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8/5/2024

REPUBLIC OF KENYA

[Signature] 07/05/24



Rt. Hon. Speaker*
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the Senate/Secretary, PSC
Date: 07/05/24

PARLIAMENT OF KENYA
THE SENATE

THIRTEENTH PARLIAMENT
THIRD SESSION

THE STANDING COMMITTEE ON HEALTH



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

COS
Recommended for
approval for tabling.

[Signature] 07/05/2024

8/5/2024
Chairperson, Health
Abdirahman

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

APRIL, 2024

Contents

TABLE OF CONTENTS	1
ABBREVIATIONS AND ACRONYMS	2
PRELIMINARIES	3
Establishment and Mandate of the Standing Committee on Health.....	3
Membership of the Committee	3
Functions of the Committee.....	3
Government Agencies and Departments under the Purview of the Committee.....	4
FOREWORD BY THE CHAIRPERSON	5
CHAPTER ONE INTRODUCTION	8
Introduction	8
Background	8
Objects of the Bill	9
Overview of the Bill	9
CHAPTER TWO	12
PUBLIC PARTICIPATION ON THE BILL	12
CHAPTER THREE	13
SUBMISSIONS FROM STAKEHOLDERS AND COMMITTEE	
RESOLUTIONS	13
CHAPTER FOUR.....	21
COMMITTEE OBSERVATIONS AND RECOMMENDATIONS	21
Committee Observations.....	21
Committee Recommendations	23
LIST OF APPENDICES	24

ABBREVIATIONS AND ACRONYMS

CS	-	Cabinet Secretary
MNH	-	Maternal and Newborn Health Association
MOH	-	Ministry of Health
NEC	-	Nairobi Eastern Central Regional Budget Hub
NGEC	-	National Gender and Equality Commission

PRELIMINARIES

Establishment and Mandate of the Standing Committee on Health

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

Membership of the Committee

The Committee is comprised of the following Members:

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

Functions of the Committee

Pursuant to Standing Order 228(4), the Committee is mandated to –

10. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of its assigned ministries and departments;
11. Study the program and policy objectives of its assigned ministries and departments, and the effectiveness of the implementation thereof;
12. Study and review all legislation referred to it;
13. Study, assess and analyze the success of the ministries and departments assigned to it as measured by the results obtained as compared with their stated objectives;
14. Consider the Budget Policy Statement in line with Committee's mandate;
15. Report on all appointments where the Constitution or any law requires the Senate to approve;
16. Make reports and recommendations to the Senate as often as possible, including recommendations of proposed legislation;

17. Consider reports of Commissions and Independent Offices submitted to the Senate pursuant to the provisions of Article 254 of the Constitution;
18. Examine any statements raised by Senators on a matter within its mandate; and
19. Follow up and report on the status of implementation of resolution within their mandate.

Government Agencies and Departments under the Purview of the Committee

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

FOREWORD BY THE CHAIRPERSON

Hon. Speaker,

The Maternal, Newborn, and Child Health Bill, (Senate Bills No. 17 of 2023) seeks to create a comprehensive, responsive, and structured system for delivering quality healthcare services to mothers, newborns, and children. This includes addressing causes of morbidity and mortality, enhancing accessibility and utilization of services, and promoting integrated, innovative approaches in service delivery.

Additionally, the Bill seeks to foster collaboration among existing programs and provide special attention to mothers and children with special needs, aiming to empower them as independent contributors within their families and communities.

Mr. Speaker Sir,

The Maternal, Newborn, and Child Health Bill, (Senate Bills No. 17 of 2023) was published *vide* Kenya Gazette Supplement No. 63 of 5th May, 2023. It was introduced in the Senate by way of First Reading on Tuesday, 8th August, 2023, and thereafter stood committed to the Standing Committee on Health pursuant to Standing Order 145.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 10th, August, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill.

Following the call for submissions, the Committee received written memoranda from various stakeholders, namely: The National Gender and Equality Commission (NGEC), the Maternal and Newborn Health Association/MNH Coalition of Kenya, the Nairobi, Eastern and Central Budget Hub and the Kiambu Working Group.

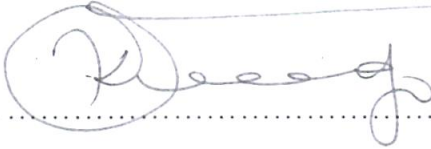
Hon. Speaker,

On behalf of the Committee, I wish to sincerely thank the National Gender and Equality Commission (NGEC), the Maternal and Newborn Health Association/MNH Coalition of Kenya, the Nairobi, Eastern and Central Budget Hub and the Kiambu Working Group who heeded to our call and made articulate written submissions. The Committee reviewed all the submissions received and has taken into account the views of all stakeholders in preparation of this report.

Hon. Speaker,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to ~~present the Report of the Standing Committee on Health on the Maternal, Newborn and Child Health Bill (Senate Bills No. 17 of 2023).~~

Signed



Date

22/02/2024

SEN. JACKSON MANDAGO, EGH, M.P.

CHAIRPERSON, STANDING COMMITTEE ON HEALTH

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON
HEALTH ON THE MATERNAL, NEWBORN AND CHILD HEALTH BILL
(SENATE BILLS NO. 17 OF 2023).**

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

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

CHAPTER ONE

Introduction

1. The Maternal, Newborn and Child Health Bill (Senate Bills No. 17 of 2023) was published *vide* Kenya Gazette Supplement No. 63 of 5th May, 2023. A copy of the Bill as published has been attached to this report as *Appendix 2*.
2. It was introduced in the Senate by way of First Reading on Tuesday, 8th August, 2023, and thereafter stood committed to the Standing Committee on Health pursuant to Standing Order 145.
3. In compliance with the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 10th August, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advert as published has been attached to this report as *Appendix 3*.
4. Following the call for submissions, the Committee received written memoranda from various stakeholders including National Gender and Equality Commission (NGEC), the Maternal and Newborn Health Association/MNH Coalition of Kenya, the Nairobi, Eastern and Central Budget Hub and the Kiambu Working Group, *Appendix 6*
5. In addition, the Committee held intensive meetings to review the memoranda submitted as matrixed, *Appendix 1*.

Background

6. Maternal mortality rates in Kenya have remained high, with the World Health Organization estimating it at 673 deaths per 100 000 live births. This is partly due to inadequate access to quality prenatal and postnatal care, emergency obstetric care, skilled birth attendance, and family planning services. In addition, there are disparities based on socio-economic status and geographical location, with rural and impoverished women less likely to receive adequate care.
7. Additionally, according to the Kenya Demographic and Health Survey, neonatal deaths remain high, contributing to 40% of under-five mortality rates making it an important health priority. Again, limited access to quality healthcare and disparities based on location and economic status contribute to these high mortality rates

8. Despite efforts to improve healthcare in Kenya, access to quality maternal, newborn, and child health services is still a challenge, especially in rural areas. Factors such as distances to health facilities, shortage of skilled health workers, and costs associated with care can create barriers to access.
9. Consequently, a law focused on maternal, newborn, and child health could help address these issues by creating a framework for delivering quality health services, ensuring these services are accessible and available to all, promoting linkages among existing programs, and fostering innovative approaches to healthcare delivery. This kind of legislation could then be a significant step towards improving maternal, newborn, and child health outcomes in Kenya.

Objects of the Bill

10. The objects of the Bill are to –

- a) Provide a comprehensive, structured, and responsive framework for the delivery of quality health services to mothers, newborns, and children, ensuring accessibility to essential interventions and supplies;
- b) Establish and link programs to expand services, particularly at the community level;
- c) Respond to the key causes of maternal and child health issues while ensuring accessible healthcare services and interventions;
- d) Promote linkages among existing programs, placing a focus on community health services and caring for those with special needs and;
- e) Promote the use of health services and encourage innovative and integrated delivery methods.

Overview of the Bill

11. **PART I- Preliminary-** which contains four (4) clauses sets out the short title of the Bill, the interpretation of words used in the Bill, the objects of the Bill and the principles of service delivery.
12. **PART II- Maternal, Newborn and Child Health Services-** which contains six (6) clauses tasks the National and County governments with ensuring they provide necessary health infrastructure, enabling access to health services, including e-health, creating targeted programs for marginalized and at-risk groups, and ensuring service continuity during crises. It further obligates the National and County governments to implement measures ensuring access to maternal, neonatal, and child healthcare such as reasonable healthcare services, prenatal, intrapartum, and postpartum services, emergency services, skilled personnel, necessary supplies, and

safe facilities for new-born.

13. Further stipulates, that a non-pregnant woman is entitled to services that prepare for ~~future pregnancy, including family planning services, preconception care,~~ counseling services, health information and education, and referral to adoption services agencies mandating the Cabinet Secretary to put in place measures to ensure every pregnant woman's access to health services designed for the well-being of the woman and her fetus during pregnancy and post-birth.
14. It further specifies that every person seeking maternal, new-born, and child health services be entitled to respectful and courteous treatment, regardless of their individual characteristics and further ensuring healthcare providers to offer a range of services to children from birth up to twelve years.
15. **PART III-Role of the National Government-** which contains two (2) clauses that establishes the relation between the role of the National Government and the Cabinet Secretary with regards to the effective delivery of maternal, newborn, and child healthcare services. The Cabinet Secretary is also tasked with mobilizing resources for efficient service delivery, ensuring public awareness, and promoting capacity building. In collaboration with the County governments, the Cabinet Secretary is required to implement strategies aimed at reducing health risks, including public education, healthcare provider training, community support services for pregnant women, and health promotion during and after pregnancy.
16. It further mandates the Cabinet Secretary to prepare and submit an annual report on the status of maternal, newborn, and child health services to the National Assembly and the Senate within three months of each financial year's end. A report which should include a description of the Ministry's activities, recommendations on legal and administrative measures, and other relevant information.
17. **PART IV- Role of the County Governments-** which contains six (6) clauses that provide that every county executive committee member has various responsibilities in relation to maternal, newborn, and child health services and are tasked with coordinating the implementation of related policies while collaborating with various stakeholders such as the Cabinet Secretary and to actively promote public awareness and community involvement in the formulation and implementation of policies, strategies, community programs concerning maternal, newborn, and child health services and design civic education programs to provide readily accessible information on various aspects of maternal, newborn, and child health.
18. Further, it requires every county government to earmark adequate funds in its annual budget specifically for the provision of maternal, newborn, and child health services in the County and to submit a report to the County Assembly, within three months

of the end of each financial year, detailing the status of maternal, newborn, and child health services in the county. The report is to be published in the County Gazette and other media for maximum dissemination.

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19. **PART V- Monitoring and Evaluation**-which contains three (3) clauses, provides that each County executive committee member is to identify vulnerable and marginalized communities in their County in order to generate necessary data to build the capacity of health workers so as to cater to these groups' health needs.
 20. Further states that the Cabinet Secretary shall carry out annual monitoring and evaluation of the maternal, newborn, and child health services in the country and the adherence to standards and guidelines under the Act and in collaboration with the Kenya National Bureau of Statistics, carry out periodic analytic studies to investigate maternal, neonatal, and child deaths and develop strategies for reducing maternal morbidity and mortality. In addition, there are provisions on matters quality assurance which should be in accordance with National standards and guidelines.
 21. **PART VI - General Provisions**- which contains three (3) clauses, obligates every hospital or approved health facility to maintain a register with set procedures, standards, code of ethics, and guidelines as prescribed under the Bill or any other relevant law and penalties for breach of the set regulations.

CHAPTER TWO

PUBLIC PARTICIPATION ON THE BILL

22. Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Standing Committee on Health invited interested members of the public to submit submissions on the Bills.
23. An advertisement requesting for submission of memoranda from members of the public was made in the Daily Nation and Standard Newspapers Thursday, 10th August, 2023. Receipt of memoranda on the Bill was closed on Friday, 25th August, 2023.
24. The Committee received written memoranda from various stakeholders, namely: The National Gender and Equality Commission (NGEC), the Maternal and Newborn Health Association/MNH Coalition of Kenya, the Nairobi, Eastern and Central Budget Hub and the Kiambu Working Group.
25. A matrix with a summary of the submissions from the various stakeholders has been attached to this report as *Appendix 4* and is illustrated under Chapter 3.
26. The Committee proceeded to consider the submissions received, further giving their own views and amendments thereon as set out in the matrix attached to this report as *Appendix 4* which informed the Committee Stage amendments as *Appendix 5*.
27. The signed minutes of the committee sittings have also attached to this report as *Appendix 1*

CHAPTER THREE

SUBMISSIONS FROM STAKEHOLDERS AND COMMITTEE RESOLUTIONS

28. Submission under Clause 1- *Short Title*- the Maternal and Newborn Health Association proposed to amend the title to the bill to include “adolescents” in the name of the bill to be “Maternal, newborn child and adolescent health Bill”. This they rationalized as being a need to have adolescent health be prioritized in the Bill to integrate youth-friendly services and increase access to reproductive, maternal, neonatal, adolescent and child health services and commodities e.g. family planning commodities. As a result, this will help in the reduction of teenage pregnancies and maternal mortalities.

Committee resolution: The Committee rejected this proposal as it was not necessary to include “adolescents” in the citation of the Bill as the definition of child under the Act includes adolescents.

29. Submission under Clause 2- *Interpretation*- the National Gender and Equality Commission proposed the following-

An amendment to the clause by inserting the definition of the term ‘children’ as follows- “children” for the purpose of this Act means persons of up to twelve years because there are a number of other relevant terms in the proposed Bill including “child”, “minors” and “adolescents”.

Committee determination: The Committee rejected this proposal as it was not necessary to redefine the term “child”. The term as defined in the Bill makes reference to the definition in the Children’s Act (Cap. 141) and thus sufficient.

b) An amendment to the clause by inserting the definition of the term ‘birth attendant’ as follows- “birth attendant” includes both traditional birth attendants and professional midwives. Since Clause 14(h) states one of the functions of county governments as to develop and implement training programs for skilled birth attendants in the county and further that the Government generally recognizes the role of traditional birth attendants and so the need to include them in the training programs.

Committee resolution: The Committee rejected this proposal stating that the definition was unnecessary, however the Committee proposed an amendment to clause 14(h) of the Bill to include traditional birth attendants.

c) An amendment to the clause by inserting the definition of the term ‘intersex child’ as follows- “intersex child” means a child with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female or male due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns, which could be apparent prior to, at birth, in childhood, puberty or adulthood. The interpretation is lifted from the Children’s Act, 2022. Hence the need to protect them from harmful practices by either parents or health workers.

Committee resolution: The Committee partially adopted this proposal with the suggestion being- to insert the definition of the term “intersex child” to state as follows- “intersex

child” means a child with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female or male due to inherent and mixed anatomical patterns, which could be apparent prior to, at birth, or in childhood.

d) An amendment to the clause by inserting the definition of the term ‘vulnerable groups’ as follows- “vulnerable groups” include members of minority or marginalized communities and members of particular ethnic, religious or cultural communities and families on the streets. The proposal made a clarification on what the term means and street families are specifically mentioned because they are a neglected group that are always omitted in planning.

Committee resolution: The Committee rejected this proposal since the term “vulnerable groups” is defined under Article 21(3) of the Constitution and thus unnecessary to redefine it.

e) An amendment to the definition of the term ‘unborn child’ to state as follows- “foetus” to mean the developing young of a human being in the uterus from conception to before birth irrespective of the method of conception. This is because the term ‘unborn child’ is not applied in the Bill while reference is made to ‘foetus’ in clause 7.

Committee resolution: The Committee rejected this proposal as the definition was not necessary. The Committee proposed an amendment to clause 7(1) of the Bill where the term ‘foetus’ had been used as to delete the term ‘foetus’ and replace it with the term “unborn child”.

f) An amendment to the definition of the term ‘National Social Assistance Authority’ by substituting it with “body responsible for social assistance”. This is because the National Social Assistance Authority has never been established because the Social Assistance Act has never been operationalized.

Committee resolution: The Committee rejected this proposal as it is not the onus of Parliament to amend its draft law to reflect the failure by the National executive to implement other laws passed by Parliament. The Executive has a duty to implement the Social Assistance Act (Cap. 258A).

30. Submission under Clause 3. – *Objects* The Maternal and Newborn Health Association proposed:

a) An amendment to clause 3(a) to read - to meet the health needs of mothers, new-borns, adolescents, and children. This is to ensure adolescent health is prioritized in the Bill to integrate youth-friendly services and increase access to reproductive, maternal, neonatal, adolescent and child health services and commodities e.g. family planning commodities. This is meant to help in the reduction of teenage pregnancies and maternal mortalities.

Committee resolution: The committee rejected this proposal as it was not necessary as the definition of child under the Act includes adolescents.

The Nairobi, Eastern and Central Budget Hub proposed an amendment to clause 3(b) to read establish a coordinated and well-structured system for the provision of quality

maternal, newborn and child health care services. This is to bring clarity in the bill on the type of structure it intends to establish. They proposed the insertion of the word “well” to stress on the kind of system under proposal. This will provide the needed structured system that will not be over swamped with duties.

31. Submission under Clause 4 – *Principles for Service delivery*. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed to Amend the clause to provide clarification on paragraph (e). This was to make the clause clear. For instance, the meaning of sensitivity towards various cultures given the several socio-cultural factors leading to maternal mortality. Like, some cultures advocate for traditional birth attendants yet several studies have linked this to maternal deaths. It is not clear how the government will reconcile cultural sensitivity and health.

Committee resolution: The Committee rejected the proposal as Clause 4(e) of the Bill is clear as provided in the Bill.

32. Submission under Clause 6 – *Services for a non-pregnant woman*. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed an amendment to the clause to include ‘services for women in sexual & gender-based violence (SGBV) incidences. This was meant to protect the right to emergency care and treatment for women experiencing SGBV to include access to critical interventions to prevent HIV infection through PEP, collection of rape evidence through rape kit and support to initiate police reporting procedures and post abortal care.

Committee resolution: The Committee rejected the proposal as gender-based violence is not restricted to women and should therefore not be contained in a legal provision giving rights to ‘women who are not pregnant’. The Committee Observed that gender-based violence is beyond the scope of the Bill.

The committee proposed to amend clause 6(1)(e) of the Bill to remove reference to agencies and make reference to Part XIV (Adoption) of the Children’s Act (Cap. 141).

33. Submission under Clause 7 – *Services for pregnant woman*.

a) The National Gender and Equality Commission proposed an amendment by deleting paragraph 2(d) because adoption services do not generally fit under the enumerated health services because they are premised under a different docket with its own regulatory framework.

Committee resolution: The Committee rejected the proposal as the provision is properly within the Bill. The Bill merely provides for referral to adoption services and does not make provision on adoption.

The Committee proposed to amend clause 7(2)(d) of the Bill to remove reference to agencies and make reference to Part XIV (Adoption) of the Children’s Act (Cap. 141).

b) The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed an amendment on sub-clause (2) to include ‘provision for post-abortal care (PAC) as it

ought to be part of emergency care & treatment in maternal health.

Committee resolution: The Committee rejected the proposal as the proposed addition is unnecessary as the intended beneficiaries are covered under paragraph (f) i.e. health care services during the postpartum period.

34. Submission under Clause 8 – *Services in the neonatal period and children up to twelve years*. The National Gender and Equality Commission proposed;

An amendment to sub-clause (2) to read — (2) Where the child under subsection (1) has a malformation, a disability or congenital condition, the health care provider shall refer the child to a relevant medical practitioner for comprehensive assessment, diagnosis and treatment. This is to ensure that any form of malformation, and not only severe ones, shall be referred for further intervention. The proposal sought to introduce provision of immediate intervention medical intervention to children born with disabilities and congenital (trait that exists at birth) conditions.

Committee resolution: The Committee rejected the proposal as referral under clause 8(2) of the Bill ought to be restricted to children who are severely malformed.

An amendment to the clause by inserting the following new sub-clause after sub-clause (2)— (2A) Every child born with a disability shall be registered with the National Council of Persons with Disability. This registration is crucial to enable the child access necessary and essential services offered by the Council and also for purposes of data.

Committee resolution: The Committee rejected the proposed new provision as unnecessary since its relevant part is provided under section 7(1)(c)(i) of the Persons with Disabilities Act (Cap. 133).

c) An amendment to the clause by inserting the following new sub-clauses after sub-clause (3) -

(3A) An intersex child shall have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education, training and consideration as a special need category in social protection services.

(3B) A parent, caregiver, guardian or next of kin shall not conceal the identity and information regarding any intersex child.

(3C) No person shall subject an intersex child to change or removal of an organ or subject them to intrusive and involuntary medical testing, treatment or procedure that may have negative long-term consequences. These proposals were intended to include the rights of intersex children in the Bill. The proposals were to protect this category of children from discrimination, abuse and harmful cultural practice from the time of birth and to allow them to make their own decisions on the attainment of age of majority.

Committee resolution: The Committee partially adopted the proposals, hence clause 8 of the Bill be amended by inserting provisions to cater for special rights of intersex children to receive appropriate medical treatment.

d) The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed review of sub-clause (3) to provide clarity on how to achieve fair balance with competing

interests at stake for instance parents/guardian who don't trust the public health, and interest of the public order.

Committee resolution: The Committee rejected the proposal and stressed that the consent of a parent or guardian in the medical treatment of their child is essential and non-negotiable.

35. Submission under Clause 9 – *Services for woman with special needs*. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed:

a) An amendment to the clause to expand definition of a woman with special needs to include women in sexual & gender-based violence (SGBV) incidences. This will ensure timely interventions and responsiveness to reproductive health needs for women in SGBV cases.

Committee resolution: The Committee rejected the proposal as gender-based violence is not restricted to women and should therefore not be contained in a legal provision giving rights to pregnant women with special needs.

b) An amendment to the clause to expand the definition of a woman with special needs to include women with chronic illnesses. This will ensure timely interventions and responsiveness to reproductive health needs of HIV positive women. They observed that the Bill has excluded HIV Positive mothers despite them having special needs.

Committee resolution: The Committee rejected the proposal and observed that persons with chronic illnesses cannot be equated to persons with special needs. Further, this provision is specific to pregnant women with special needs.

36. Submission under Clause 13 – *Report to Parliament*. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed amendment to the clause to include, among the recipients of the report, members of the public. This is to ensure the reports are published and publicized and shared with the public.

Committee resolution: The Committee rejected the proposed amendment and observed it as unnecessary as clause 13(4) of the Bill provides for publication of the report in the Gazette and a national newspaper.

37. Submission under Clause 14 – *Functions of the County Executive Committee member*.

a) The National Gender and Equality Commission proposed to Amend paragraph (e) by substituting the phrase 'National Social Assistance Authority established under the Social Assistance Act' with the phrase "body responsible for social assistance". This is because the Social Assistance Act has not been operationalized.

Committee resolution: The Committee rejected the proposal and observed that it is not the onus of Parliament to amend its draft law to reflect the failure by the National Executive to implement other laws passed by Parliament. The Executive has a duty to implement the Social Assistance Act (Cap. 258A).

b. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group

proposed amendment to the clause to include the following among the roles of the CEC-

- i) develop and implement programmes for effective response to needs of mother and/or child in SGBV cases; and

- ii) facilitate psycho-social support to mitigate mental health issues related to maternal, newborn and child health e.g. post-partum depression. This is to ensure responsiveness to factors impacting Maternal, Newborn and Child Health (MNCH).

Committee resolution: The Committee partially adopted the proposed amendments. It was resolved that clause 7(2) of the Bill be amended by inserting provisions to include facilitation of psycho-social support to mitigate mental health issues related to maternal, newborn and child health among the health services to be provided by the Cabinet Secretary for health.

- c) The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed to the amendment of paragraph (l) to provide cross-departmental collaboration between health department and the agricultural department.

Committee resolution: The Committee rejected the proposed amendment as it is not necessary.

- d) The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed an amendment of paragraph (l) by inserting the word “enough” to quantify ‘number’ of skilled healthcare providers, to read as follows—

- (m) facilitate the training of enough skilled health care providers in the county.

Even though the clause is commendable, it neglects health workers to population ratio. The ideal ratio should be 23:10,000 health workers to Kenyans, or 40: 100,000 clinical officers to Kenyans and 32: 100,000 doctors to Kenyans. The ratio should be factored in. They presented that this will ensure a competent workforce with sufficient skilled health care providers to meet the needs and demands of the surging population.

Committee resolution: The Committee rejected the proposed amendment and found it unnecessary. Further, the proposal may require resources which county governments may not have at their disposal.

38. Submission under Clause 15 – *County Government Collaboration*. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed:

- a) An amendment to the clause to include, among the collaborations between the county executive committee member for health, the Cabinet Secretary for health and relevant stakeholder, professional associations e.g. of psychologists. This will bridge human resource gaps to address related issues for women with special needs that highly impact MNCH.

Committee resolution: The Committee rejected the proposed amendment as unnecessary. The Committee resolved to Amend clause 15 of the Bill to replace community health workers with community health promoters to align with the Primary Health Care Act, 2023. Additionally, to amend clause 2 of the Bill to make provision for the definition of the term “community health promoter” in accordance with section 2 of the Primary Health

Care Act, 2023.

b) An amendment to the clause to include, among the collaborations between the county executive committee member for health, the Cabinet Secretary for health and relevant stakeholder, ~~women of reproductive age. This will Harness the views and opinions of~~ target beneficiaries to shape implementation of MNCH

Committee resolution: The Committee rejected the proposed amendment and observed that they were unnecessary as the same may be addressed by public participation in compliance with the Constitution.

39. Submission under Clause 17 – *Publication of information on maternal, newborn and child health*. The National Gender and Equality Commission proposed the following amendments:

a) An amendment to the paragraph (3)(a) by substituting the phrase ‘easily accessible’ with the phrase “in accessible formats”. Accessible formats include braille or big prints for persons with print disability.

Committee resolution: The Committee adopted the proposal partially. It was resolved that clause 17(3)(a) be amended to provide that civic education programmes and information be easily accessible and be in accessible formats.

b) An amendment to paragraph (3)(b) by inserting the words “and simple” after the word ‘clear’. This is meant to ensure that the language is simple to be understood by the residents.

Committee resolution: The Committee rejected the proposed amendment since clear language is sufficient for civic education programmes and information.

c) An amendment on paragraph (3)(c) by substituting the phrase ‘distinguishing between minors from adults’ with the phrases “on age, gender, disability status, ethnicity among others”. This is to ensure that the Bill gets disaggregated data that is not limited on age only. The disaggregation will help the state understand intersectionality.

Committee resolution: The Committee rejected the amendment proposal as it deemed it unnecessary.

39. Submission under Clause 18 – *Financing of maternal, newborn and child health services*. The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group proposed to Amend the clause to set penalties for misuse of funds/resources allocated towards provision of maternal, newborn and child health services. The commission presented that from evidence, the budget allocated is huge and there is need to ensure that the budget translates to development. The Bill should provide clear penalties for misuse of funds and resources allocated towards provision of maternal, newborn and child health services.

Committee resolution: The Committee rejected the proposed amendment and deemed it unnecessary since penalties for misuse of public funds or resources are provided under the Public Finance Management Act (Cap. 412A).

40. Submission under Clause 21 – *Monitoring and evaluation*. The National Gender and Equality Commission proposed that sub-clause (3) be amended by substituting the phrase ‘distinguish between minors from adults’ with the phrase “on age, gender, disability status, ethnicity among others”. This is to ensure that state is able to get other disaggregated data in addition to age to help in the understanding of intersectionality.

Committee resolution. The Committee rejected the proposed amendment and found it unnecessary.

41. Submission General submission. The following made general submissions:

a) The Maternal and Newborn Health Association proposed the amendment of the entire Bill to include adolescents in all the clauses with ‘maternal, newborn and child health’ to be “maternal, newborn, child and adolescent health”. The rationale to this inclusion is the evidence from government research that show great proportion of teenage mothers and unmet need for family planning for women across different ages and marital relationship status. There is need to prioritize adolescents’ health in the Bill to integrate youth-friendly services and increase access to reproductive, maternal, neonatal, adolescent and child health services and commodities. This will have the direct impact of reducing teenage pregnancies and maternal mortality.

Committee resolution: The Committee rejected the proposed amendment and found it unnecessary since the definition of child under the Act includes adolescents.

b) The Nairobi, Eastern and Central Budget Hub and Kiambu Working Group made the following general submissions:

i) The group affirmed their support of the Bill because it is progressive, timely and will create a framework for realization of the well-being of pregnant women, newborn babies and children and also obligates counties to establish structures and systems to guarantee stakeholder involvement and collaborative approach for the improvement of maternal health services. The Committee took note.

ii) Amend the Bill to take into account—

a. How the huge intra-urban differences will be addressed. The various health indicators show a clear divide between the rural and urban population which would require specific interventions.

b. Population growth rate of 25% by 2025 will demand specific scale of solutions which should be factored in the Bill. The population growth will demand use of new models of data and evidence to predict future population growth and maternal needs for services. The Bill does not cover this comprehensively.

c. Inclusion of primary beneficiaries. There is need to know the prospects of engagement of the target beneficiaries and whether they will be considered as key stakeholders at the county level.

Committee resolutions: The Committee rejected the proposed amendments as they are neither specific nor clear.

CHAPTER FOUR

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Committee Observations

Having considered the Bill and the submissions received thereon, the Committee made the following observations—

42. The object of the Bill is to put in place a legal framework to facilitate and enhance the delivery of quality maternal, newborn and child health services, provide a platform for raising the profile and agenda for maternal, newborn and child health services, provide a framework for formal engagement, cooperation and promotion of coordinated approach to the delivery of maternal, newborn and child health services in the country, provide a platform of engagements between the national and county governments, and to enhance accountability and sound funding strategy for maternal, newborn and child health services.

43. Stakeholders who made submissions on the Bill supported it and its principal objectives.

44. It is not necessary to include “adolescents” in the citation or language of the Bill as proposed by stakeholders as the definition of “child” under the Act includes adolescents, i.e. a person below the age of eighteen.

45. Traditional birth attendants play a key role in rural areas of Kenya in providing maternal and newborn child health services. Their role has however been ignored under the Bill. It is therefore imperative that the role of traditional birth attendants be recognized and that they be trained to perform duties where licensed health service providers are unavailable.

46. It is not necessary to define the term “vulnerable groups” as the term is defined under Article 21(3) of the Constitution and it is therefore not necessary to redefine it as proposed by some stakeholders.

48. Some stakeholders proposed that the term National Social Assistance Authority be deleted from the Bill since the Authority has never been established because the Social Assistance Act has never been operationalized. The Committee however notes that it is not the onus of Parliament to amend its draft law to reflect the failure by the National executive to implement other laws passed by Parliament. The executive has a duty to implement the Social Assistance Act (Cap. 258A).

49. Other stakeholders proposed that the Bill be amended to include health services for women in sexual and gender-based violence incidents. The Committee however observed that gender-based violence is not restricted to women and should therefore not be contained in a law giving health rights to women and children. In any event, gender-

based violence is beyond the scope of the Bill.

50. The health rights of intersex children, as some stakeholders noted, have not been specifically safeguarded under the Bill. It is therefore imperative to amend the Bill to cater for special rights of intersex children to receive appropriate medical treatment.

51. The consent of a parent or guardian in the medical treatment of their child is essential and non-negotiable. The proposal by some stakeholders to review such consent ought not to be entertained.

52. Noting that the Primary Health Care Act, 2023 enshrined community health promoters into law, it is prudent to amend the Bill to replace community health workers with community health promoters to align the Bill with the current statute.

53. Some stakeholders proposed that the Bill be amended to set penalties for misuse of resources allocated towards provision of maternal, newborn and child health services. The Committee however noted that the amendment is not necessary as penalties for misuse of public funds or resources is provided under the Public Finance Management Act (Cap. 412A).

Committee Recommendations

The Committee therefore recommends that the Senate **passes the Bill with amendments** as follows—

54. Amend clause 2 of the Bill to insert the following definition of the term “intersex child”— “intersex child” means a child with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary of female or male due to inherent and mixed anatomical patterns, which could be apparent prior to, at birth, or in childhood.

55. Further amend clause 2 of the Bill to make provision for the definition of the term “community health promoter” in accordance with section 2 of the Primary Health Care Act, 2023.

56. Amend clause 6(1)(e) and 7(2)(d) of the Bill to remove reference to agencies and make reference to Part XIV (Adoption) of the Children’s Act (Cap. 141).

57. Amend clause 7(1) of the Bill to delete the term ‘foetus’ and replace it with the term “unborn child” as the term “unborn child” is the proper term that has been defined under clause 2 of the Bill.

58. Amend clause 7(2) of the Bill to include facilitation of psycho-social support to mitigate mental health issues related to maternal, newborn and child health among the health services to be provided by the Cabinet Secretary for health.

59. Amend clause 8 of the Bill to insert provisions catering for special rights of intersex children to receive appropriate medical treatment.

60. Amend clause 14(h) of the Bill to mandate county executive committee members for health to develop and implement training programmes for traditional birth attendants in the county.

61. Amend clause 15 of the Bill to replace community health workers with community health promoters to align with the Primary Health Care Act, 2023.

62. Amend clause 17(3)(a) of the Bill to provide that civic education programs and information be easily accessible and be in accessible formats.

LIST OF APPENDICES

Appendix 1	-	Signed minutes of the Committee
Appendix 2	-	Copy of the Maternal, Newborn and Child Health Bill (Senate Bills No. 17 of 2023)
Appendix 3	-	Copy of the Advertisement for public participation
Appendix 4	-	Matrix of stakeholder submissions with Committee determinations.
Appendix 5	-	Committee stage amendments
Appendix 6	-	Stakeholder submissions

