Human Resource:** It was noted by a majority of the stakeholders presenting submissions that apart from the rights of healthcare providers set out under section 12 and the formation of the KHPOA in section 27, the Bill does not expressly propose on the welfare of the health providers in terms of education and training and welfare in general. This case was also noted by the Legislative and Inter-governmental Liaison Office. This was supported by the Committee who were of the opinion that the issues by Health workers ought to be addressed as much as possible through the Health Bill.

As such the Committee proposed to introduce a provision to provide for the establishment of a body (*not a constitutional body*) which will be advisory in nature and geared towards developing policy and standards for health workers on areas including but not limited to postings, transfers, training and scheme of service. The body to be referred to as the Kenya Health Advisory Council will be expected to establish norms and standards and review policy for – (a) postings, transfers, training and scheme of service (b) establishment of welfare mechanisms for health professionals appointed under specialized

medical cadre and public office established under the National or County Government.

However, CIC was principally against the proposal indicating that already there is an existing mechanism as provided in the Intergovernmental relations Act. In addition CIC cited the likelihood of possible conflicts of roles between the proposed body, Public Service Commission and the County Service Boards. However the Committee justification was the need to retain health workers both within the different Counties and the Country as a whole through standardization of health workers compensation package while at the same time ensuring health standards are maintained through an institutionalized training mechanism for specialized medical practitioners. The Commission was also careful not to infringe on the roles of both the Public Service Commission and the County Service Boards.

- i. **Other areas that stakeholders proposed to be considered while making recommendations for amendments include:**
  - a. Provisions on mechanism to undertake quality assurance and control.
  - b. The need to include the health profession tribunal in the Bill so as to offer the requisite conflict resolution mechanism among the health professionals and the sector as a whole.
  - c. Guidelines on the regulation of human tissue donor and mortuary services.
  - d. The inclusion of Mental Health provision (Section 41), Reproductive health (Section 6) and Traditional and Alternative Medicine (Part VIII) in the Bill at the expense of other disciplines of medicine as being discriminatory.
  - e. The emphasis on Kenya Medical Supplies Authority ( KEMSA) as the primary provider of health products and technologies in Section 37(1) of the Bill

### **5.3 MEETING WITH THE SENATE COMMITTEE ON HEALTH AND COMMISSION ON THE IMPLEMENTATION OF THE CONSTITUTION.**

5.3.1 While seeking consensus on the Bill, and in recognition that Article 96(1) of the Constitution provides that the Senate serves to protect the interests of the Counties and their Governments, and that any Bill that touches on matters of the County government will be reviewed by the Senate, the Committee organized a two day session with the Senate Committee on Health from 31<sup>st</sup> July to 1<sup>st</sup> August 2015, where attempts to build consensus on certain contentious provisions was paramount.

5.3.2 The Committee also held a brief session with the Legislative and Inter-governmental Liaison Office from the Office of the Deputy President who presented a brief on the legislative impact of the Health Bill. The Concerns of the Office on the Bill relates to the interpretation of what constitutes National Health Referral Facility vis a vis County Health facility. The Office recognized that there exists no legislative framework that classifies level 5 as either National or County health facilities. While the Office noted the positive impact the Health Bill 2015 is likely to have on national security and to the economy, it raised concern about the inability of the Bill to expressively explain how best to address the issues of health human resource challenges.

5.3.3 Following the foregoing discussions between the National Assembly Committee on Health and the standing Committee on Health from the Senate, both Committees were agreeable that the Health Bill 2015 was indeed timely particularly in the context of the devolved health system which requires the much needed guidelines and direction for operation. However, the Committee took note of the reservations by the Senate Committee that form part of the Committee amendments. These include:-

- Section 15 on the duties of the National government that these duties should be in consultation with the County Government;
- Section 19(a) on County Health System, that Consensus should be built on whether the qualifications of County Director of Health require a Master's Degree to allow for equal opportunities;

- Section 24 on devolution of public health facilities to be reviewed considering that Health functions have already been devolved in line with legal notice no. 116 of 2013;
- Section 25(b) on the provisions that refer to the specialized health facilities, the Bill ought to define 'these specialized activities' to avoid ambiguity;
- Section 26 and the first schedule on the technical classification of levels of health;
- Section 28 on the Kenya Health Professions Oversight Authority to consider having representation from County Government;
- Section 61 on the Membership of the National Research for Health Committee to consider representation of the County Government;
- Section 37(1) on procurement of health products and technologies that the provision be reviewed to ensure County governments are not compelled to purchase health products through KEMSA;
- With respect to provisions on emergency care, additional clarification is required to ensure the Constitution is upheld and that the interests of the service providers are guaranteed;
- On issues of health human resource, it was revealed that there exist other inter-governmental mechanisms under the Intergovernmental Relations Act and an already formed forum under the Ministry of Devolution whose mandate among other is to pursue and resolve inter-governmental issues including health human resource. These forums to be considered when considering amendments;
- Section 20 on the duties of the County executive department for health, to be reviewed especially with respect to sub-clause 20(e) (f) (g) (h) (i);
- Part v on regulation of the health products and health technologies to be redrafted for clarity including amending Sub clause 33(f) to read '*...and Biological weapons and harmful products*'.
- Section 75 on training to be reconsidered and redrafted;
- Section 2 and the Bill in general, to be reconsidered including or clarifying the following definitions under interpretation for clarity and

consistency: Health personnel, Health system, Health care provider, health care profession, health care worker, health products and technologies.

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#### 5.4 MEETING WITH THE COUNCIL OF GOVERNORS

5.4.1 The Committee held consultative meetings with the Council of Governors and the Ministry of Health on the 18<sup>th</sup> and 25<sup>th</sup> August 2015 in Parliament to discuss various issues in the Health Bill, 2015 relating to devolution. The meeting resolved that a technical team drawn from the Committee on Health Secretariat, Ministry of Health and the Council of Governors discuss and harmonize the contentious issues as raised by the Council of Governors. A Joint Retreat was held between 16<sup>th</sup> – 19<sup>th</sup> September 2015 at Serena Beach Hotel, Mombasa and was geared towards building consensus on contentious Clauses of the Health Bill 2015, following a consultative meeting between the representatives of Parliament, Council of Governors and the Ministry of Health. Other stakeholders present included; representatives of the Public Service Commission, various County Service Board members and Members of the National Consultative Forum for County Service Boards. The meeting resolved on the following issues that:-

- i. Under Clause 15(2), there is need for the Cabinet Secretary to consult the Council of Governors while making regulations.
- ii. Under Clause 16(2), The Director General for Health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the President.
- iii. Under Clause 20(d) there is need to include gazettelement of providers and health facilities as a function of the County Governments.
- iv. Clause 25 (a) on retention of service provision, a new sub-clause to be inserted to indicate that *'the National Government shall establish, manage and be responsible for the National Referral*

- Hospitals*'. Further in Clause 25(a) to be amended to include a transitional clause that provides for consultation with the County Governments in cases of reversion of level 5 facilities to the National Government.
- v. the phrase '*public health good*' with respect to 25 (f) be defined in Clause 2 of the Bill.
  - vi. Clause 28 – it was agreed that sub-clause 28(h) be deleted and introduce a representative of the County Governments to maintain the number at nine representatives in line with the Report of the Presidential Taskforce on Parastatal Reforms of October 2013 decision on the State Corporation Act.
  - vii. Clause 48 be retained as was the case in the published Bill.
  - viii. Clause 54 be redrafted as follows:– except for sub-clauses (b)(c)(d)and (g), the phrase 'the National Government to provide a framework' be inserted in sub clauses (a)(e) (f) (h)(i)
  - ix. Clause 55 be redrafted as '*That subject to the Constitution and the PFM Act, the National Treasury and the County Treasury shall facilitate the opening and maintenance of bank accounts for purposes of operationalizing disbursements of conditional grants, donations and any other monies designated for health as may be prescribed. (2) Funds identified in sub-section (1) shall not be appropriated for any other purpose.* The clause was further amended to introduce a definition clause '*prescribed*' *means prescribed through regulation*
  - x. Clause 56, be amended by inserting the phrase 'and regulation' after the words development
  - xi. Clause 72 excludes the phrase 'Director – General'
  - xii. Clause 75 (3) provides for the definition of the word Specialist as defined by World Health Organization and that the management of the health specialists be provided as a function of the proposed intergovernmental forum.

- xiii. Clause 79(a) the phrase 'framework for' be inserted at the beginning of the sub-clause.
- xiv. The First Schedule of the Bill on technical classification of levels of healthcare delivery be redrafted upon further consultations and as such Clause 26 was retained as is the case in the published Bill. Further, the phrase 'level 5' be deleted under note 2.

## **6.0 COMMITTEE'S OBSERVATIONS**

6.1 The following are the observations by the Committee:-

- i. The Health Bill, 2015 is timely and if enacted, it will provide the much needed overarching legal framework, guidelines and direction that will help in integrating the national and County health systems given the concurrent nature of health in line with the Constitution.
- ii. The objects of the Bill including the rights therein provide for the highest attainable standard of health including progressive access for provision of promotive, preventive, curative and rehabilitative services is in line with the provision of Article 43(1) (a) of the Constitution.
- iii. The law provides clear provisions for the protection of the rights of the patients, ensuring their wellbeing in both private and public sectors particularly in relation to emergency health care services in Kenya by providing for the establishment of the emergency medical treatment fund. However, the Committee felt the need to protect the service providers pending the implementation of the Fund
- iv. The Bill outlines the respective functions of the National and County Governments in line with Schedule Four of the Constitution. However, it was felt that the provisions ought to be harmonized to provide for consultation where applicable pursuant to Article 6(2) of the Constitution.
- v. Health is one of the core service sectors, with its uniqueness and complexities. As such the Committee acknowledged the provisions in the Bill to strengthen

the office of the Director General. Taking into consideration that the Bill provides that the DG is the technical advisor on all matters relating to health in the sector, it was felt that there is need to ensure the person holding the office of the DG is competitively selected, vetted and appointed by the different existing institutions. This would guarantee independence and accountability.

- vi. There is an emerging trend in the health sector where majority of the Professional bodies are championing for the establishment of regulatory bodies for each individual profession through legislation, a situation the Committee felt was not standard practice. To this end, the Committee observed the need to strengthen the envisaged Kenya Health Professions Oversight Authority for regulatory purposes, among other functions.
- vii. Given the distinctness and the interdependence of the two levels of Government and bearing in mind that health is a concurrent function, hence the unique roles assigned to each level of government, the Committee was of the opinion that there is need for an intergovernmental mechanism under this law charged with coordinating and harmonizing National and County health policies, systems and legislations, norms and standards. Further, that the law ought to provide for a framework for intergovernmental consultation between the technocrats at both levels of government on matters health.
- viii. There seems to be a lack of clear strategy and approach on how resources meant for health service delivery at County level can be ring fenced for provision of health services. As such the Committee recommends for redrafting of the provisions.
- ix. A majority of the stakeholders presenting submissions highlighted the issues of health workers welfare. The Committee further noted that the Bill does not expressly address the foregoing issue and was of the opinion that issues relating to Health workers ought to be addressed as much as possible through the law. The Committee therefore recommends that the Bill should provide for an intergovernmental advisory forum geared towards developing policy and standards for health workers in areas including but not limited to (a) postings,

transfers, training and scheme of service (b) establishment of welfare mechanisms among others.

## **7.0 COMMITTEE'S RECOMMENDATIONS**

7.1 Based on the Committee consideration of the Health Bill, 2015 and the consequent discussions with the relevant stakeholder as highlighted in the previous chapters, the Committee harmonized the amendments which will be tabled during the Committee Stage of the Bill. The following are the broad areas of amendments among others.

- i. The objects of the Act
- ii. Provisions on emergency treatment
- iii. Duties of National Government and the duties of the County government
- iv. The appointment of the Director General
- v. The composition and functions of the Kenya Health Professional Authority
- vi. Health financing
- vii. Establishing Intergovernmental coordinating mechanisms
- viii. Providing for intergovernmental mechanism to address health workers welfare

**ANNEXTURES**

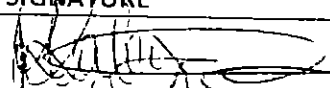
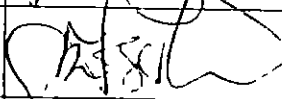
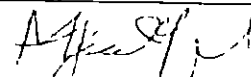

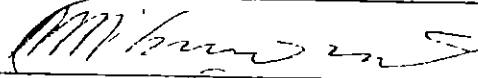

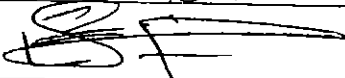
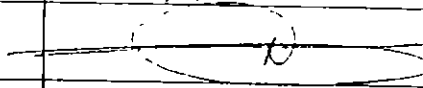
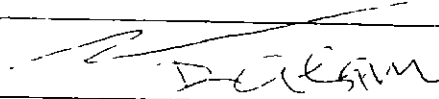
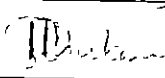

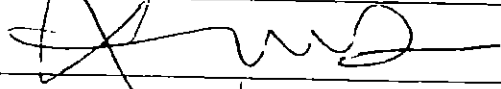
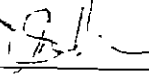
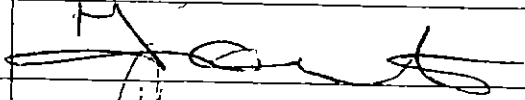
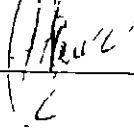
**MINUTES**

# DEPARTMENTAL COMMITTEE ON HEALTH

## ATTENDANCE REGISTER

DATE 15/10/2015

AGENDA Review and Adoption of Health Bill, 2015 Re

|     | NAME  | SIGNATURE  |
|-----|---|--|
| 1.  | Hon. Dr Rachel Nyamai, M.P. - Chairperson       |    |
| 2.  | Hon. Dr. Robert Pukose, M.P. - Vice Chairperson |    |
| 3.  | Hon Alfred Agoi, M.P                            |    |
| 4.  | Hon. Christopher Nakuleu, M P.                  |    |
| 5.  | Hon. David Karithi, M.P.                        |    |
| 6.  | Hon Dr. Dahir Mohamed, M P.                     |  |
| 7.  | Hon. Dr. David Eseli, M.P                       |  |
| 8.  | Hon Dr. Enock Kibunguchy, M P.                  | ABSENT   |
| 9.  | Hon Dr. James Murgor, M P.                      |  |
| 10. | Hon. Dr. James Nyikal, M.P                      | ABSENT   |
| 11. | Hon Dr. James Gesami, M P                       |  |
| 12. | Hon. Dr Naomi Shaban, M.P                       |  |
| 13. | Hon. Dr Patrick Musimba, M.P                    | ABSENT   |
| 14. | Hon. Eng. Stephen Mule, M.P.                    |  |
| 15. | Hon. Dr. Stephen Wachira, M.P.                  |  |
| 16. | Hon. Dr. Susan Musyoka, M P.                    |  |
| 17. | Hon. Fred Outa, M.P.                            |  |
| 18. | Hon. Hassan Aden Osman, M P                     |  |

|     |                                    |                     |
|-----|------------------------------------|---------------------|
| 19. | Hon. James Gakuya, M.P.            | <del>_____</del>    |
| 20. | Hon. John Nyaga Muchiri, M.P., HSC | ABSENT              |
| 21. | Hon. Joseph Magwanga, M.P.         | <del>Magwanga</del> |
| 22. | Hon. Kamande Mwangi, M.P.          | <del>Mwangi</del>   |
| 23. | Hon. Leonard Sang, M.P.            | <del>Sang</del>     |
| 24. | Hon. Michael Onyura, M.P.          | <del>Onyura</del>   |
| 25. | Hon. Mwachima Masoud, M.P.         | ABSENT              |
| 26. | Hon. Mwinga Gunga, M.P.            | <del>Gunga</del>    |
| 27. | Hon. Paul Koinange, M.P.           | <del>Koinange</del> |
| 28. | Hon. Raphael Milkau Otaalo, MP     | <del>Otaalo</del>   |
| 29. | Hon. Zipporah Jesang, MP           | ABSENT              |

**MINUTES OF THE 81<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD AT THE 4TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 15<sup>TH</sup> OCTOBER, 2015, AT 10:00 AM**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)**
3. The Hon. Alfred Agoi, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Dr. James Murgor, M.P.
7. The Hon. Mwinga Gunga, M.P.
8. The Hon. Raphael Milkau Otaalo, M.P.
9. The Hon. Dr. Eseli Simiyu, M.P.
10. The Hon. Michael Onyura, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Kamande Mwangi, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. Dr. Stephen Wachira, M.P.
15. The Hon. Dr. Susan Musyoka, M.P.
16. The Hon. Dr. James O. Gesami, M.P.
17. The Hon. Alfred Outa, M.P.
18. The Hon. Dr. Naomi Shaban, M.P.
19. The Hon. Christopher Nakuleu, M.P.
20. The Hon. Hassan Aden Osman, M.P.
21. The Hon. Paul Koinange, M.P.
22. The Hon. Stephen M. Mule, M.P.
23. The Hon. Leonard Sang, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. John Nyaga Muchiri, M.P.
2. The Hon. Dr. Enoch Kibunguchy, M.P.
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Zipporah Jesang, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Mwahima Masoud, M.P.

**IN ATTENDANCE**

**Individual Petitioner**

Mr. Peter Orowe Nyambok

## **National Assembly Secretariat**

- |                             |   |   |
|-----------------------------|---|---|
| 1. <b>Ms. Esther Nginyo</b> | - | <b>Third Clerk Assistant (Lead Clerk)</b> |
| 2. Mr. Dennis Mogare        | - | Third Clerk Assistant.                    |
| 3. Mr. Hassan Arale         | - | Third Clerk Assistant.                    |
| 4. Ms. Sande Marale         | - | Senior Researcher                         |
| 5. Mr. Sydney Lugaga        | - | Legal Counsel                             |

### **MIN.NO. DCH 347/2015: PRELIMINARIES**

The Chairperson called the meeting to order at 10:26 am and a prayer was said by Hon. Alfred Outa, M.P. Thereafter, all those present made a self-introduction after which the Chairperson informed members that the meeting's agenda was meeting with Mr. Peter Orowe Nyambok Regarding a Petition presented by Hon. Dr. Eseli Simiyu, MP on alleged Mismanagement and Misappropriation of Funds at the Kenya Medical Research Institute (KEMRI). The Chairperson observed that the meeting was initially scheduled for Tuesday 13<sup>th</sup> October, 2015 but has rescheduled. She also stated that the Ministry of Health and KEMRI had been invited to the meeting, however, they had requested for rescheduling of the meeting through a letter before the Committee.

### **MIN.NO. DCH 348/2015: CONFIRMATION OF MINUTES**

Confirmation of the minutes of previous meetings was deferred to the next meeting.

### **MIN.NO. DCH 349/2015: MEETING WITH MR. PETER OROWE NYAMBOK REGARDING A PETITION PRESENTED BY HON. DR. ESELI SIMIYU, MP ON ALLEGED MISMANAGEMENT AND MISAPPROPRIATION OF FUNDS AT THE KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).**

Mr. Peter Orowe Nyambok appeared before the Committee to make his presentation on his Petition regarding the alleged misappropriation and mismanagement of funds at KEMRI. In his presentation, he informed the Committee that:

1. He was an employee of the Kenya Medical Research Institute and was also a chief shop steward at the institution.
2. Apart from being an employee, he was an official of the umbrella union which had recognition agreement and a registered collective bargaining agreement (CBA) gazetted as binding document with KEMRI and which represents the interests of all employees in the Institute.
3. KEMRI is a key state corporation created through an act of parliament with an express mandate to carry out research for health, its core business to achieve its mission and vision is collaborate with both National and International collaborators and other stakeholders.
4. By virtue of his position in the union, he directly gets involved with staff welfare in the Institute, therefore all issues facing staff of the Institute which might arise

as a result of mismanagement and misappropriation of funds come to his attention and hence some form the basis of the petition.

5. He was petitioning the Committee on two major issues directly affecting KEMRI namely mismanagement and misappropriation of funds.
6. In terms of mismanagement, the following were the issues:
  - a) Human Resource Manual - The institute was operating without a Human Resource Manual. This had led to some members of staff gaining access to other collaborators' pay rolls and hence earning two salaries and not paying taxes to the Government. Particularly, this had been experienced with regard to the collaboration with the Centre for Disease Control, CDC.
  - b) Lack of scheme of service for the institute's employees which has led to staff stagnation in terms of career progression resulting into intimidation during staff appraisal and low performance of staff due to low morale/motivation.
  - c) Lack of guidelines in performance contracting
  - d) Lack of transparency in hiring new staff.
  - e) Retiring scientists selectively and defying court orders.
  - f) Allocation of staff houses selectively and renting them in a manner that lacks transparency.
7. In terms of Misappropriation of Funds, the following were the issues:
  - a) Audit reports on the Institute Financial management and operations painted a grim picture of misappropriation of funds a case in point is misappropriation of collaborators' and donor funds which was already in the public domains through the media.
  - b) Procurement of services and goods by the institute is the den of corruption through the corrupt tendering system in the institute e.g. out sourced security services and cleaning services of which the number of personnel in the contract form which was 110 was different from the number of only 60 personnel on the ground.
  - c) Insurance services for staff and institutes properties.
  - d) No status of Inventory of Institute assets and liabilities such as Land, other movable and immovable assets e.g. Title Deeds.
  - e) Out sourcing of legal services at high cost yet the Institute has employed legal officers on its payroll.
  - f) Post graduate program/interns (INTROMID Program) had reported cases of loss of money from the programs.
  - g) Mortgage, the management took some money to local financial institution (Bank) which most staff members would not meet the rules and condition of the bank to get loans.

In support of his petition, the petitioner tabled the following documents:

1. Letters related to alleged loss of funds under the INTROMID Program.
2. Medical Insurance Policy - First Assurance. In which only in patient cover was provided not out patient cover

3. Guard service contract between Kenya Medical Research Institute and Apex Security Services Limited
4. Two Letters on tender for provision of Medical Insurance Cover, Group Personal Accident (GPA), and Workman Injury Benefit Act (WIBA) scheme. The contract was allegedly evaluated and awarded within one day. It was worth Ksh 19, 292, 591.
5. A KEMRI Human Resource Policy and Procedure Manual.
6. A ruling by the Industrial Court of Kenya delivered by Hon. Mr. Justice Isaac E.K. Mukunya.
7. Three documents of the Industrial Court of Kenya
8. Two letters related to a Schemes of Service for KEMRI staff.
9. Collective Bargaining Agreement (CBA) between KEMRI and Union of National Research and Allied Institutes Staff of Kenya (UNRISK).
10. Two letters related to double payment of salaries/allowances through the KEMRI/CDC program.

### **Members' Observations**

Members made the following observations, THAT:

1. Matters regarding pension as raised by the petitioner were in court hence should be withdrawn from being part of the petition.
2. The petitioner needed to give specific details on the allegation misappropriation of funds.
3. The petitioner needs to provide details of attempts to resolve some of the matters in the petition through other channels and progress made, if any.
4. Although the letters provided by the petitioner had some details struck off for confidentiality, the Committee resolved to have them admitted and be used as a basis for conducting investigations into the allegations cited.
5. The KEMRI management should clarify the concept, challenges and the cause of insufficiency in funds under the INTROMID Program.
6. The Committee needed to review the budget on legal fees at KEMRI and the cases handled in the past one year.
7. That the petitioner needed to present additional documents on conditions attached to the mortgage meant for KEMRI staff.
8. The KEMRI management needed to be compelled to present a copy of the special audit report prepared by the office of the Auditor General on KEMRI.

**MIN.NO. DCH 350/2015:                    CONSIDERATION AND ADOPTION OF A REPORT  
ON THE CONSIDERATION OF THE HEALTH BILL,  
2015.**

The Senior Researcher, Ms. Sande Marale, took members through the highlights of the Report. After lengthy deliberations, Members adopted the Report after it was proposed and seconded by Hon. Dr. Susan Musyoka, M.P. and Hon. Paul Koinange, M.P. respectively.

**MIN.NO. DCH 351/2015: ANY OTHER BUSINESS**

1. It was resolved that the meeting with the Cabinet Secretary, Ministry of Health initially scheduled for Thursday 15<sup>th</sup> October, 2015 should be rescheduled to Tuesday, 27<sup>th</sup> October, 2015.
2. The CEO, KEMRI should be invited, at a convenient date to be established by the secretariat, to respond to the petition by Mr. Peter Orowe Nyambok.
3. The Chairperson brought to the attention of Members a communication made by the Speaker with regard to weekly reports on pending business before Committees. The Committees would present the reports in the order in which they appear in the Second Schedule of the Standing Orders.

**MIN.NO. DCH 352/2015: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.18 am.

**SIGNED:** .....

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

**DATE:** .....

**MINUTES OF THE 72<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN SERENA HOTEL MOMBASA, ON FRIDAY 18<sup>TH</sup> SEPTEMBER, 2015 AT 2.30 PM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
3. The Hon. Mwinga Gunga, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Michael Onyura, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. David Karithi, M.P.
8. The Hon. Leonard Sang, M.P.
9. The Hon. Dr. James O. Gesami, M.P.
10. The Hon. Dr. Naomi Shaban, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Raphael Milkau Otaalo, M.P
13. The Hon. Dr. Dahir D. Mohamed, M.P
14. The Hon. Alfred Agoi, M.P
15. The Hon. Christopher Nakuleu, M.P.
16. The Hon. Dr. James Murgor, M.P.
17. The Hon. Dr. Susan Musyoka, M.P.
18. The Hon. John Nyaga Muchiri, M.P.
19. The Hon. Stephen M. Mule, M.P.
20. The Hon. Joseph O. Magwanga, M.P.
21. The Hon. Zipporah Jessing, M.P.
22. The Hon. Hassan Aden Osman, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Patrick Musimba, M.P.
2. The Hon. Mwahima Masoud, M.P.
3. The Hon. Fred Outa, M.P.
4. The Hon. Dr. Eseli Simiyu, M.P.
5. The Hon. Paul Koinange, M.P
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. Stephen Wachira, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

- |                        |   |                        |
|------------------------|---|------------------------|
| 1. Esther Nginyo       | - | Third Clerk Assistant  |
| 2. Hassan A. Arale     | - | Third Clerk Assistant. |
| 3. Dennis Mogare       | - | Third Clerk Assistant. |
| 4. Sidney Lugaga       | - | Legal Counsel.         |
| 5. Sande Marale        | - | Researcher             |
| 6. Rehema Chepkelimo   | - | Audio Recorder.        |
| 7. Faith Makena        | - | Sergeant at Arms.      |
| 8. Ms. Beatrice Akinyi | - | secretary              |
| 9. Steven Omunzi       | - | Support staff          |

#### **MINISTRY OF HEALTH OFFICIALS;**

1. Dr. Pacifica Onyancha
2. Dr. Mary Wangai
3. Saleh A. Bardad
4. Nderitu kinuu
5. Belinda Kamar
6. Dr. Peter kimuu.

#### **GOVERNORS ATTENDING:**

- |                          |   |                       |
|--------------------------|---|-----------------------|
| 1. Jack Raguma           | - | Governor, Kisumu.     |
| 2. Prof. Paul Chepkwony- | - | Governor, Kericho.    |
| 3. Issack Ruto           | - | Governor, Bomet.      |
| 4. Kinuthia Mbugua       | - | Governor Nakuru.      |
| 5. Hussein Dado          | - | Governor, Tana River. |
| 6. Rosemary Nyaramba     | - | COG                   |
| 7. Dr. Korir Mercy       | - | COG                   |
| 8. Rodah Wanjiku         | - | COG                   |
| 9. Jaqueline Mogeni      | - | COG                   |

#### **COUNTY PUBLIC SERVICE BOARD ATTENDING**

- |                      |   |            |
|----------------------|---|------------|
| 1. Salim Nyanje      | - | CPSB Forum |
| 2. Arch Kungu Philip | - | CPSB Forum |
| 3. Harun Yussuf      | - | CPSB Forum |
| 4. Steve Biko Odidi  | - | CPSB Forum |
| 5. John ole Moyaki   | - | CPSB Forum |
| 6. Clare R. Kagwiria | - | CPSB Forum |

#### **PUBLIC SERVICE COMMISSION**

1. Musa Cherongony

**MIN.NO. DCH 305/2015: PRELIMINARIES.**

The Session Chairperson Hon. Dr. Robert Pukose, MP called the meeting to order at 2.45 pm and said a prayer. He then welcomed all present for the session.

**MIN.NO. DCH 306/2015: PRESENTATION OF A PETITION ON THE HEALTH BILL, 2015 BY THE ASSOCIATION OF KENYA HEALTH PROFESSIONALS ASSOCIATION.**

The representatives of the Kenya Health Professionals Association made a presentation on their Petition to the Health Committee on the Health Bill, 2015 with their prayers as follows;

- i. The Bill provides a framework for the management of human resource in health within a devolved health sector on issues such as remuneration, benefits and remittances, career progression, training and continuous professional development, staffing especially the management of inter-county and cross-county transfers, and transfers between the two levels of government.
- ii. On the position of the Director General of Health, the office to be under the national government Ministry responsible for health and that the appointment be made by the Public Service Commission and that the person being appointed by a qualified health professional registered under a statutory regulatory body. Further the Director General should in consultation with the county governments promote public health and the prevention, limitation or suppression infectious, communicable or preventable diseases in Kenya.
- iii. The DG of health in consultation and collaboration with the county governments prepare and publish research and investigations in connection with the prevention or treatment of human diseases.
- iv. On the position of the county director of health be opened up for other health professionals other than medical doctors and should be appointed by the County Public Service Board.
- v. The Kenya Health Professionals Oversight Authority be done away with as it duplicates the duties and responsibilities of the already established statutory regulatory Boards and Councils. However, should it exist, it should not encroach on the authority of the professional bodies powers. Further, the Bill should provide for the funding of the Authority to avoid it interfering with the health professionals in attempt to raise funds.

The Committee while acknowledging the petition indicated that majority of the petitioners' prayers had been addressed during the discussions with the Council of Governors and as a result of the previous submission that the Association had presented during the public hearing. Therefore, the upcoming amendments, more specifically the following: the health workers welfare (including but not limited to trainings, career progression), the position of Director General among others would consider some of their proposals.

**MIN.NO. DCH 307/2015: PRESENTATIONS BY THE COUNTY PUBLIC SERVICE BOARD AND THE PUBLIC SERVICE COMMISSION ON THE ISSUES OF THE WORKERS.**

**1. County Public Services Board**

The County Public Services Board Chairperson, Arch. Philip Kungu made a presentation of issues faced by the health workers and some possible recommendations for solutions as follows;

| S/No | issue   | Recommendations   | Timelines | Actor                                   |
|------|---|---|-----------|---|
| 1.   | <p>Inordinate Delays in payment of salaries</p> <ul style="list-style-type: none"> <li>CGs delay payment of salaries up to 10<sup>th</sup> of the following month</li> <li>Challenges in transiting from one financial year to the other</li> </ul> | <p>1. Both levels of government to develop long term solutions to address the payment of salaries:</p> <ul style="list-style-type: none"> <li>Engaging with Treasury/ Controller of Budget approve the spending from the county revenue account.</li> <li>As a short-term measure, ring fence the funds for staff salaries;</li> <li>Timely release of exchequer</li> <li>Counties to adequately</li> </ul> | Immediate | CoB<br>Treasury<br>County<br>Government |

|    |  |   |             |                        |
|----|--|---|-------------|------------------------|
|    |  | <p>plan and budget for salaries</p> <ul style="list-style-type: none"> <li>Counties to put in place systems to ensure salaries are paid by 25<sup>th</sup> of every month</li> </ul> <p>Formation of Inter county agency to manage HR in line with art,187 of COK</p>                       |             |                        |
| 2. | Non-remittances of statutory deductions  | <ul style="list-style-type: none"> <li>Counties to remit all the un remitted deduction</li> <li>CoB deduct the statutory deductions at source</li> <li>TA to hasten the process of establishing the liabilities</li> <li>Counties to come up with their debt management strategy</li> </ul> | immediately | CoG                    |
| 2. | Discrepancies in salaries and allowances | <ul style="list-style-type: none"> <li>Counties to implement the SRC guidelines on allowances</li> <li>SRC to urgently engage CPSB/CASB have a new CBA in place to solve the disparities in salaries and remunerations between the</li> </ul>   |             | County Governments SRC |

|    |   |  |                              |                   |
|----|---|--|------------------------------|-------------------|
|    |   | Defunct local authorities and other employees  |                              |                   |
| 3. | <b>Absorption of health workers</b> <ul style="list-style-type: none"> <li>• different job groups or wrong entry points e.g Medical officers</li> <li>• Use of different staffing norms and standards</li> <li>• Recruitment of unqualified health workers</li> </ul> | <ul style="list-style-type: none"> <li>• PSC to fast-track enactment of norms and standard as per Article 235</li> <li>• Compliance with TA guidelines and Schemes of service</li> <li>• Immediate appointment of medical officers at Job group 'M'</li> </ul>                     | Immediate                    | PSC<br>DPSM<br>TA |
| 4. | <b>Promotions</b> <ul style="list-style-type: none"> <li>• Delayed promotions</li> <li>• Payment of promotion arrears prior to transfer of payroll</li> <li>• Lack of proper forecasting/budgeting on HR matters</li> </ul>   | <ul style="list-style-type: none"> <li>• CPSBs to fast-track the process of promotion common cadre employee.</li> <li>• CPSB and CASB to use respective schemes of service</li> <li>• Need for prior planning and budgeting by the county governments through HR Depts.</li> </ul> | 31 <sup>st</sup> Dec 2015    | CGs               |
| 5. | <b>Salary Arrears:</b> <ul style="list-style-type: none"> <li>• Implementation of</li> </ul>  | <ul style="list-style-type: none"> <li>• National Government to cater for</li> </ul>   | By 31 <sup>st</sup> Dec 2015 | CPSBs<br>MoH      |

|    |   |   |           |                                |
|----|---|---|-----------|--------------------------------|
|    | <p>promotion letters from Ministries</p> <ul style="list-style-type: none"> <li>• payment of Salary Arrears</li> <li>• Capacity of the counties to process the backlog on promotions</li> </ul>   | <p>arrears incurred before February 2014. The CPSBs to compile the arrears due to their staff and submit to the Ministry for implementation.</p> <ul style="list-style-type: none"> <li>• Counties to budget for and cater for arrears incurred after February 2014.</li> <li>• IBEC to authorize National Treasury to provide funds for payments of arrears</li> <li>• TA and DPSM to provide technical support for HRM officer in the counties</li> </ul> |           |                                |
| 6. | <p>Rejections of medical Officers</p> <ul style="list-style-type: none"> <li>• Advertisement of posts of medical officer</li> <li>• Wrong entry points</li> <li>• Non-payment of salaries</li> <li>• Tribalism and discrimination of staff</li> </ul> | <ul style="list-style-type: none"> <li>• Counties to identify staffing needs and request for medical doctors</li> <li>• The Unions to provide a list of rejected medical personnel to CPSB Forum for further engagement with relevant</li> </ul>  | Immediate | CG/CEC for Health CPSBs Unions |

|     |   |   |             |                        |
|-----|---|---|-------------|------------------------|
|     |   | stakeholders including MoH and the CoG  |             |                        |
| 7.  | Unbundling of referral health facilities      | Establishment of body of professionals (Taskforce) to examine modalities of strengthening health referral systems/Facilities  |             | immediately            |
| 8.  | Mortgages and car allowance                   | <ul style="list-style-type: none"> <li>• Both level of government to Comply with SRC guidelines</li> <li>• National Treasury and respective Counties Treasuries to issue implementation guidelines</li> </ul> |             | SRC County Governments |
| 9.  | Suspension of CBA agreement with the treasury | <ul style="list-style-type: none"> <li>• To wait for the outcome of job evaluation by SRC</li> <li>• Seek clarification from the National Treasury</li> </ul>   |             | National Treasury      |
| 10. | Recognition of the workers Unions             | County Governments to comply with Sec 54 of Industrial Relations Act and to engage Unions effectively   | immediately | County Governments     |
| 11. | Training                                      | <ul style="list-style-type: none"> <li>• Training is a concurrent function so although is a National government function, Counties may</li> </ul>   | Continuous  | MoH CoG                |

|     |   |  |             |       |
|-----|---|--|-------------|-------|
|     |   | <p>need to augment that through training of additional staff</p> <ul style="list-style-type: none"> <li>• Need for intergovernmental mechanism to manage training</li> </ul>   |             |       |
| 12. | <p>Absorption of ESP staff/Contract health workers<br/>A few counties have not absorbed ESP<br/>Engagement on contracts</p> | <ul style="list-style-type: none"> <li>• The counties that have not absorbed the ESP staff to be advised to do so after a thorough vetting</li> <li>• CPSBs Forum to write to the two counties</li> </ul>  | immediate   | CPSBs |
| 13. | <p>Re-designation of health workers- Health workers have stagnated in one grade despite acquiring the necessary skills</p>  | <ul style="list-style-type: none"> <li>• Upgrading of staff on common cadre in service</li> <li>• Follow the guidance of the scheme of service</li> <li>• MOH to provide the necessary norms and standards and provide them to the counties</li> </ul> |             | MoH   |
| 14. | <p>Non-remittances of statutory deductions</p>  | <p>1.Counties observe the law obligation to remit deductions on time<br/>2.Remind the counties of their</p>  | immediately | CoG   |

|  |  |   |  |  |
|--|--|---|--|--|
|  |  | obligation<br>3. Write to<br>CoB/Counties<br>TA to hasten the<br>process of<br>establishing the<br>liabilities<br>Counties to come up<br>with their debt<br>management strategy |  |  |
|--|--|---|--|--|

## 2. Public Service Commission

Mr. Musa Cherogony of the Public Service Commission (PSC) made a presentation about the issues of the Health Workers as follows, that;

- i. The Public Service Commission is a Constitutional Commission established under Article 232 of the Constitution with its functions spelt out in Article 234.
- ii. Under the Fourth Schedule of the Constitution, health is a devolved function and thereby the health workers have therefore been devolved as employees of their respective County Governments.
- iii. The principle of devolution is that resources follow functions.
- iv. The County Government Act and the Urban Areas and Cities Act, health workers are deemed seconded to the county governments.
- v. The PSC has been carrying out capacity building for the County Public Service Boards on the human resource function.
- vi. The PSC has also taken measures such as holding workshops across the counties and developing the capacity of human resource officers and record management officers in the counties.
- vii. The PSC has an inter agency committee in conjunction with the Ministry of Health, Ministry of Devolution and Planning, Council of Governors, Transition Authority, and County Public Services Boards that is addressing the issues of the health workers.
- viii. The Inter Agency Committee has held several meetings and made resolutions aimed at facilitating the working of the health workers. Some of the issues addressed include;
  - Inter-county transfers
  - Absorption of health personnel under the Economic Stimulus Program
  - Management of deployment and upgrading of health interns
  - Scheme of service for nurses
  - Issues relating to registrars
  - Staffing of the Kenya Medical Training Colleges
  - Release of files/records

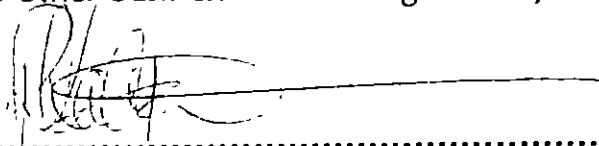
- Collective bargaining agreements

MIN.NO. DCH 308/2015

ADJOURNMENT

There being no other business the meeting was adjourned at 3.30 pm.

SIGNED.....



HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

05/10/2015

**MINUTES OF THE 71<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN SERENA HOTEL MOMBASA, ON FRIDAY 18<sup>TH</sup> SEPTEMBER, 2015 AT 9.30 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
3. The Hon. Mwinga Gunga, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Michael Onyura, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. David Karithi, M.P.
8. The Hon. Leonard Sang, M.P.
9. The Hon. Dr. James O. Gesami, M.P.
10. The Hon. Dr. Naomi Shaban, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Raphael Milkau Otaalo, M.P
13. The Hon. Dr. Dahir D. Mohamed, M.P
14. The Hon. Alfred Agoi, M.P
15. The Hon. Christopher Nakuleu, M.P.
16. The Hon. Dr. James Murgor, M.P.
17. The Hon. Dr. Susan Musyoka, M.P.
18. The Hon. John Nyaga Muchiri, M.P.
19. The Hon. Stephen M. Mule, M.P.
20. The Hon. Joseph O. Magwanga, M.P.
21. The Hon. Zipporah Jessing, M.P.
22. The Hon. Hassan Aden Osman, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Patrick Musimba, M.P.
2. The Hon. Mwahima Masoud, M.P.
3. The Hon. Fred Outa, M.P.
4. The Hon. Dr. Eseli Simiyu, M.P.
5. The Hon. Paul Koinange, M.P
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. Stephen Wachira, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

- |                        |   |                        |
|------------------------|---|------------------------|
| 1. Esther Nginyo       | - | Third Clerk Assistant  |
| 2. Hassan A. Arale     | - | Third Clerk Assistant. |
| 3. Dennis Mogare       | - | Third Clerk Assistant. |
| 4. Sidney Lugaga       | - | Legal Counsel.         |
| 5. Sande Marale        | - | Researcher             |
| 6. Rehema Chepkelimo   | - | Audio Recorder.        |
| 7. Faith Makena        | - | Sergeant at Arms.      |
| 8. Ms. Beatrice Akinyi | - | secretary              |
| 9. Steven Omunzi       | - | Support staff          |

**MINISTRY OF HEALTH OFFICIALS;**

1. Dr. Pacifica Onyancha
2. Dr. Mary Wangai
3. Saleh A. Bardad
4. Nderitu kinuu
5. Belinda Kamar
6. Dr. Peter kimuu.

**COUNCIL OF GOVERNORS:**

- |                          |   |                       |
|--------------------------|---|-----------------------|
| 1. Jack Raguma           | - | Governor, Kisumu.     |
| 2. Prof. Paul Chepkwony- | - | Governor, Kericho.    |
| 3. Issack Ruto           | - | Governor, Bomet.      |
| 4. Kinuthia Mbugua       | - | Governor Nakuru.      |
| 5. Hussein Dado          | - | Governor, Tana River. |
| 6. Rosemary Nyaramba     | - | COG                   |
| 7. Dr. Korir Mercy       | - | COG                   |
| 8. Rodah Wanjiku         | - | COG                   |
| 9. Jaqueline Mogeni      | - | COG                   |

**COUNTY PUBLIC SERVICE BOARD**

- |                      |   |            |
|----------------------|---|------------|
| 1. Salim Nyanje      | - | CPSB Forum |
| 2. Arch Kungu Philip | - | CPSB Forum |
| 3. Harun Yussuf      | - | CPSB Forum |
| 4. Steve Biko Odidi  | - | CPSB Forum |
| 5. John ole Moyaki   | - | CPSB Forum |
| 6. Clare R. Kagwiria | - | CPSB Forum |

**PUBLIC SERVICE COMMISSION**

1. Musa Cherongony

**MIN.NO. DCH 299/2015: PRELIMINARIES.**

The Session Chairperson Hon. Dr. Robert Pukose, MP called the meeting to order at 9.30 am and said a prayer. He then welcomed all present for the session.

**MIN.NO. DCH 300/2015: DELIBERATION ON THE HEALTH BILL, 2015.**

The deliberations on the contentious issues on the Health Bill, 2015 continued for clauses 55, 56, 72, 75 and 79. The following resolutions were made after a lengthy deliberation that:

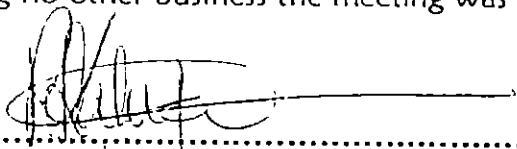
1. Clause 55 was redrafted as follows ' 55(1) Subject to the Constitution and the PFM Act, the National Treasury and the County Treasury shall facilitate the opening and maintenance of bank accounts for purposes of operationalizing disbursements of conditional grants, donations and any other monies for designated for health as may be prescribed. (2) Funds identified in sub-section(1) shall not be appropriated for any other purpose

Introduce a 'definition clause' 'prescribed' means prescribed through regulation

2. Clause 56 the phrase ' and regulation' to be inserted after the words development
3. Clause 72 to delete the word 'Director – General'
4. Clause 75 (3) to introduce a clause definition of Specialist (WHO)  
The management of health specialities to be managed by the proposed intergovernmental forum
5. Clause 79 Sub clause (a) to insert the phrase 'framework for' at the beginning of the sub-clause.
6. First Schedule to be redrafted on further consultations on technical classification of levels of healthcare delivery and hence retaining Clause 26. Further Note 2 the phrase 'level 5' to be deleted.

**MIN.NO. DCH 301/2015                      ADJOURNMENT**

There being no other business the meeting was adjourned at 2.30 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE: 8/10/2015

**MINUTES OF THE 70<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD AT THE SERENA BEACH RESORT & SPA, MOMBASA, ON THURSDAY 17<sup>TH</sup> SEPTEMBER, 2015, AT 2.00 PM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson) – Chairing**
3. The Hon. Dr. James Murgor, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Mwinga Gunga, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. James Gakuya, M.P.
9. The Hon. Dr. Dahir D. Mohamed, M.P.
10. The Hon. Alfred Agoi, M.P.
11. The Hon. Raphael Milkau Otaalo, M.P.
12. The Hon. Kamande Mwangi, M.P.
13. The Hon. Michael Onyura, M.P.
14. The Hon. Zipporah Jesang, M.P.
15. The Hon. John Nyaga Muchiri, M.P.
16. The Hon. Joseph O. Magwanga, M.P.
17. The Hon. David Karithi, M.P.
18. The Hon. Leonard Sang, M.P.
19. The Hon. Dr. Susan Musyoka, M.P.
20. The Hon. Stephen M. Mule, M.P.
21. The Hon. Dr. James O. Gesami, M.P.
22. The Hon. Dr. Naomi Shaban, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Stephen Wachira, M.P.
2. The Hon. Paul Koinange, M.P.
3. The Hon. Dr. Eseli Simiyu, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Alfred Outa, M.P.
7. The Hon. Mwahima Masoud, M.P.

**IN ATTENDANCE**

**Council of Governors**

1. Mr. Jack Raguma - Governor, Kisumu.
2. Prof. Paul Chepkwony - Governor, Kericho.
3. Mr. Issack Ruto - Governor Bomet.
4. Mr. Kinuthia mbugua - Governor, Nakuru.
5. Mr. Hussein Dado - Governor, Tana River.

6. Ms. Rosemary Nyaramba
7. Dr. Korir Mercy
8. Ms. Rodah Masaviru

#### **Ministry of Health Officials**

1. Dr. Pacifica Onyancha
2. Mr. Saleh A. Bardad
3. Mr. Nderitu Kinuu
4. Ms. Belinda Kamar
5. Dr. Peter kimuu.

#### **County Public Service Board Members**

- |                          |   |            |
|--------------------------|---|------------|
| 1. Mr. Salim Nyanje      | - | CPSB Forum |
| 2. Arch. Kungu Philip    | - | CPSB Forum |
| 3. Mr. Harun Yussuf      | - | CPSB Forum |
| 4. Mr. Steve Biko Odidi  | - | CPSB Forum |
| 5. Mr. John Ole Moyaki   | - | CPSB Forum |
| 6. Mr. Ciare R. Kagwiria | - | CPSB Forum |

#### **Public Service Commission**

1. Mr. Musa Cherogony

#### **National Assembly Secretariat**

- |                             |   |                              |
|-----------------------------|---|------------------------------|
| 1. <b>Ms. Esther Nginyo</b> | - | <b>Third Clerk Assistant</b> |
| 2. Mr. Dennis Mogare        | - | Third Clerk Assistant.       |
| 3. Mr. Hassan A. Arale      | - | Third Clerk Assistant.       |
| 4. Mr. Sydney Lugaga        | - | Legal Counsel                |
| 5. Ms. Marale Sande         | - | Senior Research Officer      |
| 6. Ms. Beatrice Auma        | - | Secretary                    |
| 7. Ms. Rahab Chepkilim      | - | Audio Officer III            |
| 8. Mr. Faith Makena         | - | Serjeant-At-Arms             |
| 9. Mr. Stephen Omunzi       | - | Support Staff                |

#### **MIN.NO. DCH 298/2015: PRELIMINARIES**

The Chairperson called the meeting to order at 2:28 pm and a prayer was said by Hon. Dr. Robert Pukose, M.P.

#### **MIN.NO. DCH 299/2015: CONFIRMATION OF MINUTES**

Confirmation of the minutes of previous meetings was deferred to the next meeting.

#### **MIN.NO. DCH 300/2015: MEETING WITH THE COUNCIL OF GOVERNORS, THE PUBLIC SERVICE COMMISSION OF KENYA, AND THE MINISTRY OF HEALTH TO SEEK CONSENSUS ON CONTENTIOUS PROVISIONS OF THE HEALTH BILL, 2015.**

The Chairperson of the session welcomed participants to the afternoon session and stated that the contentious clauses remaining for deliberation included:

- a) Clause 25 (a), (f) - Retention of Service Provision
- b) Clause 28 - Representation of the COG in the Authority
- c) Clause 48 (3) - Need for consultation on organ transplant
- d) Clause 54 - Health Financing
- e) Clause 55 - Bank Account
- f) Clause 56 - Private Health Services (Policy Issues)
- g) Clause 72 - E - legislation
- h) Clause 79 - Regulations

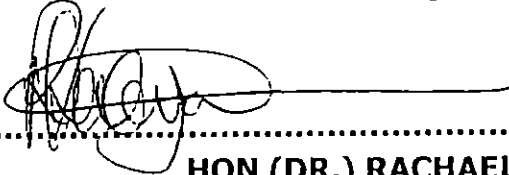
After lengthy deliberations, the following was agreed upon:

| CLAUSE        | CONSENSUS  |
|---------------|--|
| Clause 25 (a) | <p>To adopt the proposal by the Council of Governors under Clause 25 (a) on Service retention with amendments to permit the National Government to:</p> <ul style="list-style-type: none"> <li>I. Establish National referral hospitals and</li> <li>II. Introduce a transition clause providing for exemption of existing county referral facilities and requiring consultation with county governments in case of a need to upgrade them.</li> </ul> |
| Clause 25 (f) | Introduce a definition of <i>a public health good</i> with respect to 25 (f) in Article 2 of the Bill.   |
| Clause 28     | <p>To adopt proposal from the Council of Governors under Clause 28 to include a member, who should be a medical professional, to represent the interests of the Council of Governors in the Authority.</p> <p>To stick to the envisaged numbers, a consumer representative in (h) was dropped.</p>   |
| Clause 48 (3) | To drop a proposal by the Council of Governors under Clause 48 (3) hence retain the Clause as was in the published Health Bill, 2015.  |
| Clause 54     | A technical team drawn from the National Assembly Health Committee, the Council of Governors and the Ministry of Health was tasked with crafting an amendment to clause 54 to provide for consultation and corroboration with county governments for all Sub Clauses in Clause 54 except Sub Clauses (b) and (c).  |

Deliberation on the other contentious clauses identified above was deferred to the next meeting.

**MIN.NO. DCH 301/2015: ADJOURNMENT**

There being no other business the meeting was adjourned at 5.26 pm.

  
SIGNED.....

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

17/9/2015  
DATE:.....

**MINUTES OF THE 69<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD AT THE SERENA BEACH RESORT & SPA, MOMBASA, ON THURSDAY 17<sup>TH</sup> SEPTEMBER, 2015, AT 9.00 AM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson) – Chairing**
3. The Hon. Dr. James Murgor, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Mwinga Gunga, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. James Gakuya, M.P.
9. The Hon. Dr. Dahir D. Mohamed, M.P.
10. The Hon. Alfred Agoi, M.P.
11. The Hon. Raphael Milkau Otaalo, M.P.
12. The Hon. Kamande Mwangi, M.P.
13. The Hon. Michael Onyura, M.P.
14. The Hon. Zipporah Jesang, M.P.
15. The Hon. John Nyaga Muchiri, M.P.
16. The Hon. Joseph O. Magwanga, M.P.
17. The Hon. David Karithi, M.P.
18. The Hon. Leonard Sang, M.P.
19. The Hon. Dr. Susan Musyoka, M.P.
20. The Hon. Stephen M. Mule, M.P.
21. The Hon. Dr. James O. Gesami, M.P.
22. The Hon. Dr. Naomi Shaban, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Stephen Wachira, M.P.
2. The Hon. Paul Koinange, M.P.
3. The Hon. Dr. Eseli Simiyu, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Alfred Outa, M.P.
7. The Hon. Mwashima Masoud, M.P.

**IN ATTENDANCE**

**Council of Governors**

1. Mr. Jack Raguma - Governor, Kisumu.
2. Prof. Paul Chepkwony - Governor, Kericho.
3. Mr. Issack Ruto - Governor Bomet.
4. Mr. Kinuthia mbugua - Governor, Nakuru.
5. Mr. Hussein Dado - Governor, Tana River.

6. Ms. Rosemary Nyaramba
7. Dr. Korir Mercy
8. Ms. Rodah Masaviru

#### **Ministry of Health Officials**

1. Dr. Pacifica Onyancha
2. Mr. Saleh A. Bardad
3. Mr. Nderitu Kinuu
4. Ms. Belinda Kamar
5. Dr. Peter kimuu.

#### **County Public Service Board Members**

- |                          |   |            |
|--------------------------|---|------------|
| 1. Mr. Salim Nyanje      | - | CPSB Forum |
| 2. Arch. Kungu Philip    | - | CPSB Forum |
| 3. Mr. Harun Yussuf      | - | CPSB Forum |
| 4. Mr. Steve Biko Odidi  | - | CPSB Forum |
| 5. Mr. John Ole Moyaki   | - | CPSB Forum |
| 6. Mr. Ciare R. Kagwiria | - | CPSB Forum |

#### **Public Service Commission**

1. Mr. Musa Cherogony

#### **National Assembly Secretariat**

- |                             |   |                              |
|-----------------------------|---|------------------------------|
| 1. <b>Ms. Esther Nginyo</b> | - | <b>Third Clerk Assistant</b> |
| 2. Mr. Dennis Mogare        | - | Third Clerk Assistant.       |
| 3. Mr. Hassan A. Arale      | - | Third Clerk Assistant.       |
| 4. Mr. Sydney Lugaga        | - | Legal Counsel                |
| 5. Ms. Marale Sande         | - | Senior Research Officer      |
| 6. Ms. Beatrice Auma        | - | Secretary                    |
| 7. Ms. Rahab Chepkilim      | - | Audio Officer III            |
| 8. Mr. Faith Makena         | - | Serjeant-At-Arms             |
| 9. Mr. Stephen Omunzi       | - | Support Staff                |

#### **MIN.NO. DCH 293/2015: PRELIMINARIES**

The Chairperson called the meeting to order at 9:29 am and a prayer was said by Hon. Dr. Robert Pukose, M.P. then there was a self-introduction by all those present. There was representation from National Assembly Committee on Health, Council of Governors, Ministry of Health and the Public Service Commission of Kenya.

#### **MIN.NO. DCH 294/2015: CONFIRMATION OF MINUTES**

Confirmation of the minutes of previous meetings was deferred to the next meeting.

#### **MIN.NO. DCH 295/2015: MEETING WITH THE COUNCIL OF GOVERNORS, THE PUBLIC SERVICE COMMISSION OF KENYA, AND THE MINISTRY OF HEALTH TO SEEK**

## **CONSENSUS ON CONTENTIOUS PROVISIONS OF THE HEALTH BILL, 2015.**

The Chairperson of the session noted that the Senate Committee on Health was not represented despite an invitation being sent to the Committee. He then invited the following to make their opening remarks:

### **Remarks by the Chairperson, Departmental Committee on Health**

The Chairperson, Hon. Dr. Racheal Nyamai made her opening remarks and informed the participants that:

- a) On 30<sup>th</sup> April 2015, the Health Bill, 2015 was read a First Time and thereafter committed to the Departmental Committee on Health for consideration pursuant to Article 118 of the Constitution and Standing Order No. 127.
- b) On 8<sup>th</sup> May, 2015, the Committee placed advertisements on the Local Dailies (the Star and the Daily Nation newspapers) calling for views from the general public on the Bill. The Committee, subsequently, received memoranda from the following stakeholders: Pharmaceutical Society of Kenya, KELIN, Public Health Society of Kenya, Kenya National Commission on Human Rights, Council of Governors, IPAS/COVAW, Kenya Health Professional Society, Kenya Health and Palliative Care Association, Kenya Medical Association, Kenya National Union of Nurses, Kenya Dental Association, Kenya Pharmaceutical Association, Health System Management Association, Health Action International, Kenya Christians Professionals Forum, National Technical Working Group on Quality Management, The Health Sector Board for KEPISA and Various individual health care workers.
- c) The Committee had held 34 meetings to scrutinize the Bill and build consensus with stakeholders especially the Ministry of Health and the CIC where useful discussions on the Bill were held and recommendations made, most of which had been adopted.
- d) The Committee also conducted a public hearing which was publicized in the dailies on 9<sup>th</sup> July, 2015. The Public hearing was done on 15<sup>th</sup> July, 2015 at the Main Chamber, Parliament Buildings. Various stakeholders representing institutions and individuals made oral submissions on the Bill.
- e) The Committee had up to then held two (2) meetings with the Council of Governors to build consensus on the Bill. The meetings were held on 18<sup>th</sup> and 25<sup>th</sup> August, 2015. Thereafter, a technical team drawn from the National Assembly Health Committee, the Council of Governors and the Ministry of Health was constituted to thrash out contentious issues and report to the plenary in a joint retreat.

### **Remarks by the Ministry of Health representative**

Dr. Pacificah Onyantha, representing the Ministry, informed the meeting that:

1. There was a long chronology of the preparation of the Health Bill which started before the advent of devolution.
2. By the year 2012, the Bill had been considered by the Cabinet. However, it was later returned to the Ministry for redrafting since it did not conform to the dictates of the devolved system of government.
3. The Ministry then redrafted the Bill to adhere to the dictates of the devolved system of government and forwarded it to the Office of the Attorney General.
4. The Cabinet then reconsidered the Bill, made recommendations which were later incorporated in the Bill.
5. The Bill was then adopted by the Cabinet and forwarded to the CIC and subsequently submitted to the National Assembly.
6. The rest of the chronology of events was as given by the Chairperson, Committee on Health above.
7. The Bill's intention was to have a health system that is sensitive to the provisions of the Constitution of Kenya, 2010.

### **Remarks by the Chair of the Health Committee, Council of Governors**

Governor Jack Ranguma, Chairperson of the Health Committee, Council of Governors informed the meeting that:

1. The Council of Governors fully understood that health was a concurrent function hence Health Care delivery has to be actualised through corroboration between the County Governments and the National Government.
2. The National Assembly Health Committee was, in the spirit of Public Participation, engaging stakeholders like the Council in a bid to build consensus over the health bill, 2015. He commended such efforts.
3. The Council of Governors shall always endeavour to avoid dwelling on trivialities when addressing matters health since they deserved seriousness.

### **MIN.NO. DCH 296/2015: ADDRESSING THE CONTENTIOUS PROVISIONS OF THE HEALTH BILL, 2015.**

Dr. Pacifica Onyancha made a presentation to the forum on behalf of the Technical Team drawn from the Ministry of Health, the Council of Governors Secretariat and the Committee on Health Secretariat that was tasked on 25<sup>th</sup> August, 2015 to harmonize the proposal by the Council of Governors.

In her presentation, she indicated that the team had been tasked to consider clauses; objective clause, 2, 3, 8, 15, 16, 17, 20, 24, 25, 26, 27, 28, Part V, 38, Part VIII, 48,54, 55, 56, 72, 75, 78 and 79 of the Bill.

She further indicated that the Technical Team was able to agree on clauses 2, 3,8,24, 26,27, Part V, 38, Part VIII and 75. However, the following clauses remained contentious and would therefore form part of the discussion during the retreat;

- a) Clause 15 (2) - Duties of the National Government

- b) Clause 16 (2) - Appointment (Office of the Director General)
- c) Clause 17 (j) - Gazettement (Functions of the Director General)
- d) Clause 25 (a), (f) - Retention of Service Provision
- e) Clause 28 - Representation of the COG in the Authority
- f) Clause 48 (3) - Need for consultation on organ transplant
- g) Clause 54 - Health Financing
- h) Clause 55 - Bank Account
- i) Clause 56 - Private Health Services (Policy Issues)
- j) Clause 72 - E - legislation
- k) Clause 79 - Regulations

After lengthy deliberations, the following was agreed upon:

| CLAUSE        | CONSENSUS   |
|---------------|---|
| Clause 15 (2) | To adopt the proposal by the Council of Governors that the phrase "in consultation with the Council of Governors" be inserted immediately after the words "for health".   |
| Clause 16 (2) | To adopt the following on appointment of the Director General under clause 16 (2):<br><br>"The Director General for Health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the President." |
| Clause 17 (j) | Retained as is in the published draft Bill.   |
| Clause 20(d)  | To insert the word 'gazettement' after the word 'licensing'.  |

**MIN.NO. DCH 297/2015: ADJOURNMENT**

There being no other business the meeting was adjourned at 1.37 pm.

SIGNED.....

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

**CHAIRPERSON**

DATE:.....  
6/10/2015

**MINUTES OF THE 66<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, ON TUESDAY 15<sup>TH</sup> SEPTEMBER, 2015, AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Zipporah Jesang, M.P.
4. The Hon. Dr. James O. Gesami, M.P.
5. The Hon. John Nyaga Muchiri, M.P.
6. The Hon. Alfred Agoi, M.P.
7. The Hon. Dr. James Murgor, M.P.
8. The Hon. Dr. Dahir Mohamed, M.P.
9. The Hon. Michael Onyura, M.P.
10. The Hon. Dr. Eseli Simiyu, M.P.
11. The Hon. Joseph O. Magwanga, M.P.
12. The Hon. Hassan Aden Osman, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. James Gakuya, M.P.
2. The Hon. Dr. Stephen Wachira, M.P.
3. The Hon. Raphael Milkau Otaalo, M.P.
4. The Hon. Dr. James Nyikal, M.P.
5. The Hon. David Karithi, M.P.
6. The Hon. Dr. Patrick Musimba, M.P.
7. The Hon. Mwahima Masoud, M.P.
8. The Hon. Dr. Enoch Kibunguchy, M.P.
9. The Hon. Dr. Susan Musyoka, M.P.
10. The Hon. Alfred Outa, M.P.
11. The Hon. Christopher Nakuleu, M.P.
12. The Hon. Stephen M. Mule, M.P.
13. The Hon. Dr. Naomi Shaban, M.P.
14. The Hon. Kamande Mwangi, M.P.
15. The Hon. Leonard Sang, M.P.
16. The Hon. Paul Koinange, M.P.
17. The Hon. Mwinga Gunga, M.P.

## **IN ATTENDANCE**

### **National Assembly Secretariat**

- |                    |   |                        |
|--------------------|---|------------------------|
| 1. Esther Nginyo   | - | Third Clerk Assistant. |
| 2. Dennis Mogare   | - | Third Clerk Assistant. |
| 3. Hassan A. Arale | - | Third Clerk Assistant. |
| 4. Sydney Lugaga   | - | Legal Counsel          |
| 5. Faith Makena    | - | Serjeant at Arms.      |

### **MIN.NO. DCH 280/2015: PRELIMINARIES.**

The Chairperson called the meeting to order at 10.29 am and a prayer was said by Hon. Dr. Robert Pukose, M.P. He then welcomed the Members to the meeting.

### **MIN.NO. DCH 281/2015: ADOPTION OF THE AGENDA**

The Agenda of the meeting was adopted unanimously after it was proposed and seconded by Hon. Dr. Robert Pukose, M.P. and Hon. Dr. James Murgor, M.P. respectively.

### **MIN.NO. DCH 282/2015: CONFIRMATION OF MINUTES.**

Minutes of the 64<sup>th</sup> Sitting of the Committee held on Tuesday, 8<sup>th</sup> September, 2015 were confirmed as the true record of the proceedings after being proposed and seconded by Hon. Dr. James O. Gesami, M.P. and Hon. Hassan Aden Osman, M.P. respectively.

Minutes of the 65<sup>th</sup> Sitting of the Committee held on Tuesday, 8<sup>th</sup> September, 2015 were confirmed as the true record of the proceedings after being proposed and seconded by Hon. Dr. James O. Gesami, M.P. and Hon. Zipporah Jesang, M.P. respectively.

### **MIN.NO. DCH 283/2015: MATTERS ARISING**

The following matters arose:

#### **Under MIN.NO. DCH 274/2015 (ii)**

It was resolved that a letter be written to the Cabinet Secretary, Ministry of Health with respect to the NHIF case where the institution was charging the self-employed persons Ksh. 500 instead of the agreed Ksh. 300 per month. The letter should also instruct the CEO, NHIF to advertise the new rates in the mass media without further delay. If the matter was not handled

expeditiously, the Committee resolved to institute censure proceedings against the NHIF Chief Executive Officer.

**MIN.NO. DCH 284/2015: BRIEFING ON THE JOINT RETREAT WITH THE COUNCIL OF GOVERNORS, MINISTRY OF HEALTH AND COMMITTEE ON THE HEALTH BILL, 2015.**

The Legal Counsel briefed the Committee on the outcome of a meeting of the technical teams from the Ministry of Health, the Council of Governors and the National Assembly held on 7<sup>th</sup> September, 2015. The following is a summary of the outcomes and the Committee's comments on each:

| CLAUSE /PART | PROPOSAL STATUS | AGREED CLAUSE   | COMMENTS  |
|--------------|-----------------|---|---|
| Preamble     | Compromise      | AN ACT of Parliament <i>to establish an effective coordination and regulatory framework for the health sector in Kenya, to provide for the functions of national government and county government,</i> to coordinate the inter-relationship between the national government and county government health systems, to provide for regulation of health care service and health care service providers, health products and health technologies and for connected purposes. | Agreed to by the Committee.   |
| Clause 2     | Adopted         | "Healthsystem" means the organization of people, institutions and resources that deliver health care services to meet the health needs of the target population.  | Legal counsel tasked to rely the WHO to come up with a definition of "health care service". |
| Clause 3     | Adopted         | (f) Give effect on the  | Agreed to by the  |

|             |   |   |   |
|-------------|---|---|---|
|             |   | provisions of the Constitution on devolution of health services.  | Committee.  |
| Clause 4-7  | Adopted   |   | Agreed to   |
| Clause 8    | Dropped as it is covered under Clause 10  |   | Agreed to by the Committee.                                     |
| Clause 9-14 | Adopted.  |   | Agreed to by the Committee.                                     |
| Clause 15   | <p>Sub clauses (1): (e), (j), (n), (o), (q) &amp; (u) adopted with amendments /</p> <p>Clause (2) disputed.</p> <p>There was consensus on the need to introduce:</p> <ul style="list-style-type: none"> <li>a) A consultative forum for technocrats;</li> <li>b) A Joint Inter Governmental Institution that will <ul style="list-style-type: none"> <li>I. draw its membership from both National Government and County Government;</li> <li>II. shall the PSC and the CPSB delegate their functions with respect to employment of health professionals to the said body;</li> <li>III. Recognition of the health sector intergovernmental forum as established under</li> </ul> </li> </ul> | <p>(e) offer technical support at all levels with emphasis on health system strengthening <i>including specialist facilities</i>;</p> <p>(j) set guidelines for the designation of health facilities;</p> <p>(n) provide a <i>framework</i> for accreditation of health services;</p> <p>(o) coordinate health aspects of disaster and emergencies;</p> <p>(q) provide for the framework to promote the development of public and private health institutions to ensure their efficient and harmonious development and in the common interest work towards progressive achievement of the right to health;</p> <p>(u) provide for the framework to promote the use of appropriate health technologies for improving the quality of health care;</p> | The entire clause 15 to be deliberated on at the joint retreat. |

|           |  |  |  |
|-----------|--|--|--|
|           | the provisions of the Intergovernmental Relations Act.   |  |  |
| Clause 16 | Sub clause (2)-Proposal dropped in favour of Committee's proposal.   | "(2)The Director-General for Health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the Cabinet Secretary." | Agreed to by the Committee.                |
| Clause 17 | Proposals to amend sub clauses (e), (f), (h), (j) to be deliberated by joint plenary.  |  | To be deliberated on at the Joint Retreat. |
| Clause 19 | Proposal rejected as<br>(1) Details of the County executive department should be universal and therefore structure should be defined as an amendment to the County Governments Act.<br>(2) The office of the County Director of Health must be occupied by a technocrat with a comprehensive all round medical training.<br>(3) Dropping the word "executive" from the expression county executive department is cosmetic as |  | To be deliberated on at the Joint Retreat. |

|                 |  |   |  |
|-----------------|--|---|--|
|                 | <p>it is not defined in the County Governments Act.</p> <p>Sub clauses (4) (a), (5) (f) &amp; (g) deferred for further consultation by Joint Plenary.</p>  |   |  |
| Clause 21       | Proposal to delete the word "National" from the expression "National Health System" from the prefatory statement rejected because it there is meritorious constitutional or technical justification. |   | Agreed to by the Committee.  |
| Clauses 22 & 23 | Adopted. Not contested.  |   | Agreed to by the Committee.  |
| Clause 24       | Proposal adopted.  |   | Agreed to by the Committee.  |
| Clause 25       | Proposals dropped. Amendment adopted to sub clause (d).  | (d) laboratories and other institutions designated as serving a national purpose; | To be deliberated on at the Joint Retreat.                             |
| Clause 26       | Proposal dropped in favour of a MOH proposal to delete the clause and classifications under the First Schedule.  |   | To be deliberated on at the Joint Retreat.                             |
| Clause 27       | Proposal Adopted.  |   | Committee insisted on retention of the original version of the clause. |
| Clause 28       | Proposal rejected for being inconsistent with the provisions of State Corporations Act,  |   | To be deliberated on at the Joint Retreat.                             |
| Clause 29       | Adopted. Not contested.  |   | Agreed to by the Committee.  |
| Clause 30       | Proposal dropped.  |   | Agreed to by the Committee.  |

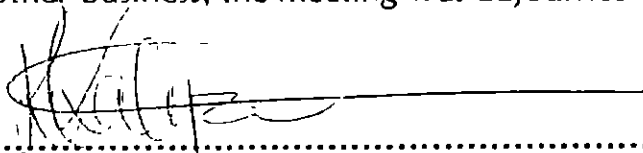
|                     |  |  |                             |
|---------------------|--|--|-----------------------------|
| PART V of the Bill. | Proposal to delete and replace PART V of the Bill dropped. |  | Agreed to by the Committee. |
|---------------------|--|--|-----------------------------|

**MIN.NO. DCH 285/2015: ANY OTHER BUSINESS**

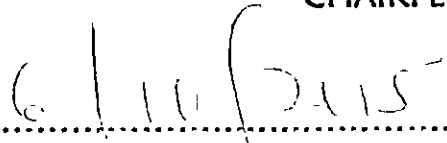
Members were informed that the planned visit to the Kisii, Bomet, Nandi and Kericho County Hospitals was postponed due to a funding hitch. The same were tentatively rescheduled to 1<sup>st</sup> October, 2015.

**MIN.NO. DCH 286/2015: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.05pm.

SIGNED.....  
  
 -HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....  


**MINUTES OF THE 61<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN 2ND FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON TUESDAY 25<sup>TH</sup> AUGUST, 2015, AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
3. The Hon. David Karithi, M.P.
4. The Hon. Leonard Sang, M.P.
5. The Hon. John Nyaga Muchiri, M.P.
6. The Hon. James Gakuya, M.P.
7. The Hon. Raphael Milkau Otaalo, M.P
8. The Hon. Fred Outa, M.P.
9. The Hon. Dr. James Murgor, M.P.
10. The Hon. Dr. Stephen Wachira, M.P.
11. The Hon. Paul Koinange, M.P
12. The Hon. Stephen M. Mule, M.P
13. The Hon. Dr. Dahir D. Mohamed, M.P
14. The Hon. Dr. Susan Musyoka, M.P.
15. The Hon. Mwinga Gunga, M.P.
16. The Hon. Hassan Aden Osman, M.P.
17. The Hon. Dr. James Nyikal, M.P.
18. The Hon. Zipporah Jesang, M.P.
19. The Hon. Dr. Eseli Simiyu, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Kamande Mwangi, M.P.
2. The Hon. Dr. Enoch Kibunguchy, M.P.
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. Michael Onyura, M.P.
5. The Hon. Dr. James O. Gesami, M.P.
6. The Hon. Joseph O. Magwanga, M.P.
7. The Hon. Christopher Nakuleu, M.P.
8. The Hon. Alfred Agoi, M.P
9. The Hon. Dr. Patrick Musimba, M.P.
10. The Hon. Mwahima Masoud, M.P.

## **IN ATTENDANCE**

### **National Assembly Secretariat**

- |                      |   |                     |
|----------------------|---|---------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant III |
| 2. Mr. Dennis Mogare | - | Clerk Assistant III |
| 3. Mr. Sydney Lugaga | - | Legal Counsel II    |
| 4. Ms. Marale Sande  | - | Senior Researcher   |

### **Ministry of Health**

1. Dr. Pacificah Onyancha
2. Dr. Mary Wangai
3. Ms. Belinda Kamar

### **Council of Governors**

- |                          |   |                   |
|--------------------------|---|-------------------|
| 1. Prof. Paul Chepkwony  | - | Governor, Kericho |
| 2. Mr. Isaac Ruto        | - | Governor, Bomet   |
| 3. Mr. Jack Ranguma      | - | Governor, Kisumu  |
| 4. Mr. James Ongwae      | - | Governor, Kisii   |
| 5. Ms. Jackline Mogeni   | - | Ag. CEO           |
| 6. Ms. Rosemary Njaramba | - | Legal Counsel     |
| 7. Ms. Florence Oduk     | - | Legal Counsel     |

### **MIN.NO. DCH 258/2015: PRELIMINARIES.**

The Chairperson called the meeting to order at 10. 05 am. Thereafter, a prayer was said by Hon. Dr. Robert Pukose, M.P. The Chairperson then welcomed all those present to the meeting and invited them to do self-introduction.

### **MIN.NO. DCH 259/2015: MEETING WITH THE COUNCIL OF GOVERNORS OVER THE HEALTH BILL, 2015.**

The Council of Governors further to a meeting that was on Tuesday 25<sup>th</sup> August, 2015 in which they were requested to appear before the Committee with specific recommendations on the amendments they were proposing to the Health Bill, 2015, Prof. Paul Chepkwony, Governor, Kericho County made presentation on behalf of the Council of Governors and submitted as follows; THAT:

1. Objective clause should be amended to read as follows "An Act of Parliament to establish a unified health system, to provide for national and county government functions in relation to health, to coordinate the inter-relationship between the national government and county government health systems, to provide for

regulation of health care service and health care service providers, health products and health technologies and for connected purposes.”

2. Clause 2 of the Bill should be amended to include a definition of “a health system”. It should provide as follows: “a health system means the organization of people, institution and resources that deliver health care services to meet the health needs of target populations.”
3. Clause 3 of the Bill should be amended by inserting a new paragraph (f) which reads as follows: “give effect to the provisions of the constitution on devolution of health services.”
4. Clause 8 be deleted in its entirety and be replaced with the following new clause:
  - 8 (1) every person has a right to public health information.
  - (2) Subject to Article 35 (1) (b) of the constitution, the national government, county government and every organ within the state health system shall facilitate access to information by the public on the health functions for which they are responsible.
  - (3) The information to be publicized and made accessible under subsection 2 shall include:
    - a) The types, availability and cost of any health service;
    - b) The structure for the delivery of health services;
    - c) Normal working schedules and timetables of visits of patients;
    - d) Procedures for access and use to the health services;
    - e) Procedures for providing feedback on quality services;
    - f) The rights and duties of users and health care providers;
    - g) The management of environmental risk factors to safeguard public health;
    - h) Health profile by diseases per county;
    - i) Disease outbreak
    - j) The cost of drugs and commodities by the health providers
    - k) National and county health sector plans and budgets;
    - l) Information on sources of funding of the health sector; and
    - m) Procedures for lodging complaints
5. Clause 15 of the Bill should be amended by substituting it with three new clauses providing for duties of the national government, duties of the county governments and intergovernmental corroboration for health service delivery.

**Resolution**

The meeting made the following resolutions that;

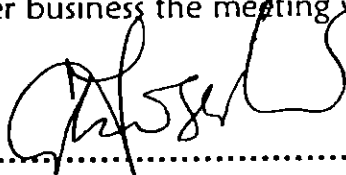
- i. It was agreed that the changes proposed to clause 8 of the Bill should be merged into Clause 10 of the Bill.
- ii. The legal teams from the National Assembly, the Council of Governors and technical experts from the Ministry of Health to discuss and agree on the proposals made by the Council of Governors and present a harmonized position in a retreat to be held within three weeks from the date of the meeting for consensus building.

**MIN.NO. DCH 260/2015: ANY OTHER BUSINESS**

- 1. It was agreed that there was an urgent need for a proper framework to handle the training, distribution of specialists, remuneration and career progression aspects of health care workers through an intergovernmental body or forum.
- 2. Governor Isaack Ruto withdrew his remarks made in a meeting with the Committee on 18<sup>th</sup> August, 2015 to the effect that Doctor Matendehero was a ghost worker in Kakamega County. He clarified that the said doctor was at the period in Nairobi pursuing his post graduate studies and doing union work.
- 3. It was resolved that there was need to develop regulations on classification of health facilities in a consultative manner to avoid legal hurdles and challenges.

**MIN.NO. DCH 261/2015 ADJOURNMENT**

There being no other business the meeting was adjourned at 12. 11pm.

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

DATE:.....  
8/9/2015 CHAIRPERSON

MINUTES OF THE 59<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, ON TUESDAY 18<sup>TH</sup> AUGUST, 2015, AT 10.00 AM.

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
3. The Hon. Kamande Mwangi, M.P.
4. The Hon. Michael Onyura, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. David Karithi, M.P.
7. The Hon. Leonard Sang, M.P.
8. The Hon. Dr. James O. Gesami, M.P.
9. The Hon. Raphael Milkau Otaalo, M.P.
10. The Hon. Fred Outa, M.P.
11. The Hon. Christopher Nakuleu, M.P.
12. The Hon. Dr. James Murgor, M.P.
13. The Hon. Dr. Susan Musyoka, M.P.
14. The Hon. Dr. Stephen Wachira, M.P.
15. The Hon. Paul Koinange, M.P.
16. The Hon. Dr. Enoch Kibunguchy, M.P.
17. The Hon. Stephen M. Mule, M.P.
18. The Hon. Dr. Eseli Simiyu, M.P.
19. The Hon. Joseph O. Magwanga, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Mwinga Gunga, M.P.
  2. The Hon. Dr. Dahir D. Mohamed, M.P.
  3. The Hon. Alfred Agoi, M.P.
  4. The Hon. John Nyaga Muchiri, M.P.
  5. The Hon. Dr. Naomi Shaban, M.P.
  6. The Hon. James Gakuya, M.P.
- 
7. The Hon. Dr. Patrick Musimba, M.P.
  8. The Hon. Mwahima Masoud, M.P.
  9. The Hon. Zipporah Jesang, M.P.
  10. The Hon. Hassan Aden Osman, M.P.

## **IN ATTENDANCE**

### **National Assembly Secretariat**

1. Ms. Esther Nginyo - Clerk Assistant III
2. Mr. Dennis Mogare - Clerk Assistant III
3. Mr. Rose Njuki - Serjeant-at-Arms.

### **Council of Governors**

1. Gov. (Prof.) Paul Chepkwony - Governor, Kericho County
2. Gov. Jack Ranguma - Governor, Kisumu County
3. Gov. Isaack Ruto - Governor, Bomet County
4. Dr. William Murrah - CEC Member (Health), Meru County
5. Ms. Jackline Mogeni - Ag. CEO, Council of Governors
6. Mr. Peter Wanyama - Legal Counsel, Council of Governors

### **MIN.NO. DCH 246/2015: PRELIMINARIES.**

The Chairperson called the meeting to order at 10.17 am. Thereafter, a prayer was said by Hon. Fred Outa, M.P. The Chairperson then welcomed all present to the meeting and invited them to do self-introduction.

### **MIN.NO. DCH 247/2015: MEETING WITH THE COUNCIL OF GOVERNORS OVER THE HEALTH BILL, 2015.**

The Chairperson while inviting the Council of Governors to make their submission highlighted the various activities that the Committee has conducted in the consideration of the Health Bill, 2015.

Prof. Paul Chepkwony, Governor, Kericho County who made a presentation on behalf of the Council of Governors submitted that:

1. The draft Health Bill, 2015 does not recognize that there are two levels of government that are functionally distinct. It therefore empowers the Ministry of Health to undertake devolved functions contrary to Clause 6 (2), 186, 189 of the Fourth Schedule.
2. Article 187 of the constitution provides adequate mechanism for the Ministry of Health to undertake devolved health care functions through inter-governmental agreements. This ought to be adhered to faithfully.
3. The draft Health Bill, 2015 adopts a legislative philosophy that undermines the functional, procurement and financial autonomy of counties in the health sector.

4. The language of the Bill is too technical and needs to be simplified to avoid the likelihood of different interpretations.
5. The draft Health Bill, 2015 omits some fundamental aspects of health like provision for the rights of vulnerable and marginalized groups in the health sector such as women, adolescents, persons with disability, mental health patients and the elderly among others.

He then proceeded to analyze the Bill clause by clause and provided the concerns of the Council of Governors on some clauses.

| CLAUSE    | COG COMMENTS   |
|-----------|--|
| Clause 13 | The term "health system" has not been defined within the preliminary section. It is important to define what a health system entails.  |
| Clause 15 | (c) What is contained in this sub section is an obligation of both levels of government.   |
|           | (d) The section is important but does not recognize the other level of government as required by Article 6 (2) and 189 of the Constitution. County governments are not stakeholders in the health sector. They are a critical player.  |
|           | (f) The Constitution has clearly delineated the responsibilities of the two levels of government. With this clause, the national government attempts to take over county functions. The clause should be redrafted.  |
|           | (h) With this clause, the national government attempts to take over county functions. The clause should be redrafted.  |
|           | (j) Conceivably, these guidelines can't be used to take over devolved functions. The guidelines must conform to the letter and spirit of the constitution. Facilities that are already transferred to counties can't be reclassified back to the Centre as it would be unconstitutional. |
|           | (n) The clause is not clear and can be used as a conduit to undermine the devolved government.   |
|           | (o) With this clause, the national government attempts to take over county functions. The clause should be redrafted.  |

The presentation was however interrupted when Committee members asked the Council of Governors to provide specific recommendations on the amendments that ought to be made to each clause they disagree or find fault with.

## Resolution

It was resolved that the Council of Governors prepares and presents its specific recommendations on the amendments on various areas and provide justifications for the same and present them to the Committee on Tuesday 25<sup>th</sup> August, 2015.

MIN.NO. DCH 248/2015

## ANY OTHER BUSINESS

1. The Council of Governors informed the Committee that:
  - a) Health care had improved since the advent of devolution and that the doctors who were allegedly resigning from county health facilities were either transferring their services from one county to the other or moving from private to public service and vice versa which was normal.
  - b) The counties had employed a total of 2367 doctors and 1164 nurses since the advent of devolution and that the supply of drugs had increased from Ksh 2 Billion worth of drugs before devolution to Ksh 18 Billion worth of drugs after rolling out of devolution.
  - c) Most strikes being witnessed at county health facilities were by intern doctors who are paid by the national government.
  - d) The delay in effecting promotions for various cadres in the health sector was due to delays in transferring files of affected officers from the national government to the counties. The files had since been received a month prior to the date of this meeting and processing of promotions was then on going through the County Public Service Boards.
  - e) The delays in paying salaries at the counties affected not just health workers but all public servants in the counties. This was being caused by delays in release of funds (which were being released monthly) to counties by the national government especially during the transition period for the new Financial Year.
  - f) There was no need of reverting level 5 hospitals to the national government under the pretext of funding them since county governments had improved them considerably since they started , however, the National Government is welcomed to provide funds for these facilities.
  - g) On staff welfare, the Council of Governors was going on a retreat to harmonize schemes of service for various professionals to allow for both vertical and horizontal movement of staff in counties.

2. The Chairperson informed the Committee that the Kenya Medical Laboratory Technologists and Technicians Board had written providing an agreement with National Public Health Laboratory Services (NPHLS) on validation of medical laboratory reagents and invitrodiagnostics (IVDs). She directed the secretariat to schedule a meeting with the Board.

MIN.NO. DCH 249/2015

ADJOURNMENT

There being no other business the meeting was adjourned at 12.55 pm.

SIGNED.....

  
HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

8/9/2015

**MINUTES OF THE 57<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH  
HELD IN SAROVA WHITESANDS BEACH RESORT AND SPA, ON FRIDAY 31<sup>ST</sup> JULY,  
2015, AT 2.00 PM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Mwinga Gunga, M.P.
3. The Hon. Hassan Aden Osman, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Michael Onyura, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. David Karithi, M.P.
8. The Hon. Leonard Sang, M.P.
9. The Hon. Dr. James O. Gesami, M.P.
10. The Hon. Dr. Naomi Shaban, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Raphael Milkau Otaalo, M.P.
13. The Hon. Dr. Dahir D. Mohamed, M.P.
14. The Hon. Fred Outa, M.P.
15. The Hon. Alfred Agoi, M.P.
16. The Hon. Christopher Nakuleu, M.P.
17. The Hon. Dr. James Murgor, M.P.
18. The Hon. Dr. Susan Musyoka, M.P.
19. The Hon. Dr. Stephen Wachira, M.P.
20. The Hon. Paul Koinange, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
2. The Hon. Dr. Patrick Musimba, M.P.
3. The Hon. Mwachima Masoud, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. John Nyaga Muchiri, M.P.
6. The Hon. Stephen M. Mule, M.P.
7. The Hon. Dr. Eseli Simiyu, M.P.
8. The Hon. Joseph O. Magwanga, M.P.
9. The Hon. Zipporah Jesang, M.P.

## IN ATTENDANCE

### National Assembly Secretariat

1. Florence Abonyo - Director Committee Services.
2. Esther Nginyo - Third Clerk assistant
3. Hassan A. Arale - Third Clerk Assistant.
4. Dennis Mogare - Third Clerk Assistant.
5. SandeMarale - Research officer
6. Sidney Lugaga - Legal Counsel.
7. Rose Omutere - Hansard
8. Faith Makena - Serjeant at Arms.
9. Stephen Omunzi - Office Assistant

### MIN.NO. DCH 240/2015: PRELIMINARIES.

The Chairperson called the meeting to order at 2.30 pm after prayer was said and welcomed the members to the meeting.

### MIN.NO. DCH 241/2015: CONSENSUS ON HEALTH BILL, 2015.

The consultative meeting between the National Assembly Committee on Health and Senate Standing Committee on Health alongside other stakeholders, the CIC and the Ministry of Health was geared towards Building consensus on specific provisions of the Health Bill, 2015. Several issues were articulated, observations made and a way forward agreed upon as follows: That,

- a) Section 15 on the duties of the national government should be in consultation with the County Government
  - b) Section 19(a) on County Health System, Consensus should be built on whether the qualifications of County Director of Health requires a Master's Degree
  - c) Section 24 on Devolution of Public Health Facilities to be reviewed considering the fact that Health functions have already been devolved in line with legal notice no. 116 of 2013
  - d) Section 25(b) the provision that refer to the specialised health facilities, the Bill ought to define 'these specialised activities' to avoid ambiguity
-

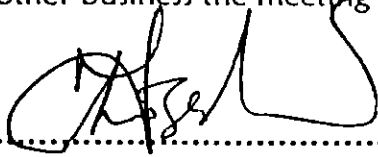
- e) Section 28 on the Kenya Health Professions Oversight Authority. To consider having representation of the County Government
  - f) Section 61 on the Membership of the National Research for Health Committee. To consider representation of the County Government
  - g) Section 37(1) on procurement of health products and technologies, the provision to be reviewed to ensure County governments are not coerced to purchase health products through KEMSA
  - h) With respect to provisions on emergency care, additional consultation is required to ensure the Constitution is upheld in so far as provision of emergency care is concerned but at the same time take care of the interest of the service providers
  - i) On issues of health human resource, there exists other intergovernmental mechanisms under the Intergovernmental Relations Act and an established forum under the Ministry of Devolution to pursue inter-governmental issues including health human resource. These forums to be considered during consultation
  - j) Section 19, the provision be retained however further consultation is required. Consider amending Section 60 of the County Government Relations Act
- 
- k) Section 20 on the duties of the County executive department for health, further scrutiny is required especially with respect to sub-section 20(e) (f) (g) (h) (i)
  - l) Part v on regulation of the health products and health technologies to be redrafted for clarity. This includes amending Sub clause 33(f) to read '...and Biological weapons and harmful products'
  - m) Section 75 on training to be reconsidered and further consultation
  - n) Section 2 and the Bill in general, To consider including or clarifying the following definitions under interpretation for clarity and consistency: Health personnel, Health system, Health care provider, health care profession, health care worker, health products and technologies.
  - o) Review and clean up the draft and further consultation on the Bill to be considered alongside the County Government representation. This will include forming a technical committee to harmonise on the draft including building consensus on intergovernmental mechanism.
-

MIN.NO. DCH 242/2015

ADJOURNMENT

There being no other business the meeting was adjourned at 5.30 pm.

SIGNED.....



HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

8/9/2015

**MINUTES OF THE 56<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH  
HELD IN SAROVA WHITESANDS BEACH RESORT AND SPA, ON FRIDAY 31<sup>ST</sup> JULY,  
2015, AT 9.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Mwinga Gunga, M.P.
3. The Hon. Hassan Aden Osman, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Michael Onyura, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. David Karithi, M.P.
8. The Hon. Leonard Sang, M.P.
9. The Hon. Dr. James O. Gesami, M.P.
10. The Hon. Dr. Naomi Shaban, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Raphael Milkau Otaalo, M.P.
13. The Hon. Dr. Stephen Wachira, M.P.
14. The Hon. Paul Koinange, M.P.
15. The Hon. Alfred Agoi, M.P.
16. The Hon. Christopher Nakuleu, M.P.
17. The Hon. Dr. James Murgor, M.P.
18. The Hon. Dr. Dahir D. Mohamed, M.P.
19. The Hon. Alfred Outa, M.P.
20. The Hon. Dr. Susan Musyoka, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
2. The Hon. Dr. Patrick Musimba, M.P.
3. The Hon. Mwahima Masoud, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. John Nyaga Muchiri, M.P.
6. The Hon. Stephen M. Mule, M.P.
7. The Hon. Dr. Eseli Simiyu, M.P.
8. The Hon. Joseph O. Magwanga, M.P.
9. The Hon. Zipporah Jesang, M.P.

**IN ATTENDANCE**

### **National Assembly Secretariat**

1. Florence Abonyo - Director Committee Services.
2. Esther Nginyo - Third Clerk assistant
3. Hassan A. Arale - Third Clerk Assistant.
4. Dennis Mogare - Third Clerk Assistant.
5. SandeMarale - Research officer
6. Sidney Lugaga - Legal Counsel.
7. Rose Omutere - Hansard
8. Faith Makena - Serjeant at Arms.
9. Stephen Omunzi - Office Assistant

### **MIN.NO. DCH 237/2015: PRELIMINARIES.**

The Chairperson called the meeting to order at 9.30 am after prayer was said by Hon. Dr. James Murgor, MP. She welcomed all present welcomed all present to the consultative meeting between the National Assembly Committee on Health and Senate Standing Committee on Health alongside other stakeholders, the CIC and the Ministry of Health which was geared towards building consensus on specific provisions of the Health Bill, 2015.

### **MIN.NO. DCH 238/2015: CONSIDERATION OF HEALTH BILL, 2015.**

Various stakeholders made presentations on their perspectives of the Health Bill, 2015 as follows;

#### **1. THE SENATE STANDING COMMITTEE ON HEALTH**

The Standing Committee considered the Bill and noted the following-

##### **1. Duties of national government**

**Clause 15** outlines the duties of the national government. The national government should however carry out its duties in consultation with the county governments.

##### **2. County Health System**

**Clause 19(4a)** of the Bill outlines the qualifications of the County Director of Health. The requirement to have a Master's degree is too high and some county governments may not be able to fill this vacancy, it should be sufficient that the person is a medical practitioner.

##### **3. Devolution of Public Health Facilities**

**Clause 24** of the Bill provides that development of public health facilities shall be devolved progressively. However, the Committee appreciates that these functions have already been devolved under Legal Notice No. 116 of 2013. This clause if retained, will be setting a new criteria for devolution of the health function.

#### **4. Retention of service provision**

**Clause 25(b)** makes reference to specialized health activities which should effectively be under the national government. It is critical that the Bill should define what these specialized activities are, so that the county governments can be clear when they set up health facilities.

#### **5. Classification of levels of health care delivery**

**Clause 26 and the First Schedule** of the Bill deals with the classification of health care facilities. It is important to clarify that level 4 and level 5 hospitals shall be under the county governments.

Under the functions of level 5 hospitals, those with capacity should be allowed to train higher cadre of health workers if the infrastructure permits.

#### **6. Composition of the Kenya Health Professions Oversight Authority**

**Clause 28** makes provision for the membership of the Authority. As the Authority's major functions revolve around regulation of the professionals, it would be important to have a representative of the county governments, as the professionals will be working in the county governments.

#### **7. Membership of the National Research for Health Committee**

One of the functions of level 5 hospitals is to act as research centers. It is proposed that these hospitals be under the county governments. In as much as the National Research for Health Committee is a technical Committee, it is proposed that the county governments be represented by a person befitting the same technical competence. The person could be nominated by the Council of Governors.

#### **Procurement of drugs.**

County pharmacies were transferred to county governments.

**Clause 37 (1)** of the Bill provides that the procurement for the public health services of health products and technologies shall be undertaken in line with the Public Procurement and Disposal Act as well as the inter-governmental arrangements for medicine and medical products agreed upon *where the Kenya Medical Supplies Authority is the primary provider.*

This provision should include a rider that other medical suppliers should supplement KEMSA.

## 2. THE MINISTRY OF HEALTH.

The Ministry made a presentation on the policy that formed the basis of the Health Bill, 2015 as follows;

- i. The Policy has been developed under the stewardship of the national government through an evidence-based and extensive consultative process with key stakeholders including; county governments, other government sectors, departments and agencies, constitutional bodies, development partners, implementing partners, private sector and civil society organizations.
- ii. The policy goal is to attain the highest possible health standards in a manner responsive to the population needs and it aims at supporting provision of *equitable, affordable and quality health and related services at the highest attainable standards to all.*
- iii. *The policy targets* to attain a level and distribution of health at a level commensurate with that of a middle income country with key targets being 16% improvement in life expectancy, 50% reduction in annual deaths and 25% improvement in years lived with disability.
- iv. The policy *Implementation* will be *collaborative* efforts of *all* stakeholders and actors adopting a *multisectoral* approach, will harness and synergize health service delivery of the *different* levels of government and *different* health service providers, and will *harmonize* within existing legal and government policy and planning frameworks.
- v. *The policy is structured to ensure;*
  - a) Delivery of efficient, cost-effective and equitable health services;
  - b) Devolution of health service delivery, administration and management to the community level;
  - c) Stakeholder participation and accountability in health services delivery, administration and management;
  - d) Operational autonomy of various levels of government;
  - e) Efficient and cost-effective monitoring, evaluation, reviewing and reporting systems;
  - f) Smooth transition from the current to the proposed devolved arrangements; and
  - g) Complementarities of efforts and interventions.

- vi. Implementation of the policy will be tracked using a set of financial and non-financial indicators to monitor; adherence to constitutional requirements, national goals and targets, health sector priorities elaborated in Vision 2030 and county specific targets and goals.
- vii. The policy will be reviewed through a mid-term and end term review and will be benchmarked against the best practices from across the globe.

**3. OFFICE OF THE DEPUTY PRESIDENT LEGISLATIVE AFFAIRS SECTION.**

| <b>Legislative Impact Statement</b> |  |
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| <b>Objective of the Bill</b>        | <ul style="list-style-type: none"> <li>• The broad objective of the Bill is to establish a unified health system, to co-ordinate the inter-relationship between the national government and the county government health systems, to provide for regulation of health care service and health care service providers, health products and health technologies and for connected purposes.</li> <li>• The Bill's more specific objectives are set out under Clause 3 as follows; to-               <ul style="list-style-type: none"> <li>○ Establish a national health system which encompasses public and private institutions and providers of health services at the national and county levels and facilitate a progressive and equitable manner, the highest attainable standard of health services;</li> <li>○ Protect, respect, promote and fulfill the health rights of all persons in Kenya to the progressive realization of their right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment;</li> <li>○ Protect, promote and fulfill the rights of children to</li> </ul> </li> </ul> |

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|  | <p>basic nutrition and health care services contemplated in Articles 43(1)(c) and 53(1)(c) of the Constitution;</p> <ul style="list-style-type: none"> <li>o Protect, respect, promote and fulfill the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health;</li> <li>o Recognize the role of health regulatory bodies established under any written law and to distinguish their regulatory role from the policy making function of the national government.</li> </ul>  |
| <p><b>Conformity with the Constitution</b></p> | <ul style="list-style-type: none"> <li>• The Bill primary mandate is to facilitate the realization of the right to the highest attainable standards of health. It does this by providing for the progressive access for provision of promotive, preventive, curative and rehabilitative services.</li> <li>• At the same time, the Bill recognizes the constitutional right of persons to be treated with dignity, respect and have their privacy respected in accordance with the Constitution.</li> <li>• The Bill also appreciates the fact that health is devolved or rather a concurrent function between the national and county levels of government. As such it sets out a co-ordination framework for the inter-relationship between the national government and the county health systems within a unified national health system.</li> <li>• Be as it may, one of the greatest tests of the Bill's constitutionality shall be in its interpretation of what constitutes a National Health Referral facility vis-a-vis a</li> </ul> |

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|  | <p>County Health facility for the purpose of the Fourth Schedule of the Constitution. Whereas Level 5 Hospitals are currently considered as part of County Referral Hospitals, the Bill reclassifies them into National Referral Hospitals (See the Bill's First Schedule on Technical Classification of Levels of Health Care Delivery) . This essentially hands over control of Level 5 hospitals to the national government.</p> <ul style="list-style-type: none"> <li>• In the meantime, we haven't come across any existing law that classifies Level 5 as either national or county health facilities. Law before the 2010 Constitution shows health was an already decentralized function.</li> </ul>   |
| <p><b>Conflict with Existing Legislation</b></p> | <ul style="list-style-type: none"> <li>• The Bill is aimed at transforming the health sector in Kenya; it is aimed at shaking up the status quo.</li> <li>• The Bill has therefore made its intentions known through the supremacy provisions under Clause 77(2) &amp; (3) which provide that - <ul style="list-style-type: none"> <li><i>"(2) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Act.</i></li> <li><i>(3) If, with respect of any particular matter –</i> <ul style="list-style-type: none"> <li><i>(a) a law that was in effect immediately before the effective date assigns responsibility for that matter to a particular state organ or public officer; and</i></li> <li><i>(b) a provision of this Act that is in effect assigns</i></li> </ul> </li> </ul> </li> </ul> |

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|   | <p><i>responsibility for that matter to different state organ or public officer.</i></p> <p><i>The provision of this Act shall prevail to the extent of the conflict."</i></p>   |
| <p><b>Conformity with the Health workers Concerns</b></p> | <ul style="list-style-type: none"> <li>• It is to be noted that apart from the rights of healthcare providers set out under Clause 12 and the formation of a Kenya Health Professions Oversight Authority, there is very little else that the Bill expressly proposes on the welfare of health care providers. The health workers' clamour for a Health Service Commission goes unaddressed this Bill.</li> </ul>  |
| <p><b>Regulatory/Institutional scheme of statute</b></p>  | <ul style="list-style-type: none"> <li>• The Bill proposes the establishment of (i) the Kenya Health Professions Oversight Authority, (ii) the Director-General for health (iii) National Research for Health Committee</li> <li>• It calls for the establishment Of the following other bodies vide Acts of Parliament (i) a single regulatory body for the regulation of health products and health technologies (ii) a regulatory body to regulate the practice of African traditional medicine and alternative medicine, (iii) Kenya National Blood Transfusion Service.</li> <li>• The proposed institutions are key drivers in the realization of the Health Bill's objectives.</li> </ul> |
| <p><b>Impact on National Security</b></p>                 | <ul style="list-style-type: none"> <li>• The Bill has a positive impact on national security in the long run as it works towards assisting people realize the highest attainable standards of health.</li> </ul>   |

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| <p><b>Economic Impact</b></p>  | <ul style="list-style-type: none"> <li>• A proper execution of the Bill shall require considerable expenditure at both levels of government.</li> <li>• The Bill creates a necessary but nevertheless complex interrelationship structure for both levels of government as well as the regulatory bodies and the Oversight Authority. It is expected that considerable resources shall be expended in finding the perfect balance and working harmony in this inter-relationship.</li> <li>• This Bill is perhaps the first Bill that codifies the idea of Health Financing. Though Part X which deals with Health Financing does not provide for specific budgetary allocations, its mere existence in the Bill shall most likely result in are more intense lobbying for health sector funds. It is even likely that the Government shall face health financing litigation based on this Part.</li> </ul> |
| <p><b>Political Impact</b></p> | <ul style="list-style-type: none"> <li>• The health function is shared/concurrent between the two levels of government and thus considerable political focus is expected on this Bill. It is expected that the reclassification of Level 5 Hospitals to National Referral Hospitals shall most likely raise devolution and health related political temperatures.</li> <li>• As far as human resource and welfare of the health workers under the stewardship of the KMPDU is concerned, the Bill does not provide anything radical and the Health Service Commission is absent. We are thus likely to experience continued labour unrest touching on the welfare of medical workers unless the</li> </ul>  |

reclassification of Level 5 hospitals is seen as an acceptable tradeoff with the Commission.

**House-Hold Impact**

- The Bill shall have an immediate and direct impact on Kenyans with its provisions on-
  - the right to emergency treatment of patients at any health facility.
  - The creation of an Oversight Authority, the requirement of a complaint procedure with the Oversight Authority with a right to the Authority to take any necessary measures if a complainant is not satisfied with the response by a health facility or regulatory body. Medical malpractice shall be comprehensively addressed going forward.
  - The Bill has a very good focus on health research and goes to the extent of requiring that at least 30% of the National Research Fund under the Science, Technology and Innovation Act is reserved for health related research (Clause 69 of the Bill).
  - The Bill also encourages the private sector to participate in the improvement of public health facilities by expressly recognizing the PPP model for infrastructure improvement.
  - The Bill also recognized the application of E-Health which shall undoubtedly result in the speedy delivery of health care.
  - In addition, the Bill recognizes that traditional and

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|  | <p>alternative medicine has been widely embraced by the Kenyan citizenry. It thus puts in place measures to ensure that that industry flourishes under proper regulation.</p>                         |
| <p><b>Recommended Tagging of bill:</b><br/><br/>(i.e. is it a bill concerning counties or not)</p> | <ul style="list-style-type: none"> <li>• The Bill is one that affects county governments within the meaning of Article 110 of the Constitution.</li> </ul>  |
| <p><b>General Text</b></p>   | <ul style="list-style-type: none"> <li>• See Schedule of Comments attached</li> <li>• Subject to addressing the comments, the Parliament should pursue the Bill to its logical conclusion.</li> </ul> |

#### 4. COMMITTEE ON HEALTH PROPOSED AMENDMENTS

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| <p><b>Clause 2</b></p>        | <p>Proposal</p>  | <ul style="list-style-type: none"> <li>• Include a definition for- <ul style="list-style-type: none"> <li>○ “notifiable condition/notifiable medical condition”</li> <li>○ “<i>health care provider</i>”</li> </ul> </li> </ul> |
|                               | <p>Rationale</p> | <ul style="list-style-type: none"> <li>• These words are used in the Bill but are not defined yet certain legal obligations have been created surrounding them. They should be defined.</li> </ul>                              |
| <p><b>Clause 9(1)</b></p>     | <p>Proposal</p>  | <p>Amend by adding the word “<i>care</i>” between the words “<i>specified health</i>” and “<i>service</i>”.</p>   |
|                               | <p>Rationale</p> | <ul style="list-style-type: none"> <li>• The Bill’s language is “<i>healthcare services</i>” NOT “<i>health services</i>”.</li> </ul>   |
| <p><b>Clause 12(1)(c)</b></p> | <p>Proposal</p>  | <ul style="list-style-type: none"> <li>• This provision is problematic and should be reviewed.</li> </ul>   |

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| )                                      |           |  |
|  | Rationale | <ul style="list-style-type: none"> <li>How can the right of a person requiring emergency treatment trample over a health care providers right to be treated with dignity?</li> </ul>   |
| Clause 12(1)(c)<br>)                   | Proposal  | <ul style="list-style-type: none"> <li>The needs to be a clarification on whether there is a difference between a <i>“health care provider”</i> and <i>“health personnel”</i>.</li> </ul>  |
|  | Rationale | <ul style="list-style-type: none"> <li>For ease of statutory interpretation, if one word, especially <i>“medical personnel”</i> is synonymous with <i>“health care worker”</i> then it should be dropped.</li> </ul>   |
| Clause 13                              | Proposal  | <ul style="list-style-type: none"> <li>Define the word <i>“health system”</i>.</li> </ul>  |
|  | Rationale | <ul style="list-style-type: none"> <li>Clause 13 employs the phrase <i>“health system”</i>. This is not a defined phrase. In light of the fact that Clause 13 is imposing a legal duty on a user in relation to a health system, then the phrase <i>“health system”</i> should be defined.</li> </ul>  |
| Clause 13(e)                           | Proposal  | There need to be a clarification between the words <i>“health care provider”</i> and <i>“health workers”</i> .   |
|  | Rationale | <ul style="list-style-type: none"> <li>For ease of statutory interpretation, if one word, especially <i>“health care workers”</i> is synonymous with <i>“health care provider”</i> then it should be dropped.</li> </ul>   |
| Clause 16(1)                           | Proposal  | <ul style="list-style-type: none"> <li>Amend to read that <i>“There is hereby established the office of the Director- General for health which is an office in the public service”</i>.</li> </ul>   |
|  | Rationale | <ul style="list-style-type: none"> <li>It was intended that not only should the Director-General for health be recruited by the Public Service Commission, it was also intended that the office be an office in the public service.</li> </ul>   |
| Part VI –<br>National<br>Health System | Proposal  | <ul style="list-style-type: none"> <li>Define the phrase <i>“national health system”</i>.</li> </ul>   |
|  | Rationale | <ul style="list-style-type: none"> <li>The Bill makes extensive reference to the <i>“national health system”</i> and goes even to the extent of imposing a legal duty on that <i>“national health system”</i> (Part VI). Is the <i>national health system</i> an entity? Can it be capable of being sued for breaching an obligation? No. The phrase <i>“national health system”</i>, if it is to be imposed upon a</li> </ul> |

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|  |           | duty, should be defined.   |
| Clause 32 – Health Products, Health Technologies | Proposal  | <ul style="list-style-type: none"> <li>Define the words “<i>health product</i>” and “<i>health technology</i>”.</li> </ul>   |
|  | Rationale | <ul style="list-style-type: none"> <li>Clause 32 under Part V of the Bill calls for the establishment, by an Act of Parliament, of a single regulatory authority body for the regulation of health products and health technologies. What is a “<i>health product</i>”? what is a “<i>health technology</i>”? The Bill does not define what they are. For example, do medical drugs amount to health products? Subsequently, a layman or legal practitioner has no way of authoritatively telling what exactly a health product or technology is. There is need for a definition of these two terms in the Bill so that when Part V calls for a regulatory body for health products and health technologies, it is very clear what items are targeted for regulation.</li> </ul> |
| Clause 57  | Proposal  | <ul style="list-style-type: none"> <li>Amend by replacing the word “<i>entities</i>” with “<i>persons</i>”.</li> </ul>   |
|  | Rationale | <ul style="list-style-type: none"> <li>Clause 57 provides that “<i>private entities shall be permitted to operate hospitals, clinics, laboratories and other institutions in the health sector, subject to licensing by the appropriate regulatory bodies.</i>” This wording seems to leave out private individuals and gives the impression that the only allowed persons are corporate persons e.g. companies. The Clause should be amended to replace the word “<i>entities</i>” with the word “<i>persons</i>”</li> </ul>  |
| Clause 65(1)                                     | Proposal  | <ul style="list-style-type: none"> <li>Amend by inserting the words “<i>(now repealed)</i>” immediately after the words “<i>Science and Technology Act</i>”.</li> <li>Alternatively, delete the words “<i>established under the Science and Technology Act</i>”.</li> </ul>  |
|  | Rationale | <ul style="list-style-type: none"> <li>KEMRI was established under the Science and Technology Act (Cap. 250) which has since been repealed by the Science, Technology and Innovation Act (No. 28 of 2013). Clause 65(1) should thus be amended to read “<i>The Kenya Medical Research Institute established under the Science and Technology Act (now repealed) shall review</i>”</li> </ul>   |

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|                                     |           | <p><i>its programmes to optimally attune to the health interests of the population and overall programme of health research."</i></p> <ul style="list-style-type: none"> <li>Alternatively, the words "<i>established under the Science and Technology Act</i>" can be deleted. This shall do away with the need of clarifying whether or not the Science and Technology Act was repealed.</li> </ul>  |
| Clause 67(1)                        | Proposal  | <ul style="list-style-type: none"> <li>Amend to read "<i>Where medical and scientific research is to be conducted on human subjects, details shall in all cases be submitted as per the regulations articulated under the Commission for Science, Technology and Innovation established under the Science, Technology and Innovation Act.</i>"</li> </ul>  |
|                                     | Rationale | <ul style="list-style-type: none"> <li>The Commission for Science, Technology and Innovation is established under the Science, Technology and Innovation Act NOT the Science and Technology Act.</li> </ul>  |
| Note No. 2 under the First Schedule | Proposal  | <ul style="list-style-type: none"> <li>Amend the Note to by deleting the word "<i>Hospital</i>" immediately after the word "<i>Referral</i>" and replacing therefore the words "<i>Health Facilities</i>".</li> </ul>  |
|                                     | Rationale | <ul style="list-style-type: none"> <li>The national government's take over for Level 5 hospitals from county governments shall in all likelihood open up political and legal battlefronts. It is therefore necessary to ensure that there is a complete harmony of language between the wording of the constitution and that of the Bill to the greatest extent possible. The Fourth Schedule of the Constitution makes use of the words "<i>national referral health facilities</i>" as opposed to "<i>national referral hospitals</i>".</li> </ul> |

MIN.NO. DCH 239/2015

ADJOURNMENT

There being no other business the meeting was adjourned at 1.00 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE: ..... 8/9/2015 .....

MINUTES OF THE 51<sup>st</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH  
HELD IN 4<sup>th</sup> FLOOR CONTINENTAL HOUSE, ON THURSDAY  
9<sup>TH</sup> JULY, 2015, AT 10.00 AM.

**PRESENT**

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

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Patrick Musimba, M.P.
2. The Hon. Mwashima Masoud, M.P.
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. Fred Outa, M.P.
8. The Hon. Dr. James O. Gesami, M.P.
9. The Hon. Kamande Mwangi, M.P.

**IN ATTENDANCE**

Hon. Kubai Iringo, M.P- Friend of the Committee.  
Hon. Dawood Rahim, MP – Friend of the Committee

**NHIF OFFICIALS;**

- |                 |   |                      |
|-----------------|---|----------------------|
| 1.S.Ole Kirgoty | - | C.E.O NHIF.          |
| 2.Lucy Rono     | - | Corporate Secretary. |

- 3.Ambrose Lugho - Director Operations and quality.
- 4.Geoffrey mwangi - Director Finance
- 5.Martin Ngari - In-charge Benefits.

**KENYA ASSOCIATION OF PRIVATE HOSPITALS OFFICIALS.**

- 1.Dr. Mohamed Abdi - Member.
- 2.Dr. C.B.Ntalo Were - Member
- 3.Dr. CK Thiakum - Chairman mount Kenya Region.
- 4.John A. M Naliti - C.E.O/ Consultant.

**COMMISSION ON IMPLEMENTATION OF THE CONSTITUTION OFFICIALS.**

- 1.Catherine Mumma - Commissioner
- 2. James Wagala - P.P.O.

**National Assembly Secretariat**

- 1. Dennis Mogare - Third Clerk Assistant.
- 2. Hassan A. Arale - Third Clerk Assistant.
- 3. Marale Sande - Research officer III
- 4. Sidney Lugaga - Legal counsel.
- 6. John Mungai - Hansard

**MIN.NO. DCH 217/2015: PRELIMINARIES.**

The Chairperson called the meeting to order at 10.30 am and prayer was said. Thereafter, the Chairperson welcomed all present and invited them to do self-introduction.

**MIN.NO. DCH 218/2015: MEETING WITH COMMISSION ON IMPLEMENTATION OF THE CONSTITUTION (CIC) ON THE HEALTH BILL, 2015.**

The CIC Commissioner Catherine Mummo gave an overview of the Health bill and the areas that the commission has separated the profession and the products though the summary was sent through the Clerk of the National Assembly vide a letter Ref. CIC/3/14/Vol.I/(93) dated 8<sup>th</sup> June, 2015. In the audit of the bill, the Commission noted that:

The Commission received the final draft from the Health Bill from the Ministry in July 2014 and facilitated two stakeholders consultations; one with the health practitioners, NGOs and representative from various government ministries and departments as well as representatives from the counties.

- i. The Commission also organized a drafting retreat in Maanzoni with representatives from the Kenya Law Reform Commission, Ministry of Health, County Government representatives and CIC to facilitate clause by clause review and amendment of the bill to incorporate the concerns of the stakeholders.
- ii. The Commission held more technical sessions with the ministry to work on the provisions relating to the establishment of one authority to handle issues relating

- to standards in line with the recommendations of the East African Community Sector on Health and the task force on parastatal reforms.
- iii. The Commission then forwarded an advance copy of the Bill to the Cabinet Secretary in the Ministry of Health and the office of the Attorney General copying the Parliamentary Health Committees and the governors in December 2014.
  - iv. The Commission then scheduled a two day roundtable meeting to be held in February 2015 to finalize on the Bill; however, CIC was advised by the Ministry's representative of an ongoing matter in court by one of the health professional bodies, challenging provisions of the Bill. The Ministry suggested that the meeting should wait as result of the court proceedings.
  - v. The Commission was of the view that that concerns relating to the Bill should be addressed at the roundtable meeting and where there is no consensus, the matter can then be challenged once the legislative proposal becomes law.
  - vi. The Commission sought the Attorney General's guidance during which period it learnt that the Cabinet had approved an earlier draft of the Health Bill which the Commission has since audited against the draft processed by it.

#### **Committee Observations.**

The Committee made the following observations that;

- i. There is a general view from the public that there should be a Health Commission to look after the welfare of the health workers. There is therefore need to agree on a health commission that is not unconstitutional as it is important to retain the few medical specialists in the country as many of them are leaving country for other greener pastures.
- ii. The CIC version of the Health Bill is too detailed containing some provisions which ideally should be in regulations; for instance in Clause 9.
- iii. Although CIC was of the opinion that the Director General should not infringe on the counties, there is need to have a link at the county level to ensure that standards and policies are harmonized from the national to the county level.
- iv. There should be inter-governmental relations and forums in the law to ensure that standards and policies are adhered to as well as create the need for consultations. In this regard, the CIC should guide on how to link the two levels of government without breaching the constitution.
- v. There is need for more consensus with the CIC so that the end product of the Health Bill is acceptable. To this end, it was agreed that there is need for a joint retreat with the Ministry of Health, CIC and the Committees on Health from the National Assembly and the Senate at a later date.
- vi. Although human resource is one of the resources required in the counties, there is no specific functions in the fourth schedule to any level of government regarding this very important asset in the health sector.

MIN.NO DCH. 219/ 2015: MEETING WITH NATIONAL HOSPITAL INSURANCE FUND C.E.O REGARDING THE PETITION BY THE ASSOCIATION OF PRIVATE HOSPITALS ON LEGAL RECOGNITION BY THE NHIF.

Mr. S. Ole Kirgotty, the C.E.O, NHIF appeared before the committee to respond to the issues raised in a petition by the Kenya Association of Private Hospitals requiring to be recognized by the Fund. The CEO submitted to the issues raised as follows;

*Engagement with Kenya association of private Hospitals ( KAPH) review of capitation rates;*

- i. The fund is empowered by the enabling Act to declare hospitals to provide both in and out patients covers. The process of declaration of hospitals has evolved since inception in 1966 Until 2011, when NHIF was offering inpatient cover exclusively. The hospitals contracted to offer services under this cover, have been progressively inspected since their dates of empaneling upon application. After receipt of application, the fund commences accreditation process through inspection of the health facilities. Identification of facilities is based on performance standards for quality of care that include.
  - License from Kenya medical practitioners and dentist board.
  - Facility infrastructure.
  - Diagnostic capacity
  - Infection prevention capacity
  - Referral systems
  - Records and information system
  - Human Resources for Health.
- ii. The government in fulfilment of the obligations to ensure access to quality healthcare introduced a comprehensive medical insurance cover for its employees and their eligible dependents with effect from 1<sup>st</sup> of January 2012. The insurance cover is administered by the national Hospital insurance Fund (NHIF).
- iii. The cover provides for both out-patient medical services in NHIF accredited government, mission and private hospitals in the country. The scheme is operational within the framework envisaged and the board is committed to ensure that the scheme

- continue to run smoothly as consultations are held extensively with stakeholders to ensure that the fund meets member expectations and to safeguard the general public interest.
- iv. The capitation rates approved by the Board for the civil servants and Disciplined services is ksh.2,850 per year for principal member plus (5) dependents for private hospitals and ksh.1500 for government Hospitals.
  - v. NHIF and KAPH have held various meetings on the matter. Though the minutes have not been confirmed and signed the content is true reflection of the deliberations.
    1. Minutes of 20<sup>th</sup> sitting February 2014.
    2. Minutes of 27<sup>th</sup> may 2014
    3. Minutes of 19<sup>th</sup> June 2014.
    4. Minutes of 27<sup>th</sup> June 2014.
    5. Minutes of 12<sup>th</sup> August 2014.
    6. Minutes of 8<sup>th</sup> May 2015.
  - vi. The capitation formula is for member plus declared dependents that must be registered in the NHIF data and forms the basis of the number of beneficiaries to be served by the healthcare providers. The members also have the right to choose the healthcare provider for service delivery. The capitation amounts paid to healthcare providers are therefore based on the data declared periodically by the members of the scheme and assigned to the healthcare providers chosen by the members.
  - vii. The NHIF and KAPH concurred that any review of capitation rates are subject to and guided by actuarial valuations and therefore any review for the civil servants and Disciplined Services medical scheme would await the outcome of actuarial recommendations.
  - viii. *The* payments payments made to private healthcare providers for the financial year 2014/2015 amounted to Kshs. 4.2 billion.
  - ix. The NHIF Act no.9 of 1998 provides for representation of the members of the board of management from various stakeholders. The matter of review of the board representation is within the policy direction of government through the parent ministry.

#### Committee concerns.

The Committee raised the following concerns that:

1. Based on the Petitioners prayers, that KAPH has legal personality in the NHIF Board, it is the responsibility of the Committee on Health and KAPH to initiate the process of amending the NHIF Act to change the board membership.
2. Although the Fund provided the actuarial studies report for Civil Servants and Disciplined Services Medical Scheme by Alexander Forbes, it was noted that there

was no adequate data to enable sufficient analysis of the scheme. There is therefore need for another study with adequate data.

3. The actuarial study has not defined the population for which the health providers needed to serve and thereby transferring too much risk to the provider. There is therefore need to have mechanisms such as gatekeeping fee to cushion the providers.
4. Although the NHIF has various cadres for contribution based on the incomes, the cadre for self-employed and voluntary contributors who pay Kshs. 500 and Kshs. 300 per month respectively were highly charged compared to those who are employed and with constant income in the lower cadres. There is therefore need to review the contributions for the self-employed and the voluntary contributors.
5. The NHIF and KAPH need to engage through their constant engagements to resolve the issues that have been raised amicably.
6. Although the Kenya Medical Association which is a welfare association for doctors, is meant to represent the interests of KAPH in the NHIF Board, not all Members of KAPH would have their interests represented as some KAPH Members are not medical doctors. There is therefore need for an amicable solution for representation of KAPH.

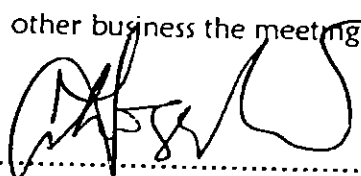
#### WAY FORWARD.

1. The Committee on Health and KAPH need to initiate on the process to resolve the issue of board representation which is not the responsibility of NHIF.
2. Regular Consultative sessions should continue between NHIF and KAPH to resolve the administrative issues raised by the petitioner.
3. KAPH should provide the Committee with the list of their membership.
4. The NHIF should provide Committee the number of population for each facility as contained in the actuarial study within two weeks.
5. The NHIF is to provide a list per sub-county for the beneficiaries of the Medical Scheme for the elderly and the vulnerable.

MIN.NO. DCH 220/2015

#### ADJOURNMENT

There being no other business the meeting was adjourned at 1.45 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....8/9/2015.....

**MINUTES OF THE 50<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE 2<sup>ND</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 7<sup>TH</sup> JULY, 2015 AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Rachael Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Zipporah Jesang, M.P.
5. The Hon. David Karithi, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. Dr. Naomi Shaban, M.P.
8. The Hon. Fred Outa, M.P.
9. The Hon. Dr. James Nyikal, M.P.
10. The Hon. Mwahima Masoud, M.P.
11. The Hon. John Nyaga Muchiri, HSC, M.P.
12. The Hon. Michael Onyura, M.P.
13. The Hon. Hassan Aden Osman, M.P.
14. The Hon. Mwinga Gunga, M.P.
15. The Hon. Leonard Sang, M.P.
16. The Hon. James Gakuya, M.P.
17. The Hon. Raphael Milkau Otaalo, M.P.
18. The Hon. Kamande Mwangi, M.P.
19. The Hon. Joseph O. Magwanga, M.P.
20. The Hon. Dr. James Murgor, M.P.
21. The Hon. Dr. Stephen Wachira, M.P.
22. The Hon. Dr. Eseli Simiyu, M.P.
23. The Hon. Paul Koinange, M.P.
24. The Hon. Dr. James O. Gesami, M.P.

**ABSENT**

1. The Hon. Dr. Susan Musyoka, M.P
2. The Hon. Stephen M. Mule, M.P
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.

## IN ATTENDANCE

### National Assembly Secretariat

1. Mr. Dennis Mogare - Third Clerk Assistant.
2. Mr. Hassan Arale - Third Clerk Assistant.
3. Ms. Sande Marale - Senior Researcher
4. Mr. Sydney Lugaga - Legal Counsel
5. Ms. Rahab Chepkilim - Audio Recording Officer
6. Mr. Philip Parsaloi - Intern, Legal officer
7. Mr. John Mungai - Intern, Audio Recording Officer

### Ministry of Health

1. Dr. Muraguri N. - DMS, Ministry of Health
2. Dr. Onyancha P.K. - DDMS, Ministry of Health
3. Mr. Daniel Yumbya - CEO, Medical Practitioners and Dentists Board
4. Dr. K.C. Koskei - Pharmacy and Poisons Board
5. Dr. Fred M. Siyoi - Pharmacy and Poisons Board
6. Dr. Margrete Oduor - Ministry of Health
7. Dr. Isaq Odongo - Ministry of Health
8. Ms. Gladys Mugambi - Ministry of Health
9. Dr. Kioko J.K. - Ministry of Health
10. Dr. Peter Ihmuin - Ministry of Health
11. Ms. Belinda Kamar - Ministry of Health

### MIN.NO. DCH 213/2015: PRELIMINARIES

The meeting was called to order at 10:19 am and a prayer was said by Hon. Dr. Robert Pukose, M.P. Thereafter, the Chairperson welcomed all present to the meeting and requested them to do self-introduction.

### MIN.NO.DCH 214/2015: MEETING WITH THE MINISTRY OF HEALTH OVER THE HEALTH BILL, 2015.

The Chairperson stated that the meeting was convened through a letter initiated by the Committee to the Ministry of Health dated 23<sup>rd</sup> June, 2015 inviting the Ministry to a joint deliberation on the Health Bill, 2015 with a view to building broad consensus.

The Chairperson stated that the National Assembly's Committee on Health had reviewed the Health Bill, 2015 clause by clause and prepared a document on areas that need to be clarified by the Ministry as the initiator of the Bill. She also stated that the Committee had equally compared the draft submitted from the Ministry with the one drafted by the Commission for the Implementation of the Constitution (CIC). The Chairperson then invited the Director of Medical Services, Ministry of Health to make his presentation.

The Director of Medical Services, Ministry of Health gave the apologies of the Cabinet Secretary, Ministry of Health who was held in another ministerial function and could therefore not attend the meeting. He then made his presentation informing the Committee that the Ministry had considered four areas that needed review to strengthen the Bill. These included:

1. Provisions on Quality of Health Care

Being a function of the national government, the Ministry felt that there ought to be provisions in the Bill that all health facilities countrywide should have a quality management system in place. This could make adherence to standards mandatory, not an optional issue as it seemed to be the case currently.

2. Powers of the Director General.

There was need to include provisions granting more powers to the Director General especially with regard to responding to medical emergencies, especially those emanating from across the borders.

3. Accreditation of hospitals/health facilities

There was need to strengthen Schedule One of the Bill to provide for continuous upgrade/downgrade depending on service levels at a facility.

4. Realignments

That because the Health Bill, 2015 affects other laws, there was need for realignment as tabulated in the matrix below:

| PARTS OF THE HEALTH BILL                  | OTHER LAW IT AFFECTS                                   | EXTENT OF THE EFFECT  |
|---|--|---|
| I- Preliminary Provisions<br>Sections 1-5 | Constitution of Kenya                                  | Actualizes<br>1. Article 21 on implementation of Rights.<br>2. Article 43(1)(a) right to the highest attainable standard of health<br>3. Article 53 (1)(c) on the rights of Children to healthcare. |
| II- Rights and Duties<br>Sections 6-21    | Constitution of Kenya<br><br>Cap 242 Public Health Act | Actualizes<br>1. Article 54(1)(e) on right to emergency treatment.<br>2. Article 35(1) on right to information.<br>Amendment of section 3 to effect change of office from                           |

|   |  |  |
|---|--|--|
|   |  | <p>the Director of Medical Services to create the Director General in the Health Bill.</p> <p>Amend the Act by deleting sections 7B of Act n. 15/90, from establishment of District Health Management Boards to County Departments of Health.</p> <p>Amendment to move the functions of the central committee of Health to the Director General.</p>   |
| III- Public Health Facilities<br>Sections 22-26   | Affects no other law   |  |
| IV- Establishment of the Kenya Health Professions Oversight Authority<br>Sections 27-31 | Affects no other law   |  |
| V- Regulation of Health Products and Health Technologies<br>Sections 32-37              | <p>Radiation Protection Cap 243</p> <p>Pharmacy and Poisons Act Cap 244</p> <p>Nurses Act Cap 257</p> <p>Kenya Laboratory Technicians and Technologists Act Cap 253A</p> | <p>Amendment of Sections 8 and 11 of the Radiation Act in so far as it concerns the regulation of radioactive material and biological weapons.</p> <p>Amendments to sections in part III on poisons in the Pharmacy and poisons Act to separate products from the practice.</p> <p>Amendments to delete the regulation of nursing commodities.</p> <p>Amendment to delete the regulation of reagents and other health products and technologies.</p> |

|   |  |   |
|---|--|---|
|   | Food, Drugs and Chemical Substances Cap 254            | Amendment to delete regulation of drugs and chemical substances.  |
| VI- Promotion and Advancement of Public and Environmental Health Section 38-40          | Cap 242 Public Health Act                              | Amendment of Part IV: prevention and suppression of infectious disease to give functions to the national government on public and environmental health. |
| VII-Mental Health Section 41  | Affects no other law                                   |   |
| VIII – Traditional and Complimentary Medicines Sections 42-47                           | Affects no other law                                   |   |
| IX- Human Organs, Human Blood, Blood Products, Other Tissues and Gametes Sections 48-53 | Tissue Act Cap 252                                     | Repeal Cap 252  |
| X- Health Financing Sections 54-55  | Affects no other law                                   |   |
| XI- Role Private Sector Participation Sections 56-60                                    | Affects no other law                                   |   |
| XII- Promotion and Conduct of Health Research Sections 61- 70                           | National Science and Technology Institutes Act of 2012 | Actualizes section on the establishment of a research committee for Health  |
| XIII- E- Health Sections 71-73  | Affects no other law                                   |   |
| XIV – Inter Departmental Collaboration Sections 74-76                                   | Affects no other law                                   |   |
| XV- Transitional and Miscellaneous Provisions 77-79                                     | Affects no other law                                   |   |

## RESOLUTIONS

The Committee and the Ministry of Health agreed on the following; that:

1. Accreditation in terms of levels of a facility would apply to both private and public health facilities.

2. Schedule one; note 3 of the Bill shall be amended to provide for upgrade/downgrade of a health facility depending on service levels therein.
3. Each county needs to have at least 2 referral hospitals. These would curb discrimination against patients from outside a county as the budget for such facilities would be catered for nationally. The facilities would also provide internship to students as training was still a national function.
4. There was need to prioritize formulation of stringent regulations to cover operationalization of the fund (Clause 15 (w) meant to compensate providers of emergency health services should be prioritized. The regulations ought to provide, among other things, for targeted facilities, source of funding and management of the fund.
5. Clause 7(5) of the Bill which had been proposed for deletion by the Committee should be retained as it only provides for punishment to institutions that have ability to provide emergency treatment but decline to.
6. The phrase “except elective abortion” in clause 6 (1) (a) be deleted.
7. There was need for proper definitions of the following two terms to be included in the Bill: “health care provider” and “health care institution”.
8. There was need to make Clause 14 (1) clearer in terms of the nature of complaints anticipated therein i.e. administrative complaints not professional negligence related complaints.
9. The amendment to clause 20 (L) proposed by the Committee stands as it seeks to cushion only the poor – indigent users.
10. There was need for provisions on establishment of a Health Services Commission whose role shall be administrative and policy formulation with respect to healthcare workers.
11. There was need to introduce Clause 26(b) that provides for a technical forum to be referred to as Health Sector Intergovernmental Consultative Forum – a platform that is envisaged to bring together national and county government health technocrats to deliberate on implementation of national health policies and strategies.
12. One body to regulate food and drugs should be established with departments to regulate various aspects of food and drug administration (FDA) under it. The rationale was to:
  - a) Harmonize and curb conflicts between the regulatory bodies. Professional bodies will then regulate only professions, not commodities.
  - b) Provide for the fact that there is proliferation of commodities and the need to regulate how they are imported, distributed or produced.
  - c) Put food and drugs administration (FDA) under one regime and avoid the contradictory legislations in place currently.
13. In clause 33 (f) the word “weapons” should be replaced by the word “products”.
14. To ensure equity in health care across the country, specialists will be treated as a national asset to be rotated around the country in line with clause 75 (3).

15. In clause 76 (a) the words "workers' health" be replaced with the words "health workers welfare" to correct a typographical error.
16. Clause 78 seems misplaced because the Bill was done in 2012 before the advent of devolution and therefore the clause needs to be relooked at in terms of the current time, after rolling out of devolution.

MIN.NO.DCH 215/2015: ANY OTHER BUSINESS

1. There was need for equitable remuneration across the country for all cadres of health care workers. The Ministry of Health was asked to present a policy document on compensation of health workers across all cadres countrywide to the Committee.
2. The management crisis and its impact on health care provision at the Moi Teaching and Referral Hospital was deliberated upon and the DMS assured the Committee that the process of seeking a suitable replacement to the current CEO was set to begin through a competitive process.
3. It was reiterated that a retreat involving the Committee and the Ministry of Health would be organized at a mutually convenient time to address, among others, the prospects of universal health coverage through the NHIF and the Managed Equipment Service Project (MES).

MIN.NO.DCH 216/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.06 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

**MINUTES OF THE 49<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN CPA ROOM, ON THURSDAY 2<sup>ND</sup> JULY, 2015, AT 4.00 PM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson.)
3. The Hon. Mwinga Gunga, M.P.
4. The Hon. Hassan Aden Osman, M.P.
5. The Hon. Kamande Mwangi, M.P.
6. The Hon. Michael Onyura, M.P.
7. The Hon. Zipporah Jesang, M.P.
8. The Hon. Dr. James Nyikal, M.P.
9. The Hon. David Karithi, M.P.
10. The Hon. Leonard Sang, M.P.
11. The Hon. Dr. James O. Gesami, M.P.
12. The Hon. Dr. Naomi Shaban, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Patrick Musimba, M.P.
2. The Hon. Mwahima Masoud, M.P.
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. Dr. James Murgor, M.P.
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. Dahir D. Mohamed, M.P.
8. The Hon. Alfred Outa, M.P.
9. The Hon. John Nyaga Muchiri, M.P.
10. The Hon. Stephen M. Mule, M.P.
11. The Hon. Dr. Eseli Simiyu, M.P.
12. The Hon. Dr. Susan Musyoka, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. James Gakuya, M.P.
15. The Hon. Raphael Milkau Otaalo, M.P.
16. The Hon. Dr. Stephen Wachira, M.P.
17. The Hon. Paul Koinange, M.P.

## IN ATTENDANCE

### National Assembly Secretariat

1. Esther nginyo - Third Clerk assistant
2. Hassan A. Arale - Third Clerk Assistant.
3. Sande Marale - Research officer
4. Sidney Lugaga - Legal Counsel.

## MIN.NO. DCH 210/2015: PRELIMINARIES.

The Chairperson called the meeting to order at 4.30 pm after prayer was said by Hon. Michael Onyura, MP. The Chairperson then welcomed the Members to the meeting.

## MIN.NO. DCH 211/2015: CONSIDERATION OF HEALTH BILL, 2015.

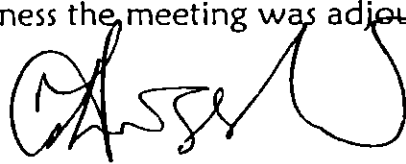
| CLAUSE | PROPOSED AMENDMENT  | JUSTIFICATION FOR AMENDMENT   |
|--------|---|---|
| 71     | Adopted as it is  |   |
| 72     | That Clause 72 be amended by deleting sub-clause "h" on Health tourism  | Appears Misplaced so need to place it appropriately.  |
| 73     | That Clause 73(1) be amended by deleting the words " a comprehensive" after the word 'of' and substitute therefor with the words "an integrated"            | To provide for an integrated system from the county to the national level.                                    |
| 74     | That Clause 74 be amended by deleting the words and "in certain matters" after the word 'that'. By deleting the word "interpretation" after the word 'the'. | The words in certain matters are ambiguous. Interpretation of the law is the responsibility of the judiciary. |

|            |   |                      |
|------------|---|----------------------|
|            |   |                      |
| 75         | Adopted. The Ministry of Health to further clarify sub-clause "3"   |                      |
| 76         | That Clause 76(a) be deleted and substituted therefor with the words "Health workers' welfare"  | Typographical error. |
| 77         | Adopted   |                      |
| 78         | That Clause 78(1) be amended by deleting the word "constitution" after the words 'before the' and substitute it with word "establishment" | For clarity          |
| 79         | Adopted. However to include all other areas that are mentioned in the Bill that have not been provided for in this clause.                |                      |
| SCHEDULE 1 | Adopted   |                      |
| SCHEDULE 2 | To provide for penalties for non-disclosure of interest by members of the board   |                      |
| SCHEDULE 3 | To provide for penalties for non-disclosure of interest by members of the Committee.  |                      |

MIN.NO. DCH 212/2015

ADJOURNMENT

There being no other business the meeting was adjourned at 6.30 pm.



SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

8/9/2015

DATE:.....

MINUTES OF THE 47<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH  
HELD IN THE 2<sup>ND</sup> FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT  
BUILDINGS ON TUESDAY, 30<sup>TH</sup> JUNE, 2015 AT 9.30 AM.

**PRESENT**

1. The Hon. Dr. Rachael Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. Susan Musyoka, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. Mwinga Gunga, M.P.
9. The Hon. Leonard Sang, M.P.
10. The Hon. James Gakuya, M.P.
11. The Hon. Raphael Milkau Otaalo, M.P.
12. The Hon. Stephen M. Mule, M.P.
13. The Hon. Kamande Mwangi, M.P.
14. The Hon. Dr. Enoch Kibunguchy, M.P.
15. The Hon. Joseph O. Magwanga, M.P.
16. The Hon. Dr. James Murgor, M.P.
17. The Hon. Dr. Stephen Wachira, M.P.
18. The Hon. Dr. Eseli Simiyu, M.P.
19. The Hon. Paul Koinange, M.P.
20. The Hon. Dr. James O. Gesami, M.P.

**ABSENT**

1. The Hon. Michael Onyura, M.P.
2. The Hon. Alfred Outa, M.P.
3. The Hon. Mwachima Masoud, M.P.
4. The Hon. Alfred Agoi, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. John Nyaga Muchiri, HSC, M.P.
8. The Hon. Dr. Patrick Musimba, M.P.
9. The Hon. Zipporah Jesang, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

- 1. Mr. Dennis Mogare - Third Clerk Assistant.
- 2. Ms. Sande Marale - Senior Researcher
- 3. Mr. Sydney Lugaga - Legal Counsel

**MIN.NO. DCH 201/2015: PRELIMINARIES**

The meeting was called to order at 10:20 am and a prayer was said by Hon. Dr. James Murgor, M.P. Thereafter, the Chairperson welcomed all members present to the meeting and read out the day's Agenda.

**MIN.NO.DCH 202/2015: CONSIDERATION OF THE HEALTH BILL, 2015**

| CLAUSE    | COMMITTEE ACTION<br>(ADOPTION/PROPOSED AMENDMENT)  | JUSTIFICATION FOR<br>AMENDMENT           |
|-----------|--|--|
| Clause 56 | (1) And (2) Adopted  |  |
|           | <p>Insert clause 56 (3) which shall read:</p> <p>“Partnerships entered into under subsection (2) may be for the purposes of, among others -</p> <ul style="list-style-type: none"> <li>(a) mobilization of resources;</li> <li>(b) joint capacity building programs;</li> <li>(c) procurement of medical supplies and technologies;</li> <li>(d) development and management of health infrastructure;</li> <li>(e) coordination of response during emergencies and disasters; and</li> <li>(f) exchange of expertise and personnel.</li> <li>(g) Strengthening of health systems”</li> </ul> <p>Picked from Clause 18 (2) of the CIC version of the Health Bill, 2015.</p> | To provide for the areas of partnership. |
| Clause 57 | Adopted  |  |
| Clause 58 | Adopted  |  |
| Clause 59 | Adopted  |  |
|           | <p>However, the legal counsel was also tasked to draft an amendment to clause 7 to introduce a clause indicating that regulations shall be done to regulate what shall constitute “emergencies”</p>  |  |

|           |   |  |
|-----------|---|--|
| Clause 60 | Adopted   |  |
| Clause 61 | Delete the following: "National Research for Health Committee" and replace them with "National Health Research Committee"   | To align the naming of the Committee with its essence. |
| Clause 62 | (1) Delete the words "ethnic" and "county"<br><br>Introduce clause 62 (2) which deals with a provision for regulations to be done to regulate appointment of members to the National Health Research Committee.   | They are superfluous in the context.                   |
| Clause 63 | The Legal Counsel was directed to research on the term of the Chairperson, and members of the National Health Research Committee and their removal from office and draft clauses on the same to be deliberated upon on Thursday 2 <sup>nd</sup> July, 2015. |  |

**MIN.NO.DCH 203/2015: ANY OTHER BUSINESS**

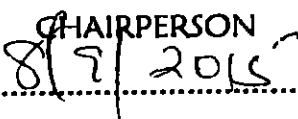
1. Members expressed their concerns over the goings on at the Moi Teaching and Referral Hospital with regard to management crisis. The Legal Counsel was directed to review the provisions of the MTRH Act and report to the Committee on Thursday 2<sup>nd</sup> July, 2015.
2. The Chairperson informed members that an officer serving the Committee was involved in an Inter-Ministerial Preparatory Meeting on the 9<sup>th</sup> Stop Cervical, Breast and Prostate Cancer in Africa Conference scheduled for the 19<sup>th</sup> to 21<sup>st</sup> July, 2015.

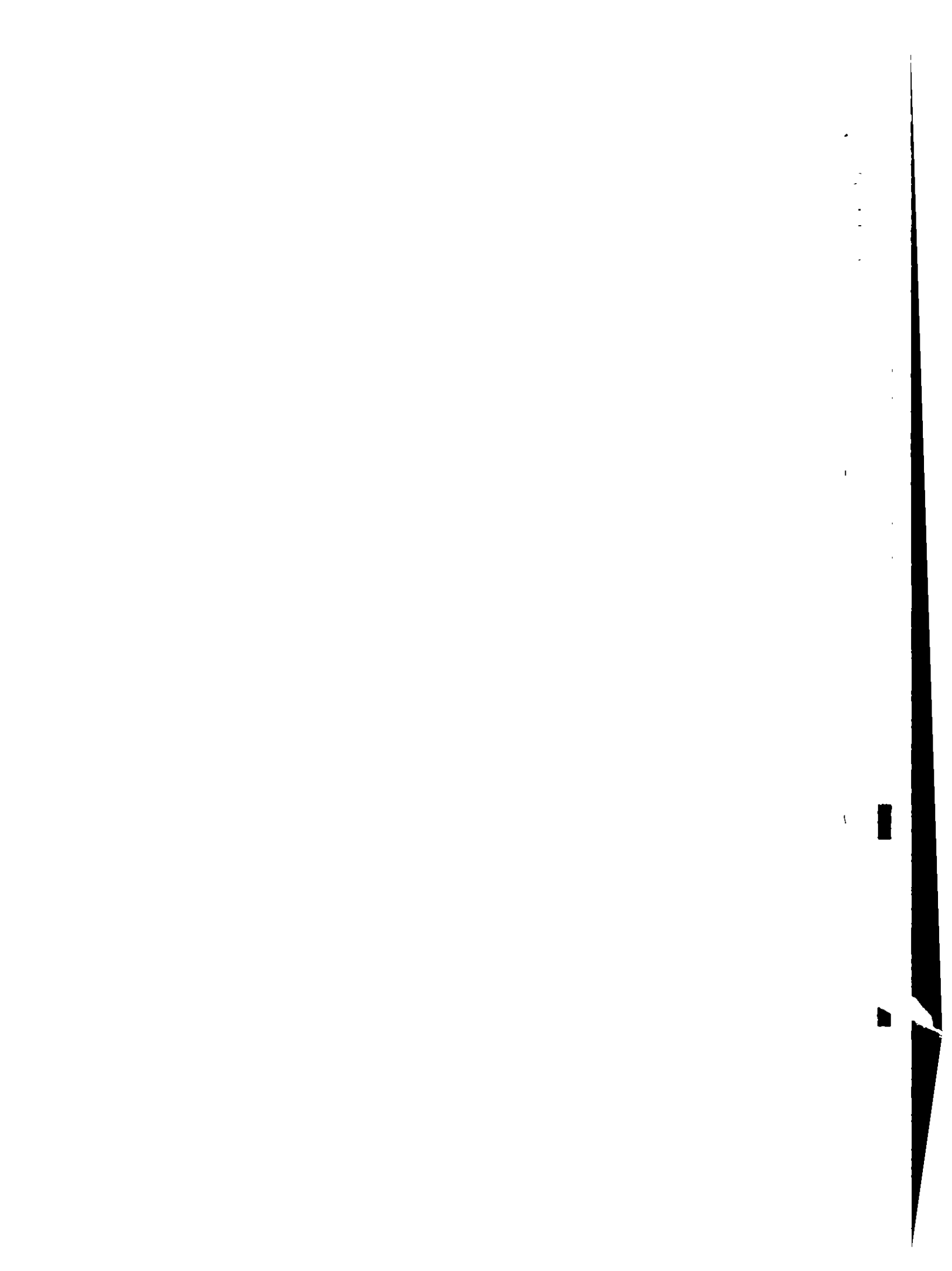
**MIN.NO.DCH 204/2015: ADJOURNMENT**

In there being no other business, the meeting was adjourned at 11.56 am.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON  
DATE:.....



**MINUTES OF THE 46<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH  
HELD IN THE 4<sup>TH</sup> FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT  
BUILDINGS ON THURSDAY, 25<sup>TH</sup> JUNE, 2015 AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Rachael Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. Dahir D. Mohamed, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Dr. Naomi Shaban, M.P.
7. The Hon. Dr. James Nyikal, M.P.
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15. The Hon. Kamande Mwangi, M.P.
16. The Hon. Alfred Outa, M.P.
17. The Hon. Dr. Enoch Kibunguchy, M.P.
18. The Hon. Joseph O. Magwanga, M.P.
19. The Hon. Dr. James Murgor, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Stephen Wachira, M.P.

**ABSENT**

2. The Hon. Michael Onyura, M.P.
3. The Hon. Dr. James O. Gesami, M.P.
4. The Hon. Mwahima Masoud, M.P.
5. The Hon. Alfred Agoi, M.P.
6. The Hon. Dr. Eseli Simiyu, M.P.
7. The Hon. Christopher Nakuleu, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. John Nyaga Muchiri, HSC, M.P.
10. The Hon. Dr. Patrick Musimba, M.P.

## IN ATTENDANCE

### National Assembly Secretariat

- |                      |   |                        |
|----------------------|---|------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant  |
| 2. Mr. Dennis Mogare | - | Third Clerk Assistant. |
| 3. Ms. Sande Marale  | - | Senior Researcher      |
| 4. Mr. Sydney Lugaga | - | Legal Counsel          |

### MIN.NO. DCH 197/2015: PRELIMINARIES

The meeting was called to order at 10:42 am and a prayer was said by Hon. Dr. Susan Musyoka, M.P. Thereafter, the Chairperson welcomed all those present to the meeting and read out the Agenda of the meeting.

### MIN.NO. DCH 198/2015: ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted after being proposed and seconded by Hon. Stephen M. Mule, M.P and Hon. Dr. James Murgor, M.P. respectively.

### MIN.NO.DCH 199/2015: CONSIDERATION OF THE HEALTH BILL, 2015

| CLAUSE    | COMMITTEE ACTION<br>(ADOPTION/PROPOSED AMENDMENT)   | JUSTIFICATION FOR<br>AMENDMENT   |
|-----------|---|--|
| Clause 48 | (1) Adopted   |  |
|           | (2) Insert the word "in" between the words "mentioned" and "subsection"   | To correct a typographical error.  |
|           | <ul style="list-style-type: none"> <li>Ministry of Health to be invited to justify the content of clause 48 (2) and why what was agreed on in the Naivasha consultations was left out.</li> </ul> |  |
|           | (3) and (4) Adopted   |  |
| Clause 49 | (1) Adopted   |  |
|           | (2) Add "(s)" immediately after the word spouse   | To provide for a situation where there is more than one spouse and to conform to the <i>Marriage Act, 2014</i> |
|           | Add the following words immediately after the words "person's death":   | To provide for other possible, legitimate people who can claim the body.                                       |
|           | " and no one else has claimed the body"   |  |
|           | Delete the word "partner"   | To avoid ambiguity   |

|           |   |   |
|-----------|---|---|
|           | (3) Adopted   |   |
| Clause 50 | Adopted   |   |
| Clause 51 | Adopted   |   |
| Clause 52 | (1) (a) Adopted   |   |
|           | (b) delete the word "major" wherever it appears   | For clarity   |
|           | (c) Adopted   |   |
|           | (2) (a) Adopted   |   |
|           | (b) separate the following phrase to stand-alone immediately after clause (2) (b):<br><br>"Authorizes the post mortem examination in writing and in the prescribed manner."   | To correct a syntax error   |
| Clause 53 | Adopted   |   |
| Clause 54 | (1) Delete the word "financial" And insert the following words immediately after the words "by taking":<br><br>"the following financial"<br><br>(b) Delete the following words "and health technology assessment"<br><br>(f) Insert the word "mechanisms" immediately after the words "relevant department" | To correct a syntax error<br><br>The words are misplaced in the context – to ensure logical flow<br><br>To correct a syntax error |
| Clause 55 | Adopted   |   |


...IN.NO.DCH 200/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.05 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

**MINUTES OF THE 45<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE 4<sup>TH</sup> FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 23<sup>RD</sup> JUNE, 2015 AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Christopher Nakuleu, M.P.
5. The Hon. David Karithi, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. Dr. Eseli Simiyu, M.P.
8. The Hon. Dr. Susan Musyoka, M.P.
9. The Hon. Dr. Naomi Shaban, M.P.
10. The Hon. Dr. James Nyikal, M.P.
11. The Hon. Mwachima Masoud, M.P.
12. The Hon. Hassan Aden Osman, M.P.
13. The Hon. Mwinga Gunga, M.P.
14. The Hon. Leonard Sang, M.P.
15. The Hon. James Gakuya, M.P.
16. The Hon. Raphael Milkau Otaalo, M.P.
17. The Hon. Stephen M. Mule, M.P.
18. The Hon. Michael Onyura, M.P.
19. The Hon. Dr. Stephen Wachira, M.P.
20. The Hon. Dr. James Murgor, M.P.
21. The Hon. Dr. James O. Gesami, M.P.

**ABSENT**

1. The Hon. Paul Koinange, M.P.
2. The Hon. Zipporah Jesang, M.P.
3. The Hon. Kamande Mwangi, M.P.
4. The Hon. Alfred Outa, M.P.
5. The Hon. Dr. Enoch Kibunguchy, M.P.
6. The Hon. John Nyaga Muchiri, HSC, M.P.
7. The Hon. Joseph O. Magwanga, M.P.
8. The Hon. Dr. Patrick Musimba, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

- 1. Mr. Dennis Mogare - Third Clerk Assistant.
- 2. Mr. Hassan Arale - Third Clerk Assistant.
- 3. Ms. Sande Marale - Senior Researcher
- 4. Mr. Sydney Lugaga - Legal Counsel
- 5. Mr. Moses Kariuki - Serjeant-At-Arms

**MIN.NO. DCH 193/2015: PRELIMINARIES**

The meeting was called to order at 10:40 am and a prayer was said by Hon. Dr. James Murgor, M.P. Thereafter, the Chairperson welcomed all those present to the meeting.

**MIN.NO. DCH 194/2015: ADOPTION OF THE AGENDA**

The Agenda of the meeting was adopted after being proposed and seconded by Hon. Dr. James Murgor, M.P. and Hon. Dr. Susan Musyoka, M.P. respectively.

**MIN.NO.DCH 195/2015: CONSIDERATION OF THE HEALTH BILL, 2015**

| CLAUSE    | COMMITTEE ACTION<br>(ADOPTION/PROPOSED AMENDMENT)  | JUSTIFICATION FOR<br>AMENDMENT                                    |
|-----------|--|---|
| Clause 38 | Delete (a) in (a)(2) and retain only (2)<br><br>Legal counsel tasked to draft clauses to provide for:<br><ul style="list-style-type: none"> <li>•Hospital waste management</li> <li>•Health impact assessment for projects that may cause health hazards.</li> </ul> | To correct a typographical error                                  |
| Clause 39 | Adopted  |   |
| Clause 40 | Adopted  |   |
| Clause 41 | DELETE "appropriate legislation shall be developed by the national government department of health to-" and INSERT "there shall be established by an act of parliament appropriate legislation to-"<br><br>The rest of the clause (a-e) was adopted                  | To allocate the law making function where it belongs; parliament. |
| Clause 42 | Adopted  |   |
| Clause 43 | (1) DELETE the word "African"  | The term African is restrictive                                   |
|           | (2) Adopted  |   |
|           | (3) DELETE the word "African"  | The term African is restrictive                                   |
|           | (4) Adopted  |   |
| Clause 44 | Deleted  | It is a repetition - see clause 42                                |

|                        |   |                                    |
|------------------------|---|------------------------------------|
| Clause 45              | Deleted   | It is a repetition - see clause 42 |
| Clause 46              | Adopted   |                                    |
| Clause 47              | Adopted   |                                    |
| Clause 49 to Clause 53 | Legal counsel tasked to re-draft the clauses after reviewing the <i>Human Tissue Act</i> and other relevant existing legislation. |                                    |
| Clause 54              | Adopted   |                                    |
| Clause 55              | Adopted   |                                    |

**MIN.NO.DCH 167/2015: ANY OTHER BUSINESS**

1. The Secretariat was tasked to prepare for a visit to Machakos Level 5 Hospital, which had received and installed medical equipment under the MES project, on Tuesday 30<sup>th</sup> June, 2015.
2. The Secretariat was equally asked to prepare for an inspection visit to the slum up grading projects being undertaken through the ministry of health within the month of July, 2015.
3. The Committee also resolved to organize a retreat on The Health Bill, 2015 in Mombasa from 9<sup>th</sup> July, 2015.

**MIN.NO.DCH 196/2015: ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.27 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

**MINUTES OF THE 44<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN TRAVELLERS HOTEL, ON SATURDAY 20<sup>TH</sup> JUNE, 2015, AT 2.00 PM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
- 2.
3. The Hon. Dr. Dahir D. Mohamed, M.P.
4. The Hon. Mwinga Gunga, M.P.
5. The Hon. Dr. Stephen Wachira, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. James Gakuya, M.P.
8. The Hon. Raphael Milkau Otaalo, M.P.
9. The Hon. Kamande Mwangi, M.P.
10. The Hon. Michael Onyura, M.P.
11. The Hon. Zipporah Jesang, M.P.
12. The Hon. Dr. James Nyikal, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. David Karithi, M.P.
15. The Hon. Leonard Sang, M.P.
16. The Hon. Alfred Outa, M.P.
17. The Hon. John Nyaga Muchiri, M.P.
18. The Hon. Stephen M. Mule, M.P.
19. *The Hon. Dr. Eseli Simiyu, M.P.*
20. The Hon. Dr. Susan Musyoka, M.P.
21. The Hon. Dr. Naomi Shaban, M.P.
22. The Hon. Dr. Naomi Shaban, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
2. The Hon. Dr. Patrick Musimba, M.P.
3. The Hon. Mwahima Masoud, M.P.
4. The Hon. Alfred Agoi, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Dr. James Murgor, M.P.
7. The Hon. Dr. Enoch Kibunguchy, M.P.
8. The Hon. Dr. James O. Gesami, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

- |                    |   |                        |
|--------------------|---|------------------------|
| 1. Esther nginyo   | - | Third Clerk assistant  |
| 2. Dennis Mogare   | - | Third Clerk Assistant. |
| 3. Hassan A. Arale | - | Third Clerk Assistant. |
| 4. Sande Marale    | - | Research officer       |
| 5. Joash Kosiba    | - | Fiscal analyst.        |
| 6. Sidney Lugaga   | - | Legal Counsel.         |
| 7. Stephen Kariuki | - | SerJeant at Arms.      |
| 8. Stephen Omunzi  | - | Office Asisstant.      |

**MIN.NO. DCH 189/2015: PRELIMINARIES.**

The chairperson called the meeting to order at 2.30 pm after prayer was said and welcomed the members to the meeting.

**MIN.NO. DCH 190/2015: CONSIDERATION OF HEALTH BILL, 2015.**

The Committee continued with consideration of the Health Bill, 2015 starting from Clause 32. The Committee adopted and agreed to the following amendments:

| CLAUSE | PROPOSED AMENDMENT   | JUSTIFICATION FOR AMENDMENT                               |
|--------|--|---|
| 32     | <p>That clause 32 be deleted and be substituted therefor with;</p> <p style="padding-left: 40px;">32. (1) There shall be legislation for regulation of health products and health technologies.</p> <p style="padding-left: 40px;">(2) The legislation under subsection (1) shall establish regulatory bodies to regulate the various areas contemplated under section 33.</p> <p style="padding-left: 40px;">(3) There shall be established by an Act of Parliament, a single regulatory body for regulation of the regulatory bodies under subsection (2) above.</p> | To establish the Health Products and Technologies Agency. |
| 33     | That Clause 33(1)(f) be amended by deleting the words 'and biological weapons' after the word 'material.'  | This should be regulated under the Ministry of Defence.   |
| 34     | Adopted  |   |

|    |  |  |
|----|--|--|
| 35 | That Clause 35(1) and (2) be amended by deleting the word 'single' | In order to do away with single regulatory body. |
| 36 | To be redrafted  |  |
| 37 | To be redrafted  |  |
|    |  |  |

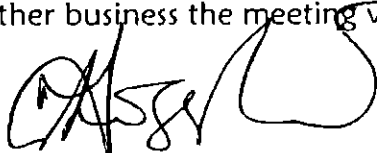
**MIN.NO. DCH 191/2015: ANY OTHER BUSINESS.**

The following matters arose from this agenda item that;

1. The Chairperson prevails upon the Leader of Majority to delay second reading of the Health bill, 2015 which was to be on Tuesday 23<sup>rd</sup> June 2015 order paper to be considered at a later date to allow the committee have a more time to comprehensively study the bill.
2. There was a need to have a programme for the activities that will enhance consideration of the Health Bill, 2015 which would be presented to the Committee during the next sitting.

**MIN.NO. DCH 192/2015                      ADJOURNMENT**

There being no other business the meeting was adjourned at 4.30 pm.



SIGNED.....

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

8/9/2015

DATE:.....

**MINUTES OF THE 43<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN TRAVELLERS BEACH HOTEL, ON SATURDAY 20<sup>TH</sup> JUNE, 2015, AT 9.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Dahir D. Mohamed, M.P.
3. The Hon. Dr. Stephen Wachira, M.P.
4. The Hon. Hassan Aden Osman, M.P.
5. The Hon. James Gakuya, M.P.
6. The Hon. Raphael Milkau Otaalo, M.P.
7. The Hon. Kamande Mwangi, M.P.
8. The Hon. Michael Onyura, M.P.
9. The Hon. Zipporah Jesang, M.P.
10. The Hon. Dr. James Nyikal, M.P.
11. The Hon. Joseph O. Magwanga, M.P.
12. The Hon. David Karithi, M.P.
13. The Hon. Leonard Sang, M.P.
14. The Hon. Alfred Outa, M.P.
15. The Hon. John Nyaga Muchiri, M.P.
16. The Hon. Stephen M. Mule, M.P.
17. *The Hon. Dr. Eseli Simiyu, M.P.*
18. The Hon. Dr. Susan Musyoka, M.P.
19. The Hon. Dr. Naomi Shaban, M.P.
20. The Hon. Alfred Agoi, M.P.
21. The Hon. Paul Koinange, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
2. The Hon. Dr. James Murgor, M.P.
3. The Hon. Dr. Patrick Musimba, M.P.
4. The Hon. Mwahima Masoud, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. James O. Gesami, M.P.
8. The Hon. Mwinga Gunga, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

1. Esther nginyo - Third Clerk assistant
2. Dennis Mogare - Third Clerk Assistant.
3. Hassan A. Arale - Third Clerk Assistant.
4. Sande Marale - Research officer
5. Joash Kosiba - Fiscal analyst.
6. Sidney Lugaga - Legal Counsel.

7. Stephen Kariuki - SerJeant at Arms.  
 8. Stephen Okumu - Office Asisstant.

**MIN.NO. DCH 186/2015: PRELIMINARIES.**

The Chairperson called the meeting to order at 9.00 am she then said the prayer and welcomed the Members to the meeting.

**MIN.NO. DCH 187/2015: CONSIDERATION OF HEALTH BILL, 2015.**

| CLAUSE    | COMMITTEE ACTION<br>(ADOPTION/PROPOSED AMENDMENT)  | JUSTIFICATION FOR<br>AMENDMENT   |
|-----------|--|--|
| Clause 19 | adopted  |  |
| Clause 20 | <p>THAT the Bill be amended in clause 20 as follows;</p> <p>By inserting a new clause 20(A)</p> <p>'establishment of a quality assurance unit to oversee continuous quality of the health facilities in coordination with the national government and Ministry responsible for health.</p> <p>Insert the word 'gazettement' after the word 'licensing' in subclause d.</p> <p>by deleting sub-clause (l) of Clause 20 and substituting therefor the following sub-clause -</p> <p>"(l) making due provision and develop criteria to compensale health care facilities for debts arising through failure to secure payment for bills for non payment of treatment of indigent users."</p> | <p>To ensure quality assurance.</p> <p>To ensure that counties facilitate for gazettement for the health facilities under them.</p> <p>This is to protect the service providers from unpaid bills.</p> |
| Clause 21 | Adopted  |  |
| Clause 22 | Adopted  |  |
| Clause 23 | Adopted  |  |
| Clause 24 | That Clause 24 be deleted and substituted therefor with  | The provisions clause 24 have been overtaken by event.   |

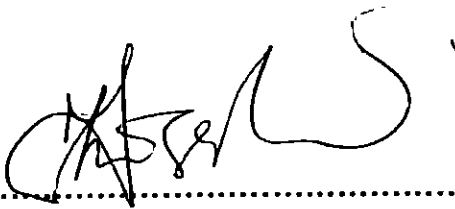
|                  |   |  |
|------------------|---|--|
|                  | <p>Subclause 1 ' National and county governments may, through the health sector inter-governmental consultative for and in line with the constitution, the Inter-Governmental Relations Act and any other law, collaborate, cooperate and coordinate in the delivery of health services.'</p> <p>Subclause 2 ' Activities of the inter-governmental forum shall include;<br/> a). developing of criteria for determining matters requiring intergovernmental consultation.<br/> b). developing of inter-governmental agreements for joint implementation of any activities for health service delivery;<br/> c). consultation on transfer of functions from the national government to any of the counties subject to the Constitution and any other written law; and<br/> d). developing of criteria for equitable access to health services and resources, the management of health resources and development of systems to facilitate the flow of funds for delivery of health services under articles 202(2) and 204 and funding derived from external loans and grants.</p> <p>Subclause 3 Two or more county governments may form joint committees to facilitate collaboration, cooperation and coordination of health sector activities to enhance health service delivery.</p> <p>Subclause 4 A joint committee formed under subsection (3) may undertake among others, the following activities-<br/> a). determination of health issues of common concern to the counties;<br/> b). the development of inter-county agreements for joint implementation of , or collaboration on any of the activities for health care delivery in the counties concerned;<br/> c). development, management and financing of shared health facilities and programmes; and</p> |  |
| <b>Clause 25</b> | adopted   |  |
| <b>Clause 26</b> | adopted   |  |

|           |  |   |
|-----------|--|---|
| Clause 27 | adopted  |   |
| Clause 28 | That Clause 28(1)(f) be amended by deleting the word 'three' before the word 'representative' and replacing it therefore with the word 'one'   | To limit the number of the board members. |
| Clause 29 | <p>That Clause 29 be deleted and substituted therefor with</p> <ol style="list-style-type: none"> <li>1) 'At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.</li> <li>2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular, shall provide for the- <ol style="list-style-type: none"> <li>a). payment of remuneration in respect of the members and staff of the Authority.</li> <li>b). payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Authority;</li> <li>c). maintenance of the buildings and grounds of the Authority.</li> <li>d). funding of training, research and development of activities of the Authority; and</li> <li>e). creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Authority may think fit.</li> </ol> </li> <li>3). The annual estimates shall be approved by the Cabinet Secretary before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.</li> </ol> | For clarity on the funds of the Authority |
| Clause 30 | adopted  |   |
| Clause 31 | adopted  |   |

MIN.NO. DCH 188/2015

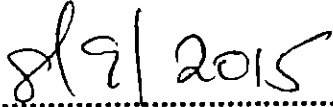
ADJOURNMENT

There being no other business the meeting was adjourned at 1.10 pm.



SIGNED.....

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



DATE:.....

**MINUTES OF THE 42<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH  
HELD AT THE TRAVELLERS BEACH HOTEL & CLUB, MOMBASA ON FRIDAY, 19<sup>TH</sup> JUNE,  
2015 AT 2.30 PM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Dahir D. Mohamed, M.P.
3. The Hon. Mwinga Gunga, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Hassan Aden Osman, M.P.
6. The Hon. James Gakuya, M.P.
7. The Hon. Raphael Milkau Otaalo, M.P.
8. The Hon. Kamande Mwangi, M.P.
9. The Hon. Michael Onyura, M.P.
10. The Hon. Zipporah Jesang, M.P.
11. The Hon. Dr. James Nyikal, M.P.
12. The Hon. Joseph O. Magwanga, M.P.
13. The Hon. David Karithi, M.P.
14. The Hon. Leonard Sang, M.P.
15. The Hon. Alfred Outa, M.P.
16. The Hon. John Nyaga Muchiri, M.P.
17. The Hon. Stephen M. Mule, M.P.
18. The Hon. Dr. Eseli Simiyu, M.P.
19. The Hon. Dr. Susan Musyoka, M.P.
20. The Hon. Dr. Naomi Shaban, M.P.
21. The Hon. Paul Koinange, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
2. The Hon. Dr. Patrick Musimba, M.P.
3. The Hon. Mwahima Masoud, M.P.
4. The Hon. Alfred Agoi, M.P.
5. The Hon. Christopher Nakuleu, M.P.
6. The Hon. Dr. James Murgor, M.P.
7. The Hon. Dr. Enoch Kibunguchy, M.P.
8. The Hon. Dr. James O. Gesami, M.P.

## IN ATTENDANCE

### National Assembly Secretariat

- |                      |   |                        |
|----------------------|---|------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant. |
| 2. Mr. Dennis Mogare | - | Third Clerk Assistant. |
| 3. Mr. Hassan Arale  | - | Third Clerk Assistant. |
| 4. Ms. Sande Marale  | - | Senior Researcher      |
| 5. Mr. Sydney Lugaga | - | Legal Counsel          |
| 6. Mr. Joash Kosiba  | - | Fiscal Analyst         |
| 7. Mr. Moses Kariuki | - | Serjeant-At-Arms       |

### MIN.NO. DCH 183/2015: PRELIMINARIES

The meeting was called to order at 2:42 pm and a prayer was said by Hon. Stephen M. Mule, M.P. Thereafter, the Chairperson welcomed all those present to the meeting and read out the agenda of the meeting.

### MIN.NO.DCH 184/2015: CONSIDERATION OF THE HEALTH BILL, 2015.

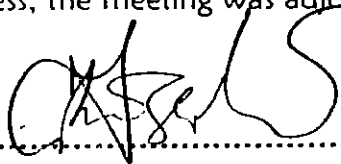
| CLAUSE        | COMMITTEE ACTION<br>(ADOPTION/PROPOSED AMENDMENT)   | JUSTIFICATION FOR<br>AMENDMENT                                 |
|---------------|---|--|
| Clause 11     | Adopted   |  |
| Clause 12     | Adopted   |  |
| Clause 13     | DELETE the words "in so far as it is within users" and substituting them with the following words -<br><br>"in the absence of any observable incapacity"  | For clarity  |
| Clause 14     | Adopted   |  |
| Clause 15 (1) | (a) DELETE entire sub clause and replace it with:<br><br>"develop health policies, laws and administrative procedures and programmes in consultation with county governments and health sector stakeholders and the public for the progressive realization of the highest attainable standards of health including reproductive health care and the right to emergency treatment" | To emphasize the need for consultation with mentioned parties. |
|               | (b) Adopted   |  |

|               |   |   |
|---------------|---|---|
|               | (c) Deleted   | The clause provides for what is already provided for in the constitution.   |
|               | (d) insert the following words immediately after the words "dietetic services":<br><br>"and healthy lifestyles.   | To make the statement comprehensive.  |
|               | (e)(f) and (g) adopted  |   |
|               | (h) INSERT the following paragraphs immediately after paragraph (h) -<br><br>"(hA) put in place intervention measures to reduce the burden of communicable and non-communicable diseases, emerging and re-emerging diseases, neglected diseases;"<br><br>"(hB) develop standards for the protection of the health and safety of consumers in all other sectors and promote, encourage collaboration and consultation with these sectors for the effective implementation of the standards;" | To make the provisions comprehensive  |
|               | (i) to (s) Adopted  |   |
|               | (t) INSERT the following words immediately after the words "national health referral facilities" -<br><br>"and specialized referral health facilities;"   | To encompass specialized referral facilities  |
|               | (u) Adopted   |   |
|               | INSERT the following paragraph immediately after paragraph (u) -<br><br>"(uA) provide policy guidelines and regulation for hospital waste management and conduct of environmental health impact assessment;"  | To provide for the hospital waste management and environmental health impact assessment.                              |
|               | (v) to (x) Adopted  |   |
| (2)           | Adopted   |   |
| Clause 16 (1) | Adopted   |   |
| (2)           | DELETE and replace with the following paragraph:<br>"The Director-General for Health shall be recruited by the Public Service Commission  | To introduce participation of the National Assembly and the Public Service Commission in recruitment of the Director- |

|            |   |   |
|------------|---|---|
|            | through a competitive process and be vetted by the National Assembly.” – CIC draft Clause 19 (3).                       | General for Health.   |
| (3)and (4) | Adopted   |   |
| Clause 17  | (a) insert the following words between the word “advisor” and “on”:<br>“to the government”                              | To be specific  |
|            | (b) to (k) Adopted  |   |
|            | (k) Insert the word “technical” just before the word “directorates.”  | To avoid conflict over other administrative directorates that won’t be under the Director General of Health.                                |
| Clause 18  | Insert the following words after the words “Cabinet Secretary”:<br>“With the advice of the Director General of Health.” | To ensure that in forming directorates, the Cabinet Secretary establishes functional structures after receiving necessary technical advice. |

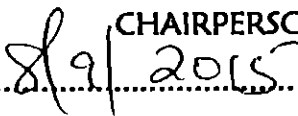
**MIN.NO.DCH 185/2015: ADJOURNMENT**

There being no other business, the meeting was adjourned at 6. 45 pm.

SIGNED.....

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

**CHAIRPERSON**

DATE:.....

**MINUTES OF THE 40<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE MEDIA CENTRE, MAIN PARLIAMENT BUILDINGS ON THURSDAY, 18<sup>TH</sup> JUNE, 2015 AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Alfred Agoi, M.P.
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Dr. Eseli Simiyu, M.P.
7. The Hon. Dr. Enoch Kibunguchy, M.P.
8. The Hon. Dr. Susan Musyoka, M.P.
9. The Hon. Dr. James Nyikal, M.P.
10. The Hon. Hassan Aden Osman, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. Dr. Stephen Wachira, M.P.
13. The Hon. Dr. James O. Gesami, M.P.
14. The Hon. Joseph O. Magwanga, M.P.
15. The Hon. Dr. Patrick Musimba, M.P.
16. The Hon. Fred Outa, M.P.
17. The Hon. John Nyaga Muchiri, M.P.
18. The Hon. Kamande Mwangi, M.P.
19. The Hon. Leonard Sang, M.P.
20. The Hon. Michael Onyura, M.P.
21. The Hon. Raphael Milkau Otaalo, M.P.
22. The Hon. Stephen M. Mule, M.P.
23. The Hon. Zipporah Jesang, M.P.

**APOLOGIES**

1. The Hon. Dr. James Murgor, M.P.

**ABSENT**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
2. The Hon. Paul Koinange, M.P.
3. The Hon. Mwinga Gunga, M.P.
4. The Hon. Dr. Naomi Shaban, M.P.
5. The Hon. Mwahima Masoud, M.P.

## IN ATTENDANCE

### National Assembly Secretariat

- |                       |   |                        |
|-----------------------|---|------------------------|
| 1. Ms. Esther Nginyo  | - | Third Clerk Assistant. |
| 2. Mr. Dennis Mogare  | - | Third Clerk Assistant. |
| 3. Mr. Hassan Arale   | - | Third Clerk Assistant. |
| 4. Ms. Sande Marale   | - | Senior Researcher      |
| 5. Mr. Sydney Lugaga  | - | Legal Counsel          |
| 6. Mr. Joash Kosiba   | - | Fiscal Analyst         |
| 7. Mr. Jared Nyamongo | - | Legal Intern           |
| 8. Mr. Timothy Ayako  | - | Legal Intern           |

### MIN.NO. DCH 174/2015: PRELIMINARIES

The meeting was called to order at 10:41 am and a prayer was said by Hon. Dr. Stephen Wachira, M.P. Thereafter, the Chairperson welcomed all those present to the meeting and read the agenda of the meeting.

### MIN.NO. DCH 175/2015: ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted (with an amendment) after being proposed and seconded by Hon. Dr. James Nyikal, M.P. and Hon. Raphael Milkau Otaalo, M.P. respectively.

The amendment introduced was to put in the following as part of the agenda: Consideration of a report on Supplementary II estimates for the Ministry of Health.

### MIN.NO.DCH 176/2015: CONSIDERATION OF THE HEALTH BILL, 2015.

The fiscal analyst made a presentation to the Committee on governance structure of South Africa national health system. The presentation was informed by the fact that the Kenya Constitution, 2010 borrowed a lot from the South African constitution and the fact that, like Kenya, South Africa has devolved most of its health sector functions to its provinces. He informed the Committee that:

1. South Africa has an institution named “National Health Council of South Africa”. The National Health Council consists of –
  - a) The Minister, or his or her nominee, who acts as chairperson;
  - b) The Deputy Minister of Health, if there is one;
  - c) The relevant members of the Executive Council
  - d) One municipal councilor, representing organized local government and appointed by the national organization contemplated in section 163(a) of the Constitution;
  - e) The Director-General and the Deputy Directors-General of the national department;
  - f) The head of each provincial department;

- g) one person employed and appointed by the national organization contemplated in section 163(a) of the Constitution; and
  - h) The head of the South African Military Health Service.
2. Functions of National Health Council include advising the Minister on:
- a) Policies concerning any matter that will protect, promote, improve and maintain the health of the population.
  - b) Proposed legislation pertaining to health matters prior to such legislation being introduced into Parliament or a provincial legislature;
  - c) Norms and standards for the establishment of health establishments;
  - d) guidelines for the management of health districts;
  - e) The implementation of national health policy;
  - f) The national and provincial integrated health plans contemplated in section 21(5);
  - g) An integrated national strategy for health research; and
  - h) The performance of any other function determined by the Minister
3. South Africa has a National Consultative Health Forum which is meant to promote and facilitate interaction, communication and the sharing of information on national health issues between representatives of the national department, national organizations identified by the Minister and provincial consultative bodies. The Minister must determine the composition and the place, date and time of any meeting of the National Consultative Health Forum. The Forum must include relevant stakeholders and must meet at least once every 12 months.
4. South Africa has an Office of Health Standards Compliance which is established by the National Health Act, 2003. The objects of the Office are to protect and promote the health and safety of users of health services by:
- a) Monitoring and enforcing compliance by health establishments with norms and standards prescribed by the Minister in relation to the national health system; and
  - b) Ensuring consideration, investigation and disposal of complaints relating to non-compliance with prescribed norms and standards in a procedurally fair, economical and expeditious manner.
5. South Africa has a Health Professions Council of South Africa. The Council is established under the Health Profession Act 56 of 1974 (amended in 2008). The objects and functions of the council are –
- a) To co-ordinate the activities of the professional boards established in terms of this Act and to act as an advisory and communicatory body for such professional boards;
  - b) To promote and to regulate inter-professional liaison between health professions in the interest of the public;
  - c) To determine strategic policy in accordance with national health policy as determined by the Minister, and to make decisions in terms thereof, with regard

- to the professional boards and the health professions, for matters such as finance, education, training, registration, ethics and professional conduct, disciplinary procedure, scope of the professions, inter-professional matters and maintenance of professional competence;
- d) To consult and liaise with relevant authorities on matters affecting the professional boards in general;
  - e) To assist in the promotion of the health of the population of the Republic;
  - f) Subject to legislation regulating health care providers and consistency with national policy determined by the Minister, to control and to exercise authority in respect of all matters affecting the education and training of persons in, and the manner of the exercise of the practices pursued in connection with, the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in human kind;
  - g) To promote liaison in the field of education and training referred to in paragraph (f), both in the Republic and elsewhere, and to promote the standards of such education and training in the Republic;
  - h) To advise the Minister on any matter falling within the scope of this Act in order to support the universal norms and values of health professions, with greater emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement;
  - i) To communicate to the Minister information of public importance acquired by the council in the course of the performance of its functions under this Act.
  - j) To serve and protect the public in matters involving the rendering of health services by persons practicing a health profession;
  - k) To exercise its powers and discharge its responsibilities in the best interest of the public and in accordance with national health policy determined by the Minister;
  - l) To be transparent and accountable to the public in achieving its objectives and when performing its functions and exercising its powers;
  - m) To uphold and maintain professional and ethical standards within the health professions;
  - n) To ensure the investigation of complaints concerning persons registered in terms of this Act and to ensure that appropriate disciplinary action is taken against such persons in accordance with this Act in order to protect the interest of the public.
6. The Health Professions Council of South Africa is composed of the following members:
- a) not more than 16 persons designated by the professional boards, on a basis proportional to the number of persons registered to practice the professions falling under each professional board: Provided that each professional board shall be entitled to designate at least one person registered in terms of this Act;

- b) one person in the employment of the Department of Health, appointed by the Minister;
- c) One person in the employment of the Department of Education, appointed by the Minister of Education;
- d) nine community representatives not registered in terms of this Act, appointed by the Minister;
- e) one person from the South African Military Health Service, appointed by the Minister of Defense;
- f) three persons appointed by the South African University Vice-Chancellors' Association; and
- g) One person versed in law, appointed by the Minister.

## **COMMITTEE OBSERVATIONS**

Committee members observed that:

1. There was need to introduce an institution equivalent to the National Health Council of South Africa. The legal counsel was directed to draft a paper on its composition and how the institution can fit into the Health Bill, 2015.
2. There was need to review the governance of the health sector in more jurisdictions. Zimbabwe was particularly recommended for review.
3. There was need to introduce an institution equivalent to the National Consultative Health Forum of South Africa in the Health Bill, 2015 and tailor it to fit the Kenyan context.
4. There was need to introduce an institution equivalent to the Office of Health Standards Compliance in South Africa and tailor it into the Health Bill, 2015 and the Kenyan context.
5. On the Health Professions Council of South Africa, a similar institution is contained in the health bill, 2015. However there was need to adjust its composition to include:
  - Representation from the Ministry of Defense (the military).
  - Representation from training institutions in the health sector

**MIN.NO.DCH 177/2015:                    CONSIDERATION OF A REPORT ON THE 2014/2015  
SUPPLEMENTARY II ESTIMATES FOR THE MINISTRY OF  
HEALTH.**

The Committee considered and unanimously adopted (with amendments) its report on the 2014/2015 Supplementary II Estimates for the Ministry of Health.

The amendment introduced was to add the following into the Report's recommendations THAT: The Committee shall launch a probe into the purchase of MRI machines for 20 hospitals across the country and that the probe shall involve establishing:

- a) How the contract on purchase of the machines was entered into
- b) The execution of the contract
- c) Whether the MRI machines had been delivered and their quality
- d) Whether the purchase of the machines constitutes value for money
- e) Whether MRI suites were constructed at the installation sites
- f) Whether relevant personnel had been trained in readiness to utilize the machines.

**MIN.NO.DCH 178/2015: ANY OTHER BUSINESS**

1. There was need to draw a program of work to expedite the processing of the Health Bill, 2015 by the Committee. The secretariat was tasked to come up with a draft of the same.

**MIN.NO.DCH 179/2015: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.39 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....8/9/2015.....

Research Fund is a mirage as the Fund has not been fully made operational since the enactment of the Science, Technology and Innovation Act, 2013.

- f) **Mandate of Kenya Health Professions Oversight Authority (KHPOA):** - The mandate of the Authority as outlined in Clause 27 is not consistent with its name and functions as outlined in Clause 30. The composition of the membership of the supra Authority does not take into consideration the inclusion of representatives from health training institutions (Universities and KMTC); county governments; and traditional medicine practitioners.
- g) **Discipline Forces/ Military Health Establishments:** The First Schedule of the Bill on Technical classification of levels of healthcare delivery does not provide for the classification of military health establishment including war memorial hospitals, prisons and police clinics. The direct or indirect authority and control of these vital institutions is therefore not clear.

## COMMITTEE'S OBSERVATIONS

The Committee made the following observations that;

- i. The provisions of Clause 24 of the Bill have been overtaken by event, however, the intentions of the clause have not been achieved. There is therefore need to for the National Government to ensure that the County Governments achieve the intended functions. Therefore clause 24 be amended to reflect the current situation
- ii. The Bill should provide for a National Health Council whose roles should be to coordinate and harmonize national and county health policies, systems and legislations, norms and standards. The Council should comprise of the technical persons in the health sector.
- iii. To effectively create a link between the National and the County governments the Cabinet Secretary shall convene a National Health Consultative Forum to promote and facilitate interaction, communication and sharing of information on national health issues between the representatives of the national and county governments who will include; the County Director of Health, County Executive of Health, representatives from the Committees on Health in the National Assembly and Senate.

A new Clause 19 be inserted to read;

'There is established the National Health Council charged with the responsibility of coordinating, harmonizing national and county health policies, systems and legislations; norms and standards for the establishment of the health establishments; provide guidelines for the management of health facilities; coordinate the implementation of the national health policy; and harmonize the national and county government integrated health plans'.

A new Clause 20 be inserted as follows;

#### National Consultative Health Forum

1. The Cabinet Secretary will establish a body to be known as the National Consultative Health Forum.
  2. The National Consultative Health Forum will promote and facilitate interaction, communication and the sharing of information on national health issues between representatives of the national and county governments
  3. The National Consultative Health Forum will comprise of the County Director of Health, County Executive of Health, representatives from the Committees on Health in the National Assembly and Senate.
  4. (a) The Cabinet Secretary will determine the place, date and time of any meeting of the National Consultative Health Forum.  
(b) The National Consultative Health Forum will meet at least twice every year.
- iv. Clause 5 and Clause 36 are the only provisions for the Health Standards, however there no one who is charged with ensuring compliance. Therefore the responsibility of provision of standards and ensuring compliance be vested on the Director General;

Therefore a new clause 17(c) be inserted to read;

'Be responsible for the establishment and ensuring compliance to standards in the health sector'.

Clause 17(b) be amended by inserting the following words 'on all matters relating to health'.

#### Justification

This is to qualify the advice the Director General will be giving to the CS.

Clause 28 (1)(a) be amended by deleting it and replace it thereof with the following;

- 28(1) A person appointed as Chairperson by the Cabinet Secretary shall;
- (a) Be a medical practitioner registered by the Medical Practitioners and Dentists Board.
  - (b) Be at least a holder of a Master's degree in public health, medicine or any other health related discipline; and
  - (c) Have at least 5 years' experience in management of health services.
  - (d) Will serve a term of 3 years renewable once.

#### Justification

**MINUTES OF THE 36<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN 11<sup>TH</sup> FLOOR PROTECTION HOUSE, ON TUESDAY 9<sup>TH</sup> JUNE, 2015, AT 10.00AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Kamande Mwangi, M.P.
4. The Hon. Zipporah Jesang, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Dr. James O. Gesami, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. James Gakuya, M.P.
9. The Hon. Dr. James Murgor, M.P.
10. The Hon. Joseph O. Magwanga, M.P.
11. The Hon. David Karithi, M.P.
12. The Hon. Mwinga Gunga, M.P.
13. The Hon. Dr. Stephen Wachira, M.P.
14. The Hon. Mwahima Masoud, M.P.
15. The Hon. Leonard Sang, M.P.
16. The Hon. Dr. Eseli Simiyu, M.P.
17. The Hon. Michael Onyura, M.P.
18. The Hon. Raphael Milkau Otaalo, M.P.

**ABSENT WITH APOLOGY.**

1. The Hon. Dr. Patrick Musimba, M.P.
2. The Hon. Dr. Enoch Kibunguchy, M.P.
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. Dr. Dahir D. Mohamed, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Paul Koinange, M.P.
7. The Hon. John Nyaga Muchiri, M.P.
8. The Hon. Stephen M. Mule, M.P.
9. The Hon. Alfred Agoi, M.P.
10. The Hon. Alfred Outa, M.P.
11. The Hon. Christopher Nakuleu, M.P.

**IN ATTENDANCE.**

**National Assembly Secretariat**

- |                    |   |                        |
|--------------------|---|------------------------|
| 1. Esther Nginyo   | - | Third Clerk Assistant. |
| 2. Hassan A. Arale | - | Third Clerk Assistant. |
| 3. Dennis Mogare   | - | Third clerk Assistant. |

- 4. Sande Marale - Senior Researcher.
- 5. Joash Kosiba - Fiscal Analysis.

**MIN.NO. DCH 160/2015: PRELIMINARIES**

The meeting was called to order at 10:40 am and a prayer was said by Hon. Dr. Stephen Wachira, M.P. Thereafter, the Chairperson welcomed all those present to the meeting.

**MIN.NO. DCH 161/2015 ADOPTION OF THE AGENDA**

The Agenda of the meeting was adopted after being proposed and seconded by Hon. Dr. James Murgor, M.P. and Hon. Dr. James Nyikal, M.P. respectively.

**MIN.NO.DCH 162/2015 CONSIDERATION OF THE HEALTH BILL, 2015**

The Committee was briefed by the Parliamentary Budget Officer on the Health Bill, 2015 as follows;

- 1- The pertinent policy issues arising from the analysis of the Bill include:
  - a) **Rolling back gains made in devolution of health:** The Bill in its present form will have a rollback effect in the devolution of health functions. Clause 24 on progressive devolution of the management, operation and further development of public health facilities does not serve any purpose but to roll-back gains made in the transfer of health functions to county government since the transitional period of three years (3) for the phased transfer of functions to County Government is due to lapse in less than one year's time.
  - b) **Establish a National Health Council:** The Bill should establish a body to coordinate and harmonize national and county health policies, systems and legislations; norms and standards for the establishment of health establishments; provide guidelines for the management of health facilities; coordinate the implementation of national health policy; and harmonize the national and county government integrated health plans.
  - c) **Provide for the establishment of a National Health Consultative Forum:** - The Bill should empower the Cabinet Secretary to annually convene a National Health Consultative Forum that promote and facilitate interaction, communication and the sharing of information on national health issues between representatives of the national government, national health organizations, the county governments, private sector players and faith based organization.
  - d) **Health Standards and Compliance:** The Bill has no clear provisions on health standards except for a mention in Clauses 5 and 36. For the citizens to realize the rights to the highest standards of health, which includes the right to health care services, including reproductive health care as enshrined in Article 43(1)(a) of the Constitution, there should be clear legislative mechanism to ensure adherence to the health standards and enforce compliance to such standards.
  - e) **Health Care Financing and Funding of Health Research:** - The Bill provides general measures on health care financing and lacks clear definite approach on how to finance health care. Further, the envisaged funding of health research through a portion of not less than 30% of the National

This is to provide for the qualifications of the Chairperson.

- v. In the classification of the levels of healthcare delivery under the First Schedule; the following new introductory paragraph be inserted;

'The classification applies to all the health facilities. The disciplined forces health institutions will be under the disciplined forces but the classification will be done by the National Government'.

- vi. Due to the important role that the Director General will be playing in the Health Sector, the person who will be nominated by the CS will be vetted by the National Assembly.

Clause 16(2) be amended by inserting the following words after the words 'Cabinet Secretary' 'and vetted by the National Assembly'.

Clause 16(4) be amended by deleting the word 'five' after the words 'term of' and replacing it with the word 'seven' and deleting the words 'renewable once' replacing them thereof with the words 'non-renewable'.

#### *Justification*

This is to provide security of tenure for the office of the Director General.

#### **MIN.NO. DCH 163/2015                      ANY OTHER BUSINESS**

The following matters arose under this agenda item;

- i. The Supplementary I of Kshs. 2.495 Billion for the Ministry of Health was passed by House with Ksh. 2.357 billion allocated for payment of salary and legal dues under the recurrent vote while Kshs. 139 million was allocated for Kenyatta National Hospital Cancer Centre and Mathari Referral Hospital under the Development Vote.
- ii. The Supplementary Estimates II of 4.7 billion for the Ministry of Health was tabled in House on 26<sup>th</sup> May, 2015. However, a preview of the estimates indicated that a request for purchase of MRI equipment for 20 hospitals, pending bills for Gatundu Rehabilitation Center, Nanyuki and Othaya Hospitals, rehabilitation of selected health centres across the country were made. However, the Committee resolved to receive a detailed brief from the Budget Office on the same on the Thursday, 11<sup>th</sup> June, 2015 and meet with the Ministry of Health on Tuesday, 16<sup>th</sup> June, 2015.
- iii. The Committee was informed on an invitation for a breakfast meeting with the Network of African Parliamentary Committee on Health on Thursday, 11<sup>th</sup> June, 2015 at the Hotel Intercontinental start from 7 am. Further, the

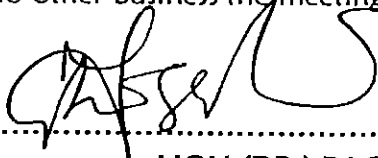
Committee was informed that only Hon. Osman Mohamed, MP, Hon. Raphael Otaalo, MP and Hon. Dr. Susan Musyoka, MP had confirmed participation for the invitation by AWEPA and PLAN Kenya on FGM on Friday, 12<sup>th</sup> June, 2015 at the Hotel Intercontinental.

- iv. On Stakeholders meeting on the Health Bill, 2015, the Committee resolved to have the meeting in Mombasa from 18<sup>th</sup> to 20<sup>th</sup> June, 2015.
  
- v. The Committee was informed that during the inspection visit on the Ebola Preparedness at the border point of Namanga, it was observed that the screening of people travelling across the border was not operational as the equipment was only functional for two weeks after installation.

MIN.NO. DCH-164/2015     ADJOURNMENT

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

SIGNED.....



HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....

8/9/2015

**MINUTES OF THE 35<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE 4<sup>TH</sup> FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 4<sup>TH</sup> JUNE, 2015 AT 10.00 AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Joseph O. Magwanga, M.P.
5. The Hon. Mwinga Gunga, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. John Nyaga Muchiri, HSC, M.P.
8. The Hon. Stephen M. Mule, M.P.
9. The Hon. Dr. Naomi Shābān, M.P.
10. The Hon. Dr. Eseli Simiyu, M.P.
11. The Hon. Michael Onyura, M.P.
12. The Hon. Christopher Nakuleu, M.P.
13. The Hon. Dr. Enoch Kibunguchy, M.P.
14. The Hon. Dr. James O. Gesami, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Mwahima Masoud, M.P.
2. The Hon. Dr. Susan Musyoka, M.P.
3. The Hon. Dr. Stephen Wachira, M.P.
4. The Hon. Paul Koinange, M.P.
5. The Hon. Alfred Agoi, M.P.

**ABSENT**

1. The Hon. Kamande Mwangi, M.P.
2. The Hon. Zipporah Jesang, M.P.
3. The Hon. David Karithi, M.P.
4. The Hon. Leonard Sang, M.P.
5. The Hon. James Gakuya, M.P.
6. The Hon. Hassan Aden Osman, M.P.
7. The Hon. Dr. James Murgor, M.P.
8. The Hon. Alfred Outa, M.P.
9. The Hon. Dr. Patrick Musimba, M.P.
10. The Hon. Raphael Milkau Otaalo, M.P.

**IN ATTENDANCE**

**National Assembly Secretariat**

- |                      |   |                             |
|----------------------|---|-----------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant.      |
| 2. Mr. Dennis Mogare | - | Third Clerk Assistant.      |
| 3. Mr. Hassan Arale  | - | Third Clerk Assistant.      |
| 4. Mr. Joash Kosiba  | - | Parliamentary Budget Office |

**MIN.NO. DCH 155/2015: PRELIMINARIES**

The meeting was called to order at 10:40 am and a prayer was said by Hon. Dr. Robert Pukose, M.P. Thereafter, the Chairperson welcomed all those present to the meeting.

**MIN.NO. DCH 156/2015 ADOPTION OF THE AGENDA**

The Agenda of the meeting was adopted after being proposed and seconded by Hon. Michael Onyura, M.P. and Hon. Dr. James Nyikal, M.P. respectively.

**MIN.NO.DCH 157/2015 CONSIDERATION OF THE HEALTH BILL, 2015**

The Fiscal Analyst briefed the Committee on the policy and financial implications of the Health Bill, 2015 as follows, THAT:

1. The Health Bill, 2015 seeks to establish a unified health system, to coordinate the interrelationship between the national government and county government health systems, to provide for regulations of health care service and health care service providers, health products and health technologies.
2. The right of access to emergency medical treatment which is a fundamental right guaranteed under Article 43(2) of the Constitution is provided for under Clause 7. However the Bill limits the enjoyment of this right to availability of funds as contemplated in Clause 7(2) read together with Clause 54 (1)(e).
3. Clause 7(4 and 5 ) sets a fine of not exceeding one million shillings or imprisonment for a period of not exceeding twelve months or both for any health provider and a fine of not exceeding three million shillings for any medical institution which fails to provide emergency medical treatment and has the ability to do so.
4. Clause 16 establishes the Office of the Director-General for Health as the national technical advisor for health and who shall be recruited through a competitive process and appointed by the Cabinet Secretary and shall hold office for a term of five (5) years renewable once.
5. Clause 19 deals with the County Health Systems including establishment of a County Executive Department responsible for health. Specifically in clause 19 (2) the Bill establishes the office of the County Director of health who shall be a technical advisor on all matters of health in the county and shall be recruited through a competitive process by the County Public Service Board as contemplated in Clause 19(3) and meet the set minimum qualifications defined in Clause 19(4).
6. Part IV of the Bill establishes the Kenya Health Professions Oversight Authority (KHPOA) as a body corporate charged with the responsibility of providing an oversight role to the regulatory function of the national health system and ensuring the adequate co-ordination of joint activities of regulatory bodies within the health sector.

7. The Bill in Clause 28 provides that the Authority shall comprise of a Chairperson, and at least seventeen (17) board members including the Chief Executive Officer who shall be the secretary to the board. The actual number of board members may vary subject to Clause 28(1)(e) read together with Clause 31(2)(i).
8. The Bill in Clause 61 provides that the Cabinet Secretary shall establish a technical National Research for Health Committee composed of not more than eleven members including a Chairperson and the head of the directorate of the Ministry of health responsible for research and development who shall be its Secretary as per Clause 64(4). The Chairperson shall serve a term of five years while members shall serve a term of three years all renewable once as per Clause 63.
9. On Health Research Budget, the Bill provides in Clause 69 that a portion of not less than 30% of the National Research Fund shall be allocated for health research. The National Research Fund is established under Section 32 of the Science, Technology and Innovation Act, 2013, which also provides that a sum of money amounting to two per cent of the country's gross domestic product provided by the Treasury every financial year shall form part of the Fund.
10. The key highlights of the Bill include:
  - a) Defining of rights and duties of users, health care personnel and national government in Clauses 6 to 15; duties of County Executive Department for Health in Clause 20 and the Coordination of National Health System in Clause 21.
  - b) Retention of the Office of the Director of Medical Services and changing the name to the Office of the Director-General for health as per Clauses 16 and The Director-General functions and powers including: advise the two levels of government on matters of national security on public health; to register, license and gazette all health facilities; be responsible for internship program for health workers among others.
  - c) Promoting public private partnerships for the purpose of establishing and deepening health care provision as per Clauses 23 & 60 and support to strategies conducive for the development of private health services. Counties and individual health facilities may enter into public private partnerships as per Clause 60(2)
  - d) Provision for the establishment of a single products and technologies regulatory body in Clause 32 and recognition of the Kenya Medical Supplies Authority as primary provider for the procurement of health products and technologies for the public health service as per clause 37.
  - e) Establishment of the County Health System including anchoring the County Executive Department for Health and the office of the County Director of health in law as per Clause 19.

## COMMITTEE OBSERVATIONS

Members observed that:

1. There was need for an analysis of the interface between the Health Bill, 2015 and the Public Health Act, to establish areas of overlap and any inconsistencies.

2. The Ministry of Health should provide a schedule of all Acts that will need amendments to conform to the Health Bill, 2015; once it's enacted.
3. There was a need to introduce, within the Bill, a mechanism for national to county health sector coordination. In this regard the legal counsel was tasked to draft a brief on the coordination of the health sector in South Africa between the national and provincial levels.
4. On the functions of the Director General (clause 17), it should be added that "the Director-General shall be in charge of national health policy and standards".
5. On health financing (article 54), members proposed that:
  - a) Clause 54 (1) (g) be deleted as cost sharing contradicts the aim of having universal access to health care.
  - b) A provision be introduced that "a minimum of 15% of national and county budgets should go to the health sector in line with the Abuja declaration."
6. Article 69 is not practical and actionable hence clause 69 (2) be introduced that reads that: "the Ministry of Health should allocate not less than 2% of its budget to research.
7. There is no clear link between the National and County governments. This is evidenced by the fact that currently the County Medical Directors report to their county governments. There is therefore need to provide for such link in the Health by creating a national health consultative forum.

MIN.NO. DCH 158/2015

**ANY OTHER BUSINESS**

1. Members expressed displeasure at the open and public disagreement between the Chairperson and the Vice Chairperson when they appeared before the Budget and Appropriations Committee on 3<sup>rd</sup> June 2015 over the 2015/2016 budget estimates for the Ministry of Health.
2. The Hon. Dr. Eseli Simiyu, M.P. gave a notice to bring a motion to discuss the conduct of the Vice Chairperson of the Committee, The Hon. Dr. Robert Pukose, M.P. with regard to his move to single handedly alter decisions reached at by the Committee in its report on Budget Estimates for FY 2015/2016.

MIN.NO.DCH 159/2015

**ADJOURNMENT**

There being no other business the meeting was adjourned at 1.14 pm.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....8/9/2015

|  |   |
|--|---|
| <b>KENYA HEALTH PROFESSIONS<br/>OVERSIGHT AUTHORITY</b>                            |   |
| 27— Establishment of the Authority.  | 27 - Annual Estimates   |
| 28— Composition of the Authority.  | 28 - Financial Year   |
| 29— Funds of the Authority.  | 29 - Accounts and Audits  |
| 30 - Functions of the Authority  | 30— Complaints.   |
| 31— Relationship with other<br>Authorities   | <b>PART V - HEALTH PROFESSIONS TRIBUNAL</b>                                 |
| <b>PART VI - REGULATION OF<br/>HEALTH PRODUCTS AND HEALTH<br/>TECHONOLOGIES</b>    | 31— Health tribunal.  |
| 32— Establishment of a single<br>health products and technologies<br>body.         | 32— Jurisdiction of the Tribunal  |
| 33— Functions of the single<br>regulatory body.                                    | <b>PART VI - REGULATION OF HEALTH<br/>PRODUCTS AND HEALTH TECHONOLOGIES</b> |
| 34— Conditions.  |   |
| 35— Licenses.  | 33— Establishment of the Agency.  |
| 36— Standards.   | 34— Functions of the Agency.  |
| 37— Procurement of health<br>products and technologies                             | 35— Licenses.   |
| <b>PART VI-PROMOTION AND<br/>ADANCEMENT OF PUBLIC AND<br/>ENVIRONMENTAL HEALTH</b> | 36— Procurement of health products and<br>technologies.                     |
| 38— Public and environmental<br>health.  | 37— Register of traditional and alternative<br>medicines.                   |
| 39— Policies.  | <b>PART VII - HUMAN ORGANS, HUMAN<br/>BLOOD, BLOOD PRODUCTS, OTHER</b>      |

|  |  |
|--|--|
| 8 – Health information.                            | 8 – Reproductive health.   |
| 9—Consent  | 9—Public health information.                                     |
| 10— Information dissemination                      | 10— Information Dissemination                                    |
| 11 – Confidentiality.                              | 11 – Provision of health information to users.                   |
| 12 – Health care providers                         | 12 – Informed Consent  |
| 13—duty of users                                   | 13—Confidentiality.  |
| 14— Complaints.                                    | 14— Rights and duties of Healthcare providers.                   |
| 15— Duties of the national government.             | 15— Duties of the National government.                           |
| 6—Office of the Director- General.                 | 16— Duties of the county governments.                            |
| 17—Functions of the Director – General             | 17— Intergovernmental collaboration for health service delivery. |
| 18— Directorates.                                  | 18— Partnerships with other actors.                              |
| 19—County health system                            | <b>PART III - DIRECTOR GENERAL</b>                               |
| 20-duties of county executive department of health | 19—Office of the Director- General.                              |
| 21—Coordination                                    | 20—Functions of the Director –General                            |
|  | <b>PART IV - KENYA HEALTH PROFESSIONS AUTHORITY</b>              |
| 22— Public health facilities.                      | 21— Establishment of the Authority.                              |
| 23— Public private partnerships.                   | 22— Composition of the Authority.                                |
| 24— Devolution.                                    | 23— Functions of the Authority.                                  |
| 25 – Retention of service provision.               | 24 – Powers of the Authority                                     |
| 26— Classification of healthcare delivery          | 25— Repeal of certain Acts and regulatory bodies                 |
| <b>PART IV – ESTABLISHMENT OF</b>                  | 26—Funds of the Authority.                                       |

## IN ATTENDANCE.

### National Assembly Secretariat

- |                    |   |                        |
|--------------------|---|------------------------|
| 1. Esther Nginyo   | - | Third Clerk Assistant. |
| 2. Hassan A. Arale | - | Third Clerk Assistant. |
| 3. Roslyne Njuki   | - | Serjenty At Arms.      |
| 4. Joel Nassiuma   | - | Security Officer.      |
| 5. Lydia Mwangi    | - | Secretary.             |

## MIN.NO. DCH 152/2015: PRELIMINARIES.

The Chairperson called the meeting to order at 10.30 am and prayer was said by Hon Hassan Aden Osman, M.P. She then welcomed the Legal Counsel attached to the Committee to make a presentation on the Health Bill, 2015.

## MIN.NO.DCH 153/2015 CONSIDERATION OF HEALTH BILL, 2015.

The Committee was briefed on the differences between the Health Bill, 2015 and a version of the same from the Commission on the Implementation of the Constitution as follows;

| Health Bill (MOH)                         | Health Bill (CIC)                                       |
|---|---|
| <b>PART 1—PRELIMINARY</b>                 | <b>PART 1—PRELIMINARY</b>                               |
| 1—Short title and commencement.           | 1—Short title.  |
| 2—Interpretation.                         | 2—Interpretation.                                       |
| 3—Objects of Act.                         | 3—Objects of Act.                                       |
| 4— Responsibility for health              | 4— Values and principles                                |
| 5—standard of health                      | 5—Protection of vulnerable groups in the health sector. |
| <b>PART II - HEALTH RIGHTS AND DUTIES</b> | <b>PART II - HEALTH RIGHTS AND DUTIES.</b>              |
| 6—Reproductive health.                    | 6— Right to Health                                      |
| 7— Emergency treatment.                   | 7—Emergency medical treatment.                          |

**MINUTES OF THE 34<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN SERENA BEACH RESORT & SPA, ON FRIDAY 29<sup>TH</sup> MAY, 2015, AT 10.00AM.**

**PRESENT**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Kamande Mwangi, M.P.
3. The Hon. Zipporah Jesang, M.P.
4. The Hon. Dr. James Nyikal, M.P.
5. The Hon. Dr. James O. Gesami, M.P.
6. The Hon. John Nyaga Muchiri, M.P.
7. The Hon. Stephen M. Mule, M.P.
8. The Hon. Hassan Aden Osman, M.P.
9. The Hon. James Gakuya, M.P.
10. The Hon. Dr. James Murgor, M.P.
11. The Hon. Alfred Agoi, M.P.
12. The Hon. Joseph O. Magwanga, M.P.
13. The Hon. David Karithi, M.P.
14. The Hon. Alfred Outa, M.P.
15. The Hon. Christopher Nakuleu, M.P.
16. The Hon. Mwinga Gunga, M.P.
17. The Hon. Dr. Stephen Wachira, M.P.
18. The Hon. Paul Koinange, M.P.

**ABSENT WITH APOLOGY.**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
2. The Hon. Dr. Patrick Musimba, M.P.
3. The Hon. Mwahima Masoud, M.P.
4. The Hon. Dr. Enoch Kibunguchy, M.P.
5. The Hon. Leonard Sang, M.P.
6. The Hon. Dr. Naomi Shaban, M.P.
7. The Hon. Dr. Dahir D. Mohamed, M.P.
8. The Hon. Raphael Milkau Otaalo, M.P.
9. The Hon. Dr. Susan Musyoka, M.P.
10. The Hon. Michael Onyura, M.P.
11. The Hon. Dr. Eseli Simiyu, M.P.

Clause 2 to be amended as follows;

- I. The definition of 'alternative medicine' be amended by deleting the word 'that' before the word 'country's' and replace it with the word 'the'.

*Justification*

This is to make reference to Kenya.

- II. Amend the definition of 'informed consent' to read 'means consent given without any force, fraud or threat and with full knowledge and understanding of the medical and social consequences of the matter to which consent relates'.

*Justification*

To qualify the definition more.

- III. Insert a new definition for 'Notifiable diseases' to mean a disease that requires to be reported to health officials when diagnosed, because of infectiousness, severity or frequency of occurrence'

*Justification*

To define infectious diseases. A list of notifiable diseases should be attached as schedule.

- IV. Insert a new definition 'Hospital Waste' means any waste which is generated in the diagnosis, treatment or immunization of human beings or animals or in research" in a hospital.

*Justification*

To provide for the definition of the Hospital waste.

- V. Insert a new definition 'Health Impact Assessment' is a *means of assessing the health impacts* of policies, plans and projects in diverse economic sectors using quantitative, qualitative and participatory techniques.

*Justification*

To provide for the definition of the health impact assessment.

- VI. Insert a new definition 'ethical clearance' to mean a range of good research practice and conduct which can include intellectual honesty, accuracy, fairness, intellectual property, and protection of human and animal subjects involved in the conduct of research.

*Justification*

To provide for the definition of ethical clearance.

- VII. Insert a new definition of 'health promotion' to mean the process of enabling people to increase control over, and to improve, their health. It moves beyond a focus on individual behaviour towards a wide range of social and environmental interventions.

*Justification*\_\_\_\_\_

To provide for the definition of health promotion.

**COMMITTEE OBSERVATION.**

The Committee made the following observation that;

- i. The Health Bill, 2015 should provide for the Health Professional Tribunal to establish channels for filing complaints.
- ii. There is need to engage the Commission on the Implementation of the Constitution as one of the stakeholders on their proposals on the Health Bill.

**MIN.NO. DCH 154/2015      ADJOURNMENT**

There being no other business the meeting was adjourned at 1.37 pm.

SIGNED.....

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

**CHAIRPERSON**

DATE:.....

|   |   |
|---|---|
| 53—Kenya National Blood-Transfusion Service           | 54—National and county government Health Information Systems. |
| <b>PART X –HEALTH FINANCING</b>                       | 55—E-Health.  |
| 54— Private Health Services.                          | <b>PART X -PROMOTION AND CONDUCT OF RESEARCH FOR HEALTH</b>   |
| 55—Bank Account                                       | 56—State Research for Health Committee.                       |
| <b>PART XI-ROLE OF PRIVATE SECTOR PARTICIPATION</b>   | 57— Composition of the Committee.                             |
| 56—Private health services                            | 58—Term of office.  |
| 57—licensing of private entities to operate hospitals | 59—Functions of the Committee.                                |
| 58—Private health workers                             | 60— Consent to research.                                      |
| 59—duty of licensees.                                 | 61— Research on minors.                                       |
| 60— Partnership Agreements.                           | 62— Funding for research.                                     |
| 61—Contravention of the Part.                         | 63—Contravention of the Part.                                 |
| <b>PART XI-PROMOTION OF HEALTH RESEARCH</b>           | <b>PART XI-HEALTH PROMOTION AND PREVENTION</b>                |
| 61—National Research for Health Committee.            | 64 - Classification of health establishments                  |
| 62 - Membership.                                      | 65 - Regulations  |
| 63—Term of office.                                    | <b>PART XII: TRANSITIONAL AND MISCELLANEOUS PROVISIONS</b>    |
| 64—Functions of the Committee.                        | <b>MISCELLANEOUS PROVISIONS</b>                               |
| 66—Institute.   | 66—Existing laws.   |
| 67 - Procedure.                                       | 67 - Transitional Provision                                   |
| 68 - Minors.  | 68 - Repeal of Laws and Saving Clause                         |
| 69— Research budget.                                  | <b>FIRST SCHEDULE—TECHNICAL CLASSIFICATION OF THE</b>         |

|  |  |
|--|--|
|  | <b>LEVELS OF HEALTHCARE DELIVERY</b>   |
| 0-Donor support and collaborative arrangements   | <b>SECOND SCHEDULE - PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY</b> |
| <b>PART XIII: E HEALTH</b>   |  |
| 1—E-health delivery  |  |
| 2—E-legislation  |  |
| 3—Health Information System  |  |
| <b>PART XIV: INTER DEPARTMENTAL COLLABORATION</b>  |  |
| 74—Collaboration   |  |
| 75—Training  |  |
| 76—Fields of collaboration   |  |
| <b>PART XV: TRANSITIONAL AND MISCELLANEOUS PROVISIONS</b>                                      |  |
| 77—Existing laws.  |  |
| 78—Public service.   |  |
| 79—Regulations.  |  |
| <b>FIRST SCHEDULE-TECHNICAL CLASSIFICATION OF THE LEVELS OF HEALTHCARE DELIVERY</b>            |  |
| <b>SECOND SCHEDULE - PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY</b> |  |

|  |  |
|--|--|
| <b>SECONDSCHEDULE -<br/>PROVISIONSAS TO THECONDUCT<br/>OF BUSINESSAND AFFAIRS<br/>OFTHEAUTHORITY</b> |  |
|--|--|

| <b>BODIES/ADMINISTRATIVE OFFICES CREATED</b>                         |  |  |
|--|--|--|
| Health Bill (MOH)  | Health Bill (CIC)                            |  |
| Officeof theDirector-<br>General.                                    | ✓  |  |
| Directorates( Power to<br>create lies with CS)                       | ✓  |  |
| County Executive<br>Department of Health                             | ✓  |  |
| KenyaHealth Professions<br>Oversight Authority                       | KenyaHealth<br>ProfessionsAuthority          |  |
| X  | Health ProfessionsTribunal                   |  |
| A Single Health Products<br>And Technologies Body (to<br>be created) | A Health Products And<br>Technologies Agency |  |
| Kenya National Blood<br>Transfusion Service                          | KenyaBlood Service.                          |  |
| National ResearchforHealth<br>Committee.                             | StateResearchforHealth<br>Committee.         |  |

**CLAUSE BY CLAUSE ANALYSIS**

Clause 1 – Agreed to.

- VI. Insert a new definition 'ethical clearance' to mean a range of good research practice and conduct which can include intellectual honesty, accuracy, fairness, intellectual property, and protection of human and animal subjects involved in the conduct of research.

*Justification*

To provide for the definition of ethical clearance.

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SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:.....