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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON HEALTH

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REPORT ON:

THE DIGITAL HEALTH BILL, 2023 (NA BILL NO. 57 OF 2023)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 26 SEP 2023
DAY: Tuesday
TABLED BY: Hon. (Dr.) Robert Pukose (Chairperson, Committee on Health)
CLERK-AT THE-TABLE: Inzofu Mwale

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER, 2023

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FOREWORD BY THE CHAIRPERSON

This report contains proceedings of the Departmental Committee on Health on its consideration of the Digital Health Bill, 2023 (NA Bill No. 57 of 2023), by the Leader of the Majority Party, Hon. Kimani Ichung'wah which was published on 8th September 2023 .The Bill was read the first time on Thursday, 14th September 2023, and was thereafter committed to the Departmental Committee on health for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has sixty-one (61) clauses and seeks to provide a framework for the provision of digital health services, to establish the Digital Health Agency, to establish a comprehensive integrated digital health information system and to provide for data governance and protection of personal health information in service delivery through digital health interventions, e-waste disposal and health tourism.

Following placement of advertisements in the print media on Friday, 15th September, 2023 and Saturday,16th September 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from several individuals and institutions as enumerated in Part III of the Report.

The Committee requested memoranda from several key stakeholders including the Ministry of Health, the Ministry of ICT, the Office of the Attorney-General and Department of Justice, the Kenya Law Reform Commission, the National Health Insurance Fund, the ICT Authority, the Kenya Medical and Dentists Practitioners Council, the Office of the Data Protection Commissioner, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, the Commission on Administrative Justice, the Council of Governors, the County Assemblies Forum, the Law Society of Kenya, the Kenya Association of Manufacturers, the Kenya Medical Association, The Federation of Kenya Employers, the Central Organization of Trade Unions, the Kenya Private Sector Alliance, the Consumers Federation of Kenya and the Kenya Association of Private Hospitals vide letters REF: NA/DDC/DC-H/2023/088 and REF: NA/DDC/DC-H/2023/089 dated 15th September 2023.

The Committee also engaged the Ministry of Health and the Council of Governors on 17th to 20th September 2023 in Mombasa County. The Committee further engaged the Kenya Association of Private Hospitals and the National Health Insurance Fund on 22nd to 25th September 2023 in Machakos County.

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

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Digital Health Bill, 2023 (NA Bill No. 57 of 2023) .It is my pleasure to report that the Committee has considered the Digital Health Bill, 2023 (NA Bill No. 57 of 2023) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

Hon. Dr. Robert Pukose, M.P.
Chairperson, Departmental Committee on Health

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

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

    a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*

    b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
    ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;

    c) *To study and review all legislation referred to it;*

    d) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*

    e) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*

    f) *Vet and report on all appointments where the constitution or any other law requires the national Assembly to approve, except those understanding Order 204 (Committee on appointments);*

    g) *To examine treaties, agreements and conventions;*

    h) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*

    i) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*

    j) *To examine any questions raised by Members on a matter within its mandate.*

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

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

1.2 COMMITTEE MEMBERSHIP

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

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

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

Hon. Owino Martin Peters, MP
Ndhiwa Constituency
ODM Party

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

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

Hon. Kipngok Reuben Kiborek , MP
Mogotio Constituency
UDA Party

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

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

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

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

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

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

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

Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency
ANC Party

1.3 COMMITTEE SECRETARIAT

5. The Committee is supported by the following Members of Staff:

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

Ms. Gladys Jepkoech Kiprotich
Clerk Assistant III

Ms. Marlene Ayiro
Principal Legal Counsel II

Ms. Faith Chepkemoi
Legal Counsel II

Mr. Yakub Ahmed
Media Relations Officer II

Ms. Rahab Chepkilim
Audio Recording Officer II

Ms. Abigael Muinde
Research Officer III

Mr. Hiram Kimuhu
Fiscal Analyst III

Mr. Benson Kimanzi
Serjeant-At-Arms III

Mr Salat Abdi Ali
Senior Serjeant-At-Arms

CHAPTER TWO

2.0 OVERVIEW OF THE DIGITAL HEALTH BILL, 2023 (NA BILL NO. 57 OF 2023)

6. The Digital Health Bill, 2023 (hereinafter referred to as "the Bill") is sponsored by the Leader of the Majority Party. The principal object of the Bill is to provide a framework for the provision of digital health services, to establish the Digital Health Agency, to establish a comprehensive integrated digital health information system and to provide for data governance and protection of personal health information in service delivery through digital health interventions, e-waste disposal and health tourism.

7. **Part I (Clauses 1-4)** of the Bill provides for the preliminary provisions and outlines the purpose and objects of the Bill as well as the principles that shall guide the implementation of the Act. The objects of the Act are to:

   (a) establish the Digital Health Agency;

   (b) establish and maintain a comprehensive integrated health information system;

   (c) promote innovation and the safe, efficient and effective use of technology for healthcare, including for continuity of care, emergency and disaster preparedness and disease surveillance;

   (d) establish a regulatory framework for the e-Health ecosystem data life cycle;

   (e) provide for privacy, confidentiality, and security of health data;

   (f) develop standards for the provision of m-Health, telemedicine, and e-learning;

   (g) establish a regulatory framework for e-waste management; and

   (h) provide for the safe and secure transfer of personal, identifiable health data and client's medical records to and from health facilities outside Kenya.

8. **Part II (Clauses 5-14)** of the Bill establishes the Digital Health Agency and provides for the Board, its functions, powers, qualification of members and appointment of the Chief Executive Officer among others. The functions of the Digital Health Agency are to:

   (a) develop, operationalise and maintain the Comprehensive Integrated Health Information System to manage the core digital systems and the infrastructure required for its seamless health information exchange;

   (b) establish registries, in consultation with other statutory authorities, at appropriate levels to create single source of truth in respect of clients, health facilities, healthcare providers, health products and technologies;

   (c) promote adoption of best practices and standards for digital health that facilitate data exchange;

(d) establish a system of shareable and portable personal health records, based on best practices and standards;

(e) ensure health data portability;

(f) facilitate collection and analysis of data to inform policy and research in the health sector;

(g) promote the development of enterprise-class health application systems;

(h) strengthen existing health information systems by ensuring their conformity with the prescribed standards and integration with the comprehensive integrated health information system;

(i) develop and implement the infrastructure for health data exchange of health information in a secured manner;

(j) maintain, in collaboration with the counties and other statutory authorities, the technological infrastructure necessary for the core digital health services;

(k) support the development and implementation of standards for enhanced interoperability;

(l) undertake resource mobilization for implementation of health digitization in the country;

(m) certify digital health solutions based on best practices and standards;

(n) advise the Cabinet Secretary on matters related to digital health; and

(o) perform any other function for the better carrying out of functions under this Act.

The Board of the Digital Health Agency comprises of :

(a) a non-executive chairperson who shall be competitively recruited and appointed by the President;

(b) the Principal Secretary responsible for Health or a representative designated in writing;

(c) the Principal Secretary responsible for National Treasury or a representative designated in writing;

(d) the Principal Secretary responsible for Information, Communication and Technology or a representative designated in writing;

(e) the Data Commissioner or a representative designated in writing;

(f) one person nominated by the Council of County Governors;

(g) one person representing the private sector appointed by the Cabinet Secretary;

(h) two persons, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in digital health; and

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

9. **Part III (Clauses 15-20)** of the Bill provides for the financial provisions including sources of funds for the Agency; the financial year; annual estimates; accounts and audit; annual report and bank accounts.

10. **Part IV (Clauses 21-24)** of the Bill provides for establishment and administration of the comprehensive integrated health information system which shall comprise of:

(a) an Information and Communication Technology environment which consists of the underlying infrastructure, enterprise service bus, standards, data banks, data exchange, governance, actors and applications, internet enabled environment, and other related components;

(b) data collection, collation, analysis, reporting, storage, usage, sharing, retrieval, or archival;

(c) applications, infrastructure and tools, and best practices that enable access to and analysis of information to improve and optimise decisions and performance;

(d) data quality assurance and audit; and

(e) shared or common resources, including the national health data dictionary, client registry, facility registry, health worker registry, the Kenya Health Enterprise Architecture, product catalogue, interoperability layer, logistics management information services, shared health records, health management information services, and finance and insurance services.

The main objectives of the system shall be to—

(a) facilitate people-centred quality health service delivery;

(b) facilitate data collection and reporting at all levels;

(c) enable secure health data sharing to ensure timely and informed interfacility health service delivery;

(d) facilitate data processing and use for informed decision-making at all levels, including at individual patient level, for public health purposes and for resource allocation and management in the health sector;

(e) safeguard the privacy, confidentiality, and security of health data for information sharing and use;

(f) serve the health sector and facilitate in a progressive and equitable manner realisation of universal health coverage, to achieve the highest attainable standard of health; and

(g) ensure standardisation of health data management.

11. **Part V (Clauses 25-29)** of the Bill provides for health data governance including classification of health data; and establishment of health data governance framework by the Cabinet Secretary in consultation with the Director-General. Under the Bill, health data has been classified into the following categories—

    (a) sensitive personal level health data;

    (b) administrative data;

    (c) aggregate health data;

    (d) medical equipment data; and

    (e) research for health data.

12. **Part VI (Clauses 30-45)** of the Bill provides for confidentiality, privacy and security of data including security, privacy and disclosure of data in the system; retention and disposal of data in the system; establishment of health data banks; and the use of sensitive personal data; responsibilities of health controller of a health data bank.

13. **Part VII (Clauses 46-50)** of the Bill provides for e-health service delivery to be delivered through telemedicine, electronic health records, m-health, e-learning, telehealth and any other recognized e-health service.

14. **PART VIII (Clause 51)** of the Bill provides for e-waste management through development of guidelines for the safe handling and disposal of all health sector related e-waste material.

15. **Part IX (Clauses 52 and 53)** of the Bill deals with health tourism and it provides that the Cabinet Secretary shall take all necessary measures to safeguard the transfer of medical records to and from facilities outside Kenya.

16. **Part X (Clauses 54-61)** of the Bill provides for the miscellaneous provisions including protection from liability; conflict of interest; confidentiality; offences; regulations and compliance with the Data Protection Act, 2019.

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

CHAPTER THREE

3.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

3.1 LEGAL PROVISION ON PUBLIC PARTICIPATION

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

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

19. Standing Order 127(3) provides that—

"The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

20. Standing Order127(3A) further provides that—

"The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATION

21. The Digital Health Bill, 2023 sponsored by the Leader of the Majority Party was published on 8th September 2023, and pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bill was committed to the Departmental Committee on Health having been read the first time in the House on Thursday, 14th September 2023.

22. Following the committal of the Bill , the Committee invited memoranda from the public through the placement of advertisements in the print media on Friday, 15th September, 2023 and Saturday,16th September 2023 and requested for memoranda from key stakeholders vide letters REF: NA/DDC/DC-H/2023/088 and REF: NA/DDC/DC-H/2023/089 dated 15th September 2023. The Committee also engaged the Ministry of Health and the Council of Governors on 17th to 20th September 2023 in Mombasa County. The Committee further engaged the Kenya Association of Private Hospitals and the National Health Insurance Fund on 22nd to 25th September 2023 in Machakos County.

3.3 SUBMISSIONS ON THE BILL

23. Following the call for memoranda, the Committee received submissions through oral presentation and written memoranda from the following institutions and individuals:

1. The Ministry of Health (MOH);

2. The Ministry of Information, Communications and the Digital Economy, State Department for ICT and Digital Economy;

3. The Council of Governors (COG);

4. The Kenya Medical Practitioners and Dentists Council (KMPDC);

5. The Health Records and Information Management Officers and the Association of Medical Records Officers (Kenya) submitted a joint memorandum;

6. BYON8;

7. The Federation of Kenya Employers (FKE);

8. Five (5) Civil Society Organisations (CSOs) namely Kenya AIDS NGOs Consortium (KANCO), Amnesty International Kenya, ICJ Kenya, People's Health Movement (PHM) and Institute of Public Finance (IPF) The Kiambu County Empowerment Network (KCEN) submitted a joint memorandum;

9. Kenya Faith Based Health Services Consortium (KCCB, CHAK, MEDS SUPKEM);

10. The Office of the Data Protection Commissioner (ODPC);

11. The Kenya Medical Association;

12. The Haki Yetu Organization;

13. The Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN);

14. Dr. Peter Ongwae;

15. Dr. Emmanuel Mulaa;

16. Hakijamii;

17. The Smart Applications International Ltd;

18. The Caucus on Disability Rights Advocacy (CDRA); and

19. The United Disabled Persons of Kenya (UDPK).

24. The **Ministry of Health, State Department for Medical Services,** whilst expressing its support for the Bill indicated that the Ministry had conducted stakeholder engagement on the Bill and prepared a memorandum on consolidated feedback received from the stakeholder engagement. It further submitted that the memorandum is a true reflection of the stakeholder engagement and guided by the views received from the stakeholders, the Ministry proposed the following amendments:

(a) Deletion of the word 'voluntarily' appearing in the definition of the words "health tourism" so as to encompass situations where a person is incapacitated;

(b) Deletion of the word "pseudonymisation" and substituting therefor the word "pseudo-anonymisation" as the word pseudonymisation is also referred to as pseudo-anonymisation. The proposed amendment is therefore for clarity and uniformity purposes as both terms have been used in the Bill;

(c) Insertion of the new definitions on de-identification, Medical Equipment data, Health Data and telehealth. The term "de-identification" is a type of health data that has been proposed for inclusion in the Bill while the terms "Medical Equipment data, Health Data Custodian and telehealth" have been mentioned in the Bill and needed to be defined;

(d) Deletion of the word 'Cabinet Secretary' immediately after 'without the prior approval of' and substitution with 'Parliament' in Clause 7(1) as the Digital Health Agency should only be allowed to charge or dispose of any immovable property with the approval of the National Assembly not the Cabinet Secretary;

(e) Insertion of the words "in accordance with National Treasury Guidelines" in Clause 7(2)(e) as adherence to National Treasury Guidelines must be explicit to avoid misappropriation of funds under the guise of investments;

(f) Increase of the representation of county governments in the Board of the Digital Health Agency as several functions of the Comprehensive Health Information System established under the Bill will be implemented in collaboration with the County Governments;

(g) Deletion of Clause 10(2) on co-option of members into the Committees of the Board of the Digital Health Agency as there is a probability that the clause may be misused based on precedence;

(h) Amendment of Clause 11(1) to provide that the Chief Executive Officer of the Digital Health Agency shall be competitively recruited by the Board and appointed on the terms determined by the Board in consultation with the Salaries and Remunerations Commission;

(i) Introduction of a provision that the Chief Executive Officer shall be the accounting officer of the Agency and that the CEO must have a master's degree and has served in a management level for a period of at least five years;

(j) Amendment of Clause 13 to make provision for the minimum qualifications and functions of the Corporation secretary;

(k) Amendment of Clause 14 to delete the word 'appoint' and substitute the word 'recruit' as the Board recruits and does not appoint staff in accordance with the expertise required;

(l) Redrafting of Clause 20 to the effect that the Chief Executive Officer may in accordance with the law relating to the management of public finance, open bank accounts on behalf of the Board with approval from the National Treasury and shall, as the accounting officer, be responsible for the proper management of the finances of the Agency;

(m) Amendment of Clause 23 to provide that the Comprehensive Integrated Health Information system shall facilitate track and trace of health products and

technologies in the country. This will be for quality purposes as part of ensuring that only licensed HPTs are used in the country;

(n) Amendment of Clause 25 by providing for a new category of de-identified, pseudo-anonymised, or anonymised individual-level health data which refers to the classification of health data which would fall under sensitive personal level health data that has been stripped of personal identifying information;

(o) Amendment of Clause 31(2) by inserting a new exception on reasonably necessary for a lawful purpose in the storage of data in the Comprehensive Integrated Health Information system beyond ten years for alignment with section 39(1) and (2) of the Data Protection Act, No. 24 of 2019;

(p) Amendment of Clause 35 by the cross reference of '15(2)' and replacing it with '30(2)' to correct the wrong cross reference;

(q) Deletion of the words "aggregate data, medical equipment data or data related to health research, the" appearing in Clause 41 (1) and substituting therefor the words "health data", deletion of the words "sensitive personal" and substituting therefor the word "health" in the marginal note and deletion of the word "unintentionally" appearing in paragraph (g) of subclause (1) as Clause 41 deals with the breach of all data types not just sensitive personal data;

(r) Deletion of the words 'five hundred thousand shillings' immediately after 'a fine not exceeding' and replacing it with 'five million shillings' in Clause 41(2) and insertion of the word "also" immediately after the words "the person shall" in Clause 41(3) as the penalty should take into consideration the impact of the crime and hence the proposal for stiffer penalties;

(s) Deletion of the word 'a guardian' immediately after 'consent from' and substitution with 'the parent, an appointed guardian or next friend' in Clause 49(1)(h) and (i) so as to align with Clause 38 of the Bill which deals with the processing of personal data relating to a minor or a person without capacity;

(t) Amendment of Clause 52(2) to specify that the requirements in paragraphs (b)-(d) in subclause (2) only apply in the case of health research or the conduct of a post-mortem;

(u) Introduction of new provision to the effect that the Cabinet Secretary shall in consultation with the County Governments, and relevant lead agencies, develop guidelines on health tourism as there is need to develop regulations for health tourism in compliance with section 104 of the Health Act, No. 21 of 2017;

(v) Deletion of the oath of the Board members provided in Clause 55;

(w) Deletion of the word 'otherwise' immediately after 'disclose to any person' and substitution with 'other' in Clause 57(1) to correct a grammatical error; and

(x) Amendment of the penalties in the Bill to enhance the fines from two hundred thousand shillings to one million shillings and imprisonment from one year to two years in Clause 59(1) and (2).

25. The **Ministry of Information, Communications and the Digital Economy, State Department for ICT and Digital Economy** made the following submissions:

(a) That the State Department for ICT and Digital Economy has a fully-fledged Directorate of ICT at the Ministry of Health that can perform the functions provided in clause 6(a), (b), (d), (h), (i) and (k) as part of its mandate although the functions in clause 6(i) and(k) are a repetition of clause 6(a) and (c) respectively;

(b) That the Agency cannot certify digital health solutions based on best practice and standards as provided in clause 6(m) as the Agency cannot implement and regulate itself and digital components can only be certified by the Ministry responsible for ICT.

(c) That the State Department for ICT and Digital Economy has continually deployed and maintained ICT infrastructure including data centres, backbone fibre and last mile connectivity to government institutions include health care facilities;

(d) That if every Ministry were to establish an Agency to manage its own integrated systems, sustainability would be a challenge to the economy further section105 of the Health Act, 2017 does not provide for the creation on an Agency, it just mandates the Ministry of Health to facilitate the establishment and maintenance of a Comprehensive Integrated Information System. The creation of the Agency will lead to duplication and overlapping of functions with other MDAs and will encroach on the mandate of the Ministry responsible for ICT. The Ministry of Health should consider stakeholder engagement to address gaps, misrepresentation and duplication of functions;

(e) That the Bill is silent on the role of Ministry responsible for ICT and the Directorate of ICT at the Ministry of Health in matters of digital health;

(f) That some of the proposed functions of the Agency are being performed by other government agencies for instance e-waste management which is largely done by the National Environment Management Authority; and

(g) That there is no need for the government to create an Agency as the Directorate of ICT at the Ministry of Health should be strengthened to execute its functions effectively.

26. The **Council of Governors** expressed its support for the Bill recognising its potential to revolutionise healthcare delivery and improve patient outcomes through integration of digital technologies. The Council submitted that the Ministry of Health had sufficiently provided the rationale for having the central authority as a body corporate. It further made the following submissions:

(a) Amendment of Clause 5(1) to change the name of the Digital Health Agency to the 'Digital Health Service' as the term "agency" pre-supposes a principal-agent relationship yet the institution as conceptualised is independent;

(b) Review of Clause 8 to increase the membership of the Council of County Governors from one to three members; and

(c) Inclusion of transitional provisions so that the existing information systems and gains made are not lost and to further preserve and transition the human resources if any, in the Department dealing with digital health information.

27. The **Kenya Medical Practitioners and Dentists Council (KMPDC)** submitted as follows:

(a) Amendment of Clause 6 to enumerate KMPDC as one of the statutory authorities referred to in the clause;

(b) Amendment of the composition of the Board to incorporate the Director-General of Health or a representative of a health regulatory body;

(c) Amendment of Clause 8(g) by inserting "in health" immediately after the words 'private sector' to emphasize that the representative of the private sector must come from the health sector;

(d) Deletion of Clause 47(1)(d) since there is no clear mechanism to regulate e-healthcare providers outside the borders of Kenya; and

(e) Amendment of Clause 49 to include issues of practice so that practitioners offering e-health services do so within their scope of practice.

28. The **Health Records and Information Managers (HRIM) Board** and **Association of Medical Records Officers (Kenya)** expressed their support to the government in its digitisation agenda in line with its manifesto. They, however, expressed concern that some sections of the Bill would create disharmony and confusion in the health sector. They submitted as follows:

(a) Section 104 and 105 (3) of the Health Act, 2017 obligates the Cabinet Secretary and Director-General to facilitate the development of policy guidelines that ensure maintenance of a comprehensive integrated health information system but does not provide for the enactment of another legislation to facilitate this function. The Bill therefore undermines the Health Act, 2017 as the function of maintaining all health information systems is already being performed by HRIM professionals regulated by the HRIM Board under section 3(1) of the Health Records and Information Managers Act, 2016;

(b) The functions of the Digital Health Agency as proposed in the Bill conflict with the functions of the HRIM Board under the Health Records and Information Managers Act, 2016 as the latter advises the Cabinet Secretary on matters pertaining to health records and information management in the country;

(c) That HRIM professionals have not been included in the composition of the Board of the Digital Health Agency and yet they are key players on matters of digital health;

(d) That the Health Act, 2017 and the practice demands all health professionals must be regulated including those handling health records or patient data who must be licensed and regulated by the HRIM Board;

(e) That the confidentiality of patient health information cannot be guaranteed as required under the Data Protection Act, No. 24 of 2019 if people deployed in the Digital Health Agency are not licensed;

(f) The Bill is silent on the role of HRIM officers in health information management and does not provide transitional provisions on serving HRIM officers who are directly affected by the Bill and therefore renders thousands of HRIM professionals jobless;

(g) That key stakeholders including training institutions, the private sector and Non-Governmental Organizations (NGOs) were not involved in the development of the Bill and have not been consulted;

(h) That the Digital Health Agency will not be able to regulate the work of the private sector and NGOs; and

(i) That the Bill, based on its objects and qualifications of Board members of the Digital Health Agency, is creating another cadre known as digital health or health informatics even though no gap in information management has been reported.

29. **BYON8,** a leading telehealth/ digital health application in Kenya expressed its support for the Bill and made the following submissions:

(a) That telemedicine has been defined clearly in the Bill,

(b) It is not clear who will license telemedicine providers between the Digital Health Agency and the Kenya Medical Practitioners and Dentists Council which is currently responsible for this licensure;

(c) That the Digital Health Agency in collaboration with the relevant clinical boards ought to provide a licence linked to the provider licence with specific requirements tailor-made for digital health providers as opposed to the prevailing situation whereby the licence is based on clinical physical requirements and assets;

(d) That the Bill should clarify whether other digital health providers such as e-pharmacies will also be regulated and licensed by the Digital Health Agency. It then recommended that a collaborative approach between the relevant clinical licensing boards be adopted to determine the appropriateness of specific digital health interventions and their respective clinical use cases;

(e) That the Bill should set out how the Digital Health Agency will enforce well-recognised standards such as FHIR and Open EHR especially in the private sector;

(f) That the Digital Health Agency will be critical in defining the standard operating procedures required for data integrity and appropriate methods for data-driven audits for the various digital health interventions in both the public and private sector;

(g) That there is a clear distinction between general-purpose data controllers and data processors and the defined health data controllers and data processors as such the Office of the Data Protection Commissioner through the Digital

Health Agency ought to define the protocols required for health data protection in light of its sensitivity; and

(h) Definition of the term "*Specific thresholds*" in the Bill so as determine appropriate licensing of digital health providers based on the digital assets in place to ensure patient data security.

30. The **Federation of Kenya Employers** ,the premier and most representative employers' body that employs 67% of formal private sector wage employees in Kenya, while acknowledging the importance of the Bill, proposed the following amendments:

a) Insertion of the words "*as amended from time to time*" in the definition of the term "data commissioner" immediately after the words "Data Protection Act, 2019" so as not to render the reference obsolete;

b) Deletion of the word "Authority" and substitution with the word "Agency" in clause 7 (2) to correct typographical mistake; and

c) Amendment of clause 8(1)(g) to provide a clear criterion for nomination of the private sector representative by redrafting paragraph (g) as follows—

"*one person nominated by the most representative Employers body, Federation of Kenya Employers and appointed by the Cabinet Secretary to represent the private sector;*".

31. The **Civil Society Organisations (CSOs)** working on health, governance and human rights namely **Kenya AIDS NGOs Consortium (KANCO), Amnesty International Kenya, ICJ Kenya, People's Health Movement (PHM) and Institute of Public Finance (IPF)** submitted as follows:

a) That the Bill be renamed the "Health Data Governance Bill" to deal with general health data issues with the digital aspect being a mere component;

b) Merger of the Bill with the E-Health Bill which seemingly addresses similar issues;

c) That the health data governing principles in clause 26 should include the principles of protection the people, promotion of health values and prioritization of equity through provision of health data principles;

d) Amendment of Clause 8 to include a Civil Society Organisation nominee in the Board of the Digital Health Agency;

e) Provision of an exception in Clause 31 for the retention and disposal of health data to enable the transition of the data from the source to the National Data Bank;

f) Amendment of the definition of *'consent'* in Clause 37 to take into account the unique nature of the health sector;

g) Amendment of Part VI to provide more details on the issues of purpose limitation, data minimisation, the responsibilities of healthcare institutions in data processing, healthcare practitioners' responsibilities in data processing and incorporation of the Principles of Data Protection as provided in section 25 of the Data Protection Act, No. 24 of 2019;

h) Amendment of Clause 42 to ensure that access to health data is seamless and to provide a penalty for refusal to provide access to the same; and

i) Amendment of Part IX to provide for urgent sharing of patients' data for emergency purposes even to persons outside Kenya.

32. The **Kiambu County Empowerment Network**, a network of more than thirty (30) vibrant youth organisations Kiambu County whilst supporting the Bill, submitted as follows:

(a) Inclusion of a member of the public to serve as a non-executive member of the Board of Directors of the Authority in Clause 8 to represent the interests and perspectives of the broader community and to ensure that the Board's decisions and actions are informed by the experiences and expectations of the citizens who will be directly affected by the Agency's operations;

(b) Allocation of a dedicated and substantial space for youth representation on the Board so that the views of the youth are actively considered and integrated into the governance of the Agency fostering inter-generational collaboration and innovation; and

(c) Amendment of Clause 18 and 19 on audit for transparency by ensuring public access to financial information, use of plain language summaries, public consultation on annual reports, engagement with stakeholders, providing a feedback mechanism and use of multi-language accessibility.

33. **The Kenya Faith Based Health Services Consortium** comprising of KCCB, CHAK, MEDS and SUPKEM whilst supporting the Bill and made following submissions:

(a) That the Bill should require that *CEO holds office for a term of three years renewable once'* in Clause 13(2) instead of five years in line with other health Bills and for uniformity with similar parastatals;

(b) Deletion of Clause 13 (4) as it is not a competitive process and yet such an office should go through interviews like others; and

(c) Amendment of Clause 28 (2) (a-c) to avoid duplication and centralise the functions within the National Government with limited delegation of roles to the counties.

34. **The Office of the Data Protection Commissioner** made the following submissions:

(a) Amendment of the definition of a "health data processor" to mean "a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller" so as to provide a standard definition.;

(b) Deletion of the definition of the term 'data privacy' as its inclusion is too limiting;

(c) Inclusion of a provision that states that "*The Agency may, in the performance of its functions collaborate with the Office of the Data Protection Commissioner,*" as the current provision will contradict the provisions of the Data Protection Act, No. 24 of 2019 and may cause conflict that may affect the independence of the Office of the Data Protection Commissioner;

(d) Definition in Clause 2 of the terms *"sensitive health data"*, *"aggregate health data"* as used in Clause 25 and *"Personal health data" as used* in Clause 53;

(e) Amendment of Clause 31(2)(c) to provide that health data may be kept for longer than the prescribed twenty years for *historical, statistical and research purposes where the data is anonymised,"* so as to align with the principles of data protection;

(f) Deletion of the word "date" and substitution with the word "data" to correction a spelling error in Clause 39(1);

(g) Deletion of clause 41 and inclusion of a new provision that reads: "Any processing of personal and sensitive personal data shall be done in accordance with the Data Protection Act No. 24 of 2019."This would ensure that any processing of personal or sensitive personal data is done in accordance with the Data Protection Act, No. 24 of 2019 and the Principles of Data Protection Principles which require transparency, confidentiality and integrity and accountability.

35. The **Kenya Medical Association (KMA)**, an umbrella professional association for doctors in Kenya, submitted as follows:

(a) Inclusion of KMA on the Board of the Digital Health Agency under clause 8(1) (h) since physicians are the team leads in healthcare delivery teams.

(b) Amendment of clause 12 (1)(b) to require that the CEO of the Digital Health Agency ought to have a degree in health, health systems, and expertise in ICT as a background in health matters is a key qualification; and

(c) Private sector digital health should not be limited under Clause 25(1) of the Bill as digital health represents a new model for doctors to package, utilise and commercialise their knowledge.

36. The **Haki Yetu Organisation**, a Human Rights Organisation registered as Charitable Trust, submitted as follows:

(a) The organization called on the Members of Parliament to exercise prudence and care while considering the Bill to ensure that they give Kenyans efficient and more practicable healthcare solutions and at the same time protecting citizens from exploitation;

(b) The organization proposed the amendment of offences and penalties in the Bill taking into account the principles of sentencing as the Bill presently relies more on the general offences and penalties provided under the Data Protection Act, No. 24 of 2019.

37. The **Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)** expressed their views as follows:

(a) That the use of complex technical language in the Bill makes it difficult for the average person to understand;

(b) That the Bill should have clear provisions and guidelines to prevent unauthorised access, sharing or misuse of health data and clear consequences for such breaches;

(c) The Bill to provide for customer care response line as it is an essential aspect of ensuring efficient service provision since individuals may seek assistance or report problems they encounter;

(d) That more explicit language should be used and guidelines on how privacy and confidentiality will be implemented provided as vague provisions can lead to uncertainty in enforcement.

(e) That qualified individuals should be appointed to the Board of the Digital Health Authority with minimal political influence to ensure the effective governance of health data;

(f) A clear criterion for selection of the person representing the private sector as well as on selection of the two persons that are not public officers should be provided for to ensure transparency.

(g) That there is no information regarding the role of county governments in the implementation of the Bill and the impact of the Bill on counties;

(h) That clear guidelines on how health data should be collected, stored, shared and protected should be set out so as to maintain trust and security;

(i) That besides setting a minimum retention period for health data, the manner of disposal of the same should also be provided to prevent ambiguity;

(j) That there is need for more comprehensive guidance on implementation of modern technological safeguards to protect health data effectively;

(k) The definition of "e-waste" should be substituted with "e-health waste";

(l) That CSOs ought to be incorporated into the governance structure under Bill to facilitate regulation oversight and accountability of contemporary and emerging technologies in digital health because it is ever evolving;

(m) That a framework governing the collection, processing, sharing and disposal of data during and after public health emergencies should be provided

(n) That paragraph (c), (d) and (e) of clause 41(1) should be substituted with "fails to disclose inauthentic access to the data governed by this Act", improperly disposes sensitive data; and "shares health data under this Act to unauthorized party".

38. **Dr. Peter Ongwae, the Pharmaceutical Society of Kenya Practice Chairman,** submitted as follows:

(a) Inclusion of "tele-pharmacy" in clause 42 (1) and in the definition of "e-health" as it is one of the critical components of telemedicine or e-health and the same to be defined as the use of telecommunications technology to facilitate or enable the delivery of high-quality pharmacy services in situations where the patient or healthcare team does not have direct (in-person) contact with pharmacy staff;

(b) That a clear criterion for the appointment of the representative of the private sector Clause 8(1)(g) be provided so as to ensure that the Board is constituted by competent persons; and

(c) That the two persons to be appointed under Clause 8(1)(h) ought to be nominated by professional organisations namely the Kenya Medical Association (KMA) and Pharmaceutical Society of Kenya (PSK).

39. **Dr. Emmanuel Mulaa** submitted as follows:

(a) Definition of e-health to be wide enough to include areas such as tele-dentistry, tele-radiology, tele-pharmacy amongst others;

(b) Inclusion of one person nominated by the Council of Governors from among the County Directors of Health in Clause 8 as most healthcare service provision occurs at county level thus most data will be generated by county health facilities. Furthermore, the county director is the highest technical representation in the county health system;

(c) Amendment of Clause 8(1)(g) to remove the representative of the private sector and substitute it with the Director-General of Health who will be the technical advisor to the Ministry of Health;

(d) Amendment of Clause 8(1)(h) to specify that the two persons appointed by the Cabinet Secretary should be a representative of patients' interests selected from patient interest groups and a health professional with knowledge and experience in digital health;

(e) That the data controller should be a health professional who understands the importance of such data so as to facilitate fast transmission, to maintain and transmit health data at the national level as need be. Similar qualification should apply to the data controller at county level.

40. **Hakijamii** made the following submissions:

(a) Amendment of Clause 4 to provide a new guiding principle that "Every person has the right to the highest attainable standards of health" which will emphasize the right to healthcare services as provided in Article 43 (1)(a) of the Constitution;

(b) Amendment of Clause 8 to provide for a representative of informal sector associations in the Board of the Digital Health Agency for inclusivity and to safeguard the interests of communities;

(c) Amendment of Clause 26 to include new governing principles: the highest attainable standards of health for all and the right to healthcare services for alignment with Article 43 (1) (a) of the Constitution.

41. The **Smart Applications International Ltd** made the following submissions:

(a) Amendment of clause 6 to provide that the Digital Health Agency ought to develop health data standards in consultation with existing health management information system providers at the onset as this collaborative approach will foster a more inclusive and robust framework;

(b) Amendment of clause 27 to clarify that submissions to the Ministry of Health should not include personally identifiable data so that this will safeguard data controllers and processors from legal challenges related to the exposure of personal information;

(c) That clause 32 and 33 allows health data banks to contain data the identifies individuals providing healthcare insurance which overlaps with the function of the Insurance Regulatory Authority specifically on registration and identification of health insurance providers. This overlap should be addressed to prevent duplication and streamline responsibilities;

(d) That the number of independent e-health technocrats from two to three members on the Digital Health Agency in clause 8 of the Bill so as to provide a more balanced and knowledgeable perspective on e-health matters which will ensure effective governance and decision-making; and

(e) That various clauses of the Bill categorizes the loss of Healthcare Data as an offence which may bring about. To ensure fairness and proportionality and to avoid undue punishment in cases of inadvertent, accidental, or force majeure data loss, it is essential to establish a mechanism for assessing and analysing the circumstances surrounding data loss before deeming it an offence.

42. The **Caucus on Disability Rights Advocacy (CDRA)** and the **United Disabled Persons of Kenya (UDPK)** submitted as follows:

(a) Amendment of clause 4 to include the guiding principles of accessibility, inclusivity and non-discrimination;

(b) The definition of the term "consent" should seek to enhance opportunities including provision of reasonable accommodation for a person with a disability to make informed choices regardless of their disabilities or vulnerabilities;

(c) That the definition of "data disaggregation" be included to mean the presentation of numerical and non-numerical data broken down into detailed sub-categories and specific dimensions including age, sex and disability to illuminate underlying trends and patters in healthcare system;

(d) Amendment of clause 5(b) to provide that the Digital Health Agency shall"establish registries in consultation with other statutory authorities and non-state actors, at appropriate levels to create single source of truth in respect of clients, health facilities, health providers, health products and technologies" as data collection exercise in healthcare systems needs to be exhaustive and comprehensive;

(e) Amendment of clause 5(e) to provide that the Digital Health Agency shall" ensure health data accessibility and portability" which will guarantee seamless access to information as guaranteed in the Constitution and other legal frameworks;

(f) Amendment of clause 8(1) to insert a new paragraph to provide for on person with a disability representing persons with disabilities on the Board of the Digital Health Agency as there is a close nexus between disability and health;

(g) Deletion of clause 8(4) as is not clear what constitutes mental or physical infirmity and the clause could be applied arbitrary;

(h) Amendment of clause 21(3) to provide that " The Comprehensive Integrated Health Information System shall operate as a point of collection, collation, disaggregation, analysis, reporting, storage, usage..... "as data disaggregation is a key component when it comes to data driven planning and resource allocation;

(i) Amendment of clause 33 by inserting a new paragraph (j) on development of targeted healthcare service interventions and programmes as sensitive personal data held at the data bank should be used to analyse certain patterns of diverse groups of identities in various dimension including location, age and disability;

(j) Amendment of clause 42(1) to add accessible formats and clause 42(2) to add accommodative to the data subject and to delink execution of clause 42 from the provisions in the Data Protection Act 2019 by deleting section 42 (3)

(k) Amendment of clause 49(1) (h) for the deletion of "mentally ill" and substitution with "person who cannot give consent" as the former has been used to legally disfranchise persons with disabilities from participating on societal affairs on an equal basis.

43. The **Kenya Association of Manufacturers (KAM)** in a letter dated 22nd September, 2023 acknowledged receipt of the National Assembly's letter REF:NA/DDC/DC-H/2023/(089) requesting KAM's views on the Bill and requested for extension of time to submit the same.

44. The Report contains an analysis of the above stakeholder submissions on the Bill noting the general comments in support of or against the amendments. The analysis is presented in a table annexed to this report as Annexure 5 which highlights the stakeholder comments and the Committee resolution on the various clauses of the Bill.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

45. The Committee, having considered the Digital Health Bill, 2023, National Assembly Bill No. 57 of 2023 and submissions from stakeholders, made the following observations:

(a) The Bill establishes a comprehensive integrated digital health information system in fulfillment of section 105 of the Health Act, No. 21 of 2017 which obligates the Cabinet Secretary to establish an integrated comprehensive health information system relating to the national government health functions and to every county in respect of their county functions. The Bill therefore seeks to consolidate and harmonize information obtained from both levels of government;

(b) The Bill sets the minimum standards applicable for the establishment and maintenance of digital health information systems. It further provides the mechanism for inter-connectivity between each county information system and the national system. This will assist both levels of government in coming up with consumer-focused and prevention-oriented care at all levels of healthcare services, which will ultimately reduce the disease burden in the country;

(c) The Bill facilitates the realization of the right to protection of personal information as guaranteed under Article 31 of the Constitution of Kenya, 2010 and under the Data Protection Act, No. 24 of 2019. The enactment of the Data Protection Act, No. 24 of 2019 presented new challenges for the health sector in Kenya as the sector handles sensitive patient data whose protection requires more safeguards. The Bill therefore fills this gap which is crucial in light of the fact that privacy concerns and data breaches are now more prevalent;

(d) The Bill enhances the health data governance framework in the country by requiring health care providers and health facilities to adopt mechanisms to ensure the safety and security of patient information. It also gives Kenyans the ability to have more control over their personal data particularly in health facilities as they must provide consent before the collection, processing and sharing of their personal health related information; and

(e) The Bill further regulates the processing of health data and in particular health data that contains sensitive personal data, through technological mediums such as telemedicine. In this regard, the Bill requires health care providers and technology platforms that offer telemedicine to put in place several safeguards including anonymization and de-identification of sensitive personal data. In this way, the Bill regulates the largely unregulated telemedicine and e-health platforms among others, which will guarantee the safety of Kenyans using such platforms.

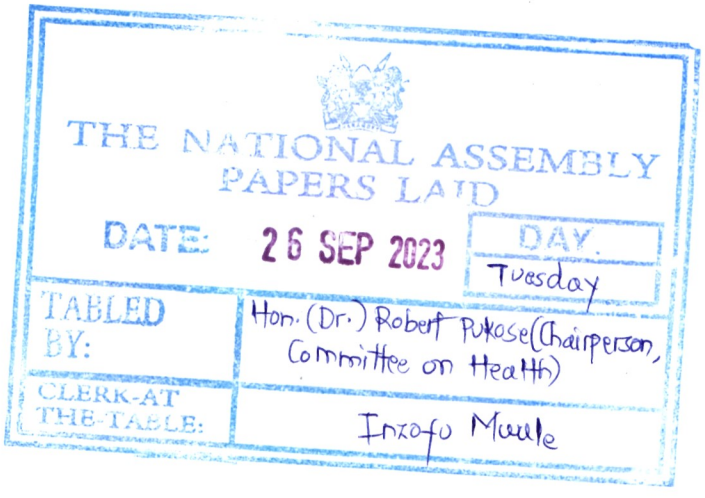
CHAPTER FIVE

COMMITTEE RECOMMENDATIONS

The Committee recommends that the House adopts the Digital Health Bill, 2023 (National Assembly Bill No 57 of 2023) with amendments

SIGNED..... **DATE**.....24/09/2023.....

HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH



CHAPTER SIX

5.0 SCHEDULE OF AMENDMENTS

46. Upon considering the Digital Health Bill, 2023, National Assembly Bill No. 57 of 2023 and submissions from stakeholders, the Committee recommends that the Bill be passed with the following amendments:

CLAUSE 2

THAT Clause 2 of the Bill be amended by—

(a) deleting the definition of the term "health care provider" and substituting therefor the following new definition—

"healthcare provider" has the meaning assigned to it under the Health Act, 2017;

(b) deleting the definition of the term "health care services" and substituting therefor the following new definition—

"health care services" has the meaning assigned to it under the Health Act, 2017;

(c) deleting the definition of the term "health facility" and substituting therefor the following new definition—

"health facility" has the meaning assigned to it under the Health Act, 2017;

Justification: To align these definitions with the Health Act, No. 21 of 2017.

(d) deleting the word 'voluntarily' appearing in the definition of term "health tourism";

Justification: To provide for situations where a person is incapacitated.

(e) deleting the word "pseudonymisation" and substituting therefor the word "pseudo-anonymization";

Justification: The words "pseudonymisation" and "pseudo-anonymization" are synonymous however the latter has been used in the Bill.

(f) inserting the following new definitions in the proper alphabetical sequence—

"de-identification" means removing or hiding personal information from records in such a way that the remaining information cannot be used to identify an individual;

"medical equipment data" means data relating to a medical equipment and contains manufacturer-provided information and client-created inventory information about such equipment and may include exhaust digital data and individual data that may be classified as sensitive data under the Data Protection Act, 2019;

"health data custodian" a person or organization that possesses legal custody over health data;

"telehealth" means the use of electronic information and telecommunications technologies including videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications, to support long-distance clinical health care, patient and professional health-related education, public health and health administration;

Justification: The proposed definitions are not defined and yet they are used in the Bill.

CLAUSE 3

THAT Clause 3 of the Bill be amended in paragraph (h) by inserting the words "within and" immediately after the words "health facilities".

Justification: To provide sharing of data locally and internationally.

CLAUSE 7

THAT Clause 7 of the Bill be amended by—

(a) deleting the term "Authority" appearing in sub-clause (2)(a) and substituting therefor the term "Agency".

Justification: Clause 5 of the Bill establishes the Digital Health Agency.

(b) by deleting the term "Cabinet Secretary" appearing in paragraph (a) of sub-clause (2) and substituting therefor the term "National Assembly"; and

Justification: The decision to charge or dispose immovable property requires the approval of the National Assembly.

CLAUSE 8

THAT Clause 8 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the words "competitively recruited and" appearing in paragraph (a)

Justification: Board Chairs of State Corporations are appointed by the President.

(ii) deleting paragraph (f);

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

"(h) three persons, not being Governors, nominated by the Council of County Governors with knowledge and experience in matters of digital health";

Justification: To increase the representation of the county governments in the Board of the Digital Health Agency as health is a devolved function under Part 2 of the Fourth Schedule to the Constitution.

CLAUSE 11

THAT Clause 11 of the Bill be amended by—

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

"(1) The Board shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Chief Executive Officer of the Agency".

Justification: The CEO to be recruited through a competitive process for accountability purposes.

(b) inserting the words "in consultation with the Salaries and Remuneration Commission" immediately after the words "from time to time" in sub-clause (2);

Justification: To provide for the involvement of the Salaries and Remuneration Commission which is responsible for advising the national and county governments on the remuneration and benefits of all public officers under Article 230 of the Constitution.

CLAUSE 12

THAT Clause 12 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the term "Authority" appearing in sub-clause (1) and substituting therefor the term "Agency".

Justification: Clause 5 of the Bill establishes the Digital Health Agency.

(ii) deleting the term "bachelor's" in paragraph (a) and substituting therefor the term "master's";

(iii) inserting the following new paragraph immediately after paragraph (b);

(ba) has served in a management level for a period of at least five years;

Justification: To ensure that the CEO has a high level of technical expertise required of the specialized entity established in the Bill.

(b) inserting the following new sub-clause immediately after sub-clause (2)—

(2A) The Chief Executive Officer shall be the accounting officer of the Agency.

Justification: To specify that the Chief Executive Officer is the accounting officer of the Agency in compliance with the Public Finance Management Act, No. 18 of 2012.

CLAUSE 13

THAT Clause 13 of the Bill be amended by inserting the following new sub-clauses immediately after the renumbered sub-clause (1)—

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

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

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

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

Justification: To make provision for the qualifications and functions of a Corporation Secretary of the Digital Health Agency.

PART III

THAT PART III of the Bill be renumbered as PART IX of the Bill and be moved to the proper sequence.

Justification: Financial provisions usually come after the substantive provisions of the Bill.

CLAUSE 15

THAT Clause 15 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

"(ba) such levy fees for services rendered by the Agency";

Justification: To provide for levies as a source of money for the Agency.

CLAUSE 20

THAT Clause 20 of the Bill be amended—

(a) by inserting the words "with the approval of the Board and the National Treasury" immediately after the words, "on behalf of the Agency".

Justification: To enhance financial accountability as contemplated under the Public Finance Management Act, No. 18 of 2012.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 20—

Investment of Funds

20A. (1) All monies in the Agency which are not immediately required to be applied for the purposes of this Act shall be invested—

(a) in such investment in a reputable bank on the advice of the Central Bank of Kenya, being an investment in which trust funds, or part thereof, are authorized by law to be invested; and

(b) in government securities as may be approved by the National Treasury.

(2) All investments made under this section shall be held in the name of the Agency.

Justification: To provide additional checks and balance on investments to be done by the Digital Health Agency.

CLAUSE 23

THAT Clause 23 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g)—

" (h) facilitate track and trace of health products and technologies in the country".

Justification: For quality purposes which will ensure that only licensed health products and technologies are used in the country.

CLAUSE 25

THAT Clause 25 of the Bill be amended by inserting the following new paragraph immediately after sub-clause (a)—

"(aa) de-identified, pseudo-anonymized or anonymized individual-level health data";

Justification: To make provision for sensitive personal level health data that has been stripped of personal identifiable information.

CLAUSE 31

THAT Clause 31 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after sub-clause (b)—

"(bb) reasonably necessary for a lawful purpose";

Justification: For alignment with the provisions of the Data Protection Act, No. 24 of 2019.

CLAUSE 39

THAT the Bill be amended by deleting the word "date" appearing immediately after the words "integrity of the" in sub-clause (1) and substituting therefor the word "data".

Justification: To correct a typographical error.

CLAUSE 40

THAT Clause 40 of the Bill be amended by deleting the expression (1).

Justification: To correct a minor error in drafting.

CLAUSE 41

THAT Clause 41 of the Bill be amended by—

(a) deleting the words "aggregate data, medical equipment data or data related to health research, the" appearing in sub-clause (1) and substituting therefor the words "health data";

(b) deleting the words "sensitive personal" appearing in the marginal note and substituting therefor the word "health";

Justification: The provision ought to cover all categories of health data.

(c) deleting the word "unintentionally" appearing in paragraph (g) of sub-clause (1);

Justification: Sharing of data is a grave breach.

(d) deleting the words "hundred thousand" appearing in sub-clause (2) and substituting therefor the word "million".

Justification: To enhance the fines to make them more deterrent and commensurate to the offences of mishandling health data.

CLAUSE 48

THAT Clause 48 of the Bill be amended by deleting the term "the" appearing in sub-clause (1) and substituting therefor the term "The".

Justification: To correct a minor error in drafting.

CLAUSE 49

THAT Clause 49 of the Bill be amended in sub-clause (1)—

(a) by deleting the word "guardian" appearing in paragraph (g) and substituting therefor the words "parent or an appointed guardian ";

(b) by deleting the word "guardian" appearing in paragraph (h) and substituting therefor the words "of an appointed guardian or next friend of the patient";

Justification: For alignment with clause 38 of the Bill on processing of personal data relating to a minor or a person without capacity.

CLAUSE 52

THAT Clause 52 of the Bill be amended—

(a) by deleting sub-clause (2) and inserting the following new sub-clauses—

"(2) A data controller, who being a custodian of, and who transfers outside Kenya, biological specimens, health images, human tissues and organs of a Kenyan citizen shall ensure confidentiality of personal health information:

Provided that where such transfer is for purposes of health research or post-mortem, the Data controller shall—

(a) provide a report to the Director-General for Health stating the findings;
(b) not share the health information without notifying the Cabinet Secretary; and
(c) seek guidance from the Cabinet Secretary in the manner the health information shall be stored, processed and destroyed."

(3) The Cabinet Secretary shall in consultation with the County Governments, and relevant lead agencies, develop guidelines on health tourism.

Justification: To specify that the requirements in paragraphs (b)-(d) in sub-clause (2) only apply in the case of health research or the conduct of a post-mortem. There is also need to develop regulations for health tourism in compliance with section 104 of the Health Act, No. 21 of 2017 and as alluded to in the marginal note of clause 52.

CLAUSE 55

THAT clause 55 of the Bill be deleted.

Justification: The Members of the Board of the Digital Health Agency are bound by the Constitution, the Data Protection Act, No. 24 of 2019 and the Oath of Secrecy signed under the Official Secrets Act, Cap. 187.

CLAUSE 57

THAT the Bill be amended by deleting the word "otherwise" appearing immediately after the words, "to any person" appearing in sub-clause (1) and substituting therefor the word, "other".

Justification: To correct a minor error.

CLAUSE 59

THAT Clause 59 of the Bill be amended—

(a) in sub-clause (1) by deleting the words "two hundred thousand shillings or to imprisonment for a term of not less than one year" appearing in the proviso and substituting therefor the words "one million shillings or to imprisonment for a term of not less than two years".

(b) in sub-clause (2) by deleting the words "two hundred and fifty thousand shillings or to imprisonment for a term of not exceeding six months" and substituting therefor the words, "one million shillings or to imprisonment for a term of not exceeding two years."

Justification: To enhance the fines to make them more deterrent and to make them commensurate to the offences committed under the Bill.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 61—

Transitional Provision.

61A. A person, who being a data controller or data processor of health data or who has been handling health information before the commencement of this Act, shall, within six months of the commencement of this Act, comply with the requirements of this Act.

Justification: To make provision on what happens to existing health data management frameworks in the country.

Annexure 1: Minutes of Committee sittings

MINUTES OF HUNDRED AND TWELFTH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN HILTON GARDEN INN MACHAKOS COUNTY ON MONDAY 25TH SEPTEMBER, 2023 AT 2.30 P.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P **-Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Oron Joshua Odongo, M.P.
6. The Hon. Kibagendi Antony, M.P
7. The Hon. Prof. Jaldesa Guyo Waqo, M.P
8. The Hon. Owino Martin Peters, M.P
9. The Hon. Lenguris Pauline, M.P
10. The Hon. Mary Maingi, MP
11. The Hon. Mathenge Duncan Maina, M.P
12. The Hon. Titus Khamala, M.P
13. The Hon. Muge Cynthia Jepkosgei, M.P
14. The Hon. Wanyonyi Martin Pepela, M.P

ABSENT WITH APOLOGY

1. The Hon. Kipngor Reuben Kiborek, M.P

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant II
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Mr. Eric Lungai - Hansard Officer III
5. Mr. Henry Mageka -Media Relations
6. Mr.Benson kimanzi - Serjeant-At-Arms
7. Ms.rahab chepkilim - Audio Officer
8. Ms. Abigel Muinde - Research Officer III

MIN. NO. NA/DC-H/2023/434: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 10.00 a.m. with a word of prayer by The Hon. Dr. Pukose Robert, M.P – Chairperson, introductions were then done.

MIN. NO. NA/DC-H/2023/435: CONSIDERATION AND ADOPTION OF THE REPORT ON THE DIGITAL HEALTH BILL,2023, NATIONAL ASSEMBLY BILL NO. 57 OF 2023 BY THE HON.KIMANI ICHUNG'WAH LEADER OF THE MAJORITY PARTY

the committee considered and adopted its report on the Social Health Insurance Bill.2023 National Assembly Bill no. 57 of 2023 by Hon.Kimani Ichung'wah Leader of the Majority Party with the following observations and recommendations.

The adoption was proposed and seconded the Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P and the Hon. Kibagendi Antony, respectively.

MIN. NO. NA/DC-H/2023/436: OBSERVATIONS

1. The Committee having considered the Digital Health Bill, 2023, National Assembly Bill No. 57 of 2023 and submissions from stakeholders made the following observations:

   (a) The Bill establishes a comprehensive integrated digital health information system in fulfillment of section 105 of the Health Act, No. 21 of 2017 which obligates the Cabinet Secretary to establish an integrated comprehensive health information system relating to the national government health functions and to every county and in respect of their county functions. The Bill therefore seeks to consolidate and harmonize information obtained from both levels of government;

   (b) The Bill sets the minimum standards applicable for the establishment and maintenance of digital health information systems. It further provides the mechanism for inter-connectivity between each county information system and the national system. This will assist both levels of government in coming up with consumer-focused and prevention-oriented care at all levels of healthcare services which will ultimately reduce the disease burden in the country;

   (c) The Bill facilitates the realization of the right to protection of personal information as guaranteed under Article 31 of the Constitution of Kenya, 2010 and under the Data Protection Act, No. 24 of 2019. The enactment of the Data Protection Act, No. 24 of 2019 presented new challenges for the health sector in Kenya as the sector handles sensitive patient data whose protection requires more safeguards. The Bill therefore fills this gap which is crucial in light of the fact that privacy concerns and data breaches are now more prevalent;

   (d) The Bill enhances the health data governance framework in the country by requiring health care providers and health facilities to adopt mechanisms to ensure the safety and security of patient information. It also gives Kenyans the ability to have more control over their personal data particularly in health facilities as they must provide consent before the collection, processing and sharing of their personal health related information; and

   (e) The Bill further regulates the processing of health data and in particular health data that contains sensitive personal data, through technological mediums such as telemedicine. In this regard, the Bill requires health care providers and technology platforms that offer telemedicine to put in place several safeguards including anonymization and de-identification of sensitive personal data. In this way, the Bill has come in to regulate the largely unregulated telemedicine and e-health platforms among others which will guarantee the safety of Kenyans using such platforms.

MIN. NO. NA/DC-H/2023/437:COMMITTEE RECOMMENDATIONS

Upon considering the Digital Health Bill, 2023, National Assembly Bill No. 57 of 2023 and submissions from stakeholders, the Committee recommends the following amendments:

Clause 2 of the Bill be amended to align these definitions with the Health Act, No. 21 of 2017.To provide for situations where a person is incapacitated.

The words "pseudonymisation" and "pseudo-anonymization" are synonymous however the latter has been used in the Bill.

And to proposed definitions are not defined and yet they are used in the Bill.

Clause 3 of the Bill be amended by in paragraph (h) by inserting the words "within and" immediately after the words "health facilities".To provide sharing of data locally and internationally.

Clause 7a of the Bill be amended by deleting the term "Authority" appearing in sub-clause (2)(a) and substituting therefor the term "Agency "since Clause 5 of the Bill establishes the Digital Health Agency.

Clause 7b term "Cabinet Secretary" appearing in paragraph (a) of sub-clause (2) and substituting therefor the term "National Assembly";.The decision to charge or disposal immovable property requires the approval of the National Assembly.

Clause 8 of the Bill be amended.The Board Chairs of State Corporations are appointed by the President and to increase the representation of the county governments in the Board of the Digital Health Agency as health is a devolved function under Part 2 of the Fourth Schedule to the Constitution.

Clause 11 of the Bill be amended by For accountability, the CEO to be recruited through a competitive process and to provide for the involvement of the Salaries and Remuneration Commission which is responsible for advising the national and county governments on the remuneration and benefits of all public officers under Article 230 of the Constitution.

Clause 12 of the Bill be amended to ensure that the CEO has a high level of technical expertise required of the specialized entity established in the Bill to specify that the Chief Executive Officer is the accounting officer of the Agency in compliance with the Public Finance Management Act, No. 18 of 2012.

Clause 13 of the Bill be amended by inserting the following new sub-clauses immediately after the renumbered sub-clause to make provisions for the qualifications and functions of a Corporation Secretary of the Digital Health Agency.

PART III

THAT PART III of the Bill be renumbered as PART IX of the Bill and be moved to the proper sequence.Financial provisions usually come after the substantive provisions of the Bill.

Clause 15 of the Bill be amended by inserting the following new paragraph immediately after paragraph .To provide for levies as a source of money for the Agency.

Clause 20 of the Bill be amended to enhance financial accountability as contemplated under the Public Finance Management Act, No. 18 of 2012.

NEW CLAUSE the Bill be amended by inserting the following new clause immediately after clause 20 To provide additional checks and balance on investments to be done by the Digital Health Agency.

Clause 23 of the Bill be amended by inserting a new paragraph immediately after paragraph (g) For quality purposes which will ensure that only licensed health products and technologies are used in the country.

Clause 25 of the Bill be amended by inserting a new paragraph immediately after sub-clause (a)To make provision for sensitive personal level health data that has been stripped of personal identifiable information.

Clause 31 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after sub-clause (b)For alignment with the provisions of the Data Protection Act, No. 24 of 2019.

CLAUSE 39 of the Bill be amended by deleting the word "date" appearing immediately after the words "integrity of the" in sub-clause (1) and substituting therefor the word "data".To correct a typographical error.

Clause 40 of the Bill be amended by deleting the expression (1).To correct a minor error in drafting.

Clause 41 of the Bill be amended by for The provision ought to cover all categories of health data and to Sharing of data is a grave breach and to also to enhance the fines to make them more deterrent and commensurate to the offences of mishandling health data.

Clause 48 of the Bill be amended by deleting the term "the" appearing in sub-clause (1) and substituting therefor the term "The".To correct a minor error in drafting.

Clause 49 of the Bill be amended in sub-clause For alignment with clause 38 of the Bill on processing of personal data relating to a minor or a person without capacity.

Clause 52 of the Bill be amended to specify that the requirements in paragraphs (b)-(d) in sub-clause (2) only apply in the case of health research or the conduct of a post-mortem. There is also need to develop regulations for health tourism in compliance with section 104 of the Health Act, No. 21 of 2017 and as alluded to in the marginal note of clause 52.

clause 55 of the Bill be deleted. The Members of the Board of the Digital Health Agency are bound by the Constitution, the Data Protection Act, No. 24 of 2019 and the Oath of Secrecy signed under the Official Secrets Act, cap. 187.

CLAUSE 57the Bill be amended by deleting the word "otherwise" appearing immediately after the words "to any person' appearing in sub-clause (1) and substituting therefor the word "other". To correct a minor error.

Clause 59 of the Bill be amended to enhance the fines to make them more deterrent and to make them commensurate to the offences committed under the Bill.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 61 to make provision on what happens to existing health data management frameworks in the country.

MIN. NO. NADC-H/2023/438: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 11.30 a.m.

Sign.....Date 24/09/2023

HON. DR. ROBERT PUKOSE, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF HUNDRED AND ELEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN HILTON GARDEN INN MACHAKOS COUNTY ON MONDAY 25TH SEPTEMBER, 2023 AT 2.00 P.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P **-Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Oron Joshua Odongo, M.P.
6. The Hon. Kibagendi Antony, M.P
7. The Hon. Prof. Jaldesa Guyo Waqo, M.P
8. The Hon. Owino Martin Peters, M.P
9. The Hon. Lenguris Pauline, M.P
10. The Hon. Mary Maingi, MP
11. The Hon. Mathenge Duncan Maina, M.P
12. The Hon. Titus Khamala, M.P
13. The Hon. Wanyonyi Martin Pepela, M.P

ABSENT WITH APOLOGY

1. The Hon. Kipngor Reuben Kiborek, M.P

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant I
2. Ms. Gladys Kiprotich - Clerk Assistant III
1. Ms. Faith Chepkemoi - Legal Counsel II
2. Mr. Eric Lungai - Hansard Officer III
3. Mr. Henry Mageka -Media Relations
4. Mr.Benson kimanzi - Serjeant-At-Arms
5. Mr. Henry mageka - Media Relations Officer II
6. Ms. Abigel Muinde - Research Officer III

MIN. NO. NA/DC-H/2023/429: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 10.00 a.m. with a word of prayer by The Hon. Dr. Pukose Robert, M.P – Chairperson, introductions were then done.

MIN. NO. NA/DC-H/2023/430: CONSIDERATION AND ADOPTION OF THE REPORT ON THE SOCIAL HEALTH INSURANCE BILL.2023 NATIONAL ASSEMBLY BILL NO. 58 OF 2023 BY THE HON.KIMANI ICHUNG'WAH LEADER OF THE MAJORITY PARTY

The committee considered and adopted its report on the Social Health Insurance Bill.2023 National Assembly Bill no. 57 of 2023 by Hon.Kimani Ichung'wah Leader of the Majority Party with the following observations and recommendations.

The adoption was proposed the Hon. Lenguris Pauline, M.P and seconded Hon. Muge Cynthia Jepkosgei, M.P respectively.

MIN. NO. NA/DC-H/2023/431: OBSERVATIONS

(a) The Bill regulates the provision of social health insurance which will reduce the current high costs of out-pocket expenditure on healthcare by Kenyans. In doing this, the Bill ensures the fulfilment of the economic and social rights guaranteed under Article 43 of the Constitution of Kenya, 2010 in particular the right to the highest attainable standard of health and the right to social security;

(b) The Bill provides for the coverage of costs of emergency treatment, critical illness and chronic illness through the establishment of the Emergency, Chronic and Critical Illness Fund. This Fund is premised on the Constitution of Kenya, 2010 which provides that a person shall not be denied emergency medical treatment;

(c) The Bill promotes the attainment of Universal Health Coverage in the country as it seeks to ensure that all Kenyans have access to affordable and comprehensive quality health services. This is through the provision of a health cover for older persons, indigents and other vulnerable persons in society including the persons in lawful custody. In this way, the Bill is therefore aligned to the Constitution of Kenya, 2010 which requires the government to provide appropriate social security to persons who are unable to support themselves and their dependants;

(d) The Bill repeals the National Health Insurance Fund Act, No. 9 of 1998 and seeks to separate the functions of registration, claims management, empanelment and dispute resolution that were being performed by singular entity. This separation will enhance efficiency through reduction of administrative costs;

(e) The Bill also makes the Social Health Authority a strategic purchaser compared to the National Health Insurance Fund which has been a passive purchaser. The Bill therefore provides for the active identification of the sets of health services to which the population is entitled, choosing of providers from whom services will be purchased, deciding how these services should be purchased, including contractual arrangements and mechanisms of paying providers. With this, the Social Health Authority will be responsive to the health needs of as contemplated in the Kenya Universal Health Coverage Policy, 2020-2030; and

(f) The Bill is further aligned to the Kenya Health Financing Strategy, 2020-2030 whose goal is to ensure adequacy, efficiency and fairness in the financing of health services in a manner that guarantees all Kenyans access to essential high quality health services they require. The Strategy calls for the prioritization of mechanisms to pool resources in a manner that ensures efficiency and equity through creation of several pools of funds including the social health pool to meet the costs of health services in Kenya. In furtherance of this, the Strategy recommends the establishment of a functional and autonomous Kenya Social Health Insurance Fund for the management of the mandatory-pooled health revenues needed for curative and rehabilitative essential services. The strategy further recognizes that a single social health insurance fund, governed by an independent board and supported by a competent management, is the preferred institutional mechanism for mandatory insurance, as it limits administrative expenses, which are usually high with multiple social health insurance funds.

MIN. NO. NA/DC-H/2023/432: RECOMMENDATIONS

Upon considering the the Social Health Insurance Bill, 2023, National Assembly Bill No. 58 of 2023 and submissions from stakeholders, the Committee recommended the following amendments:

CLAUSE 2; Clause 2 of the Bill be amended as per the report.

Clause 4 ;of the Bill be amended by deleting the word "investing" appearing immediately after the word "receiving" in sub-clause (2)(c).

Clause 5; of the Bill be amended by deleting paragraph (d) and substituting therefor the following new paragraph

Clause 6 ;of the Bill be amended by deleting the term "Cabinet Secretary" appearing in paragraph (a) of sub-clause (2) and substituting therefor the term "National Assembly";

Clause 7; of the Bill be amended to specify that the Board member will be drawn from the consortium of health care providers for overall representationTo prevent a person that
Clause 8 of the Bill be amended to make directors, officers or shareholders of private health facility eligible for appointment as members of the Board of the Social Health Authority.

Clause 9 of the Bill be amended to prevent misuse of this provision as it is impractical to get permission to be absent from a Board meeting from the President.

Clause 14 sub-clause(a) (1)i,ii, and sub-clause (4) of the Bill be amended as per the report.

Clause 16 of the Bill be amended to correct a minor error in numbering of the sub-clauses.

Clause 17 of the Bill be amended to provide for the involvement of the Salaries and Remuneration Commission.

Clause 22 of the Bill be amended the National Assembly appropriates funds for expenditure by the national government and other national state organs under Article 95 of the Constitution.

Clause 24 of the Bill be amended to make it mandatory for the Cabinet Secretary to make regulations on implementation of the Primary Healthcare Fund upon consultation with the Board.
Clause 26 of the Bill be amended as per the report.

Clause 27 of the Bill be amended the proposed penalty of ten percent for failure to pay contributions is too punitive.

Clause 30 of the Bill be amended to make it mandatory for the Cabinet Secretary to make regulations on implementation of the Emergency, Chronic and Critical Illness Fund upon consultation with the Board.

Clause 31 of the Bill be amended to make provision for enhanced benefits schemes and packages for retired civil servants and public officers who may not be covered by private medical insurance providers.

Clause 34 of the Bill be amended to provide the penalty for the offence of displaying an identification issued by the Authority without the permission of the Authority.

Clause 35 of the Bill be amended by deleting sub-clause (3) and (4);

Clause 38 of the Bill be amended by deleting the clause .The Social Health Authority is not expected to have a surplus of funds as all funds will be expended towards provision of services.

Clause 40 of the Bill be amended to enhance financial accountability as contemplated under the Public Finance Management Act, No. 18 of 2012.

Clause 41 of the Bill be amended.The proviso is superfluous as limit on administrative expenses is provided in sub-clause (2).

PART VIII be amended by deleting the word "Committee" and substituting therefor the word "Tribunal"to establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature.

Clause 44 of the Bill be amended to establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature. To provide for redress to the High Court.

Clause 45 of the Bill be amended to establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature.

Clause 49 of the Bill be amended to enhance the fines to make them more deterrent and to make them commensurate to the offences committed under the Bill and to give the Authority power to recover monies lost or due besides the payment of the fines imposed under the Bill.

Clause 50 of the Bill be amended in sub-clause 2. The timeframe of settling claims ought to be set out in the proposed regulations.

Clause 52 of the Bill be amended the Social Health Insurance Fund, being a social fund with one pool, is not supposed to provide enhanced schemes and as such there is no need for risk spreading.

FIRST SCHEDULE

THAT the First Schedule of the Bill be amended—

(a) by deleting paragraph 2(2).

Justification: There is no need to expressly provide for the power of the Board of the Social Health Authority to dispose any of the assets that will vest in it as this is within the implied discretion and control of the Board.

(b) in paragraph 5 by—

(i) deleting sub-paragraph (1);
(ii) renumbering sub-paragraph (2) as paragraph 5;
(iii) deleting the words "Notwithstanding the provisions of subparagraph (1)" in the renumbered sub-paragraph (2)

Justification: The Bill as proposed for amendment has made provision for enhanced benefits schemes and packages for retired civil servants and public officers who may not be covered by private medical insurance providers.

(c) in paragraph 6 by deleting sub-paragraph (2), (3) and (4) and substituting therefor the following new sub-paragraphs—

(2)Subject to subparagraph (3), the officers and inspectors appointed for the administration of the Fund in office on the appointed day shall be deemed to be officers and inspectors appointed by the Authority under section 17 of the Act.

(3) Notwithstanding the provisions of subparagraph (2), within twelve months after the appointed day, the Authority shall review the qualifications of all persons deemed to be employees of the Authority under subparagraph (2) and may retain those found suitably qualified for employment by the Authority subject to—

(a) such persons opting to remain in the service of the Authority; and

(b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Authority.

(4) Any employee not retained by the Authority under subparagraph (3) may exercise his or her option to either—

(a) retire from the service of the Authority; or

(b) be redeployed within the public service.

(5) Where an employee enters into an agreement with the Authority under subparagraph (3), his or her service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his or her appointment with the Government.

Justification: To save the current staff of NHIF in accordance with fair labour practices.

SECOND SCHEDULE

THAT the Second Schedule of the Bill be amended by deleting sub-paragraph (8) of paragraph (1) and substituting therefor the following new sub-paragraph—

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

Justification: To provide for decision making by a majority in the Board.

MIN. NO. NADC-H/2023/433: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 7.30 A.m.

Sign.....Date 24/09/2023

HON. DR. ROBERT PUKOSE, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF HUNDRED AND TENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN HILTON GARDEN INN MACHAKOS COUNTY ON MONDAY 25TH SEPTEMBER, 2023 AT 10.30 A.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P **-Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P-**Chairing the Meeting**.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Oron Joshua Odongo, M.P.
6. The Hon. Kibagendi Antony, M.P
7. The Hon. Prof. Jaldesa Guyo Waqo, M.P
8. The Hon. Owino Martin Peters, M.P
9. The Hon. Lenguris Pauline, M.P
10. The Hon. Mary Maingi, MP
11. The Hon. Mathenge Duncan Maina, M.P
12. The Hon. Titus Khamala, M.P
13. The Hon. Muge Cynthia Jepkosgei, M.P
14. The Hon. Wanyonyi Martin Pepela, M.P

ABSENT WITH APOLOGY

1. The Hon. Kipngor Reuben Kiborek, M.P

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant I
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Mr. Eric Lungai - Hansard Officer III
5. Mr. Henry Mageka -Media Relations
6. Mr.Benson kimanzi - Serjeant-At-Arms
7. Mr. Henry mageka - Media Relations Officer II
8. Ms. Abigel Muinde - Research Officer III

INATTENDANCE- The Kenya Private Hospitals Associations Submissions

1. Edward Kinuthia-Committee Finance KAPH
2. Dr. Peter Murimi-KAPH Finance Committee
3. Emmanuel Beyo-ADVOCATE
4. Dr.Timoty Olweny- Secretary General

INATTENDANCE- The National Health Insurance Fund (NHIF)

1. Mr.Michael kamau-chair NHIF
2. Mr.Samson Kuhora-AG CEO,NHIF
3. Ms.Janet Boit-Legal Service-NHIF
4. Mr.Chrisostim Wafula-Benefits,Claims,Actrurial Services-Nhif
5. Mr.Okoth Nashington -Ag.Director Ict
6. Mr.Evelyne Khamasi-Strategic and Planning
7. Mr.Archibolo Nyarango-Legal Services.

MIN. NO. NA/DC-H/2023/298: PRELIMINARIES/INTRODUCTION

In the immeadite absence of the chairperson and vice-chairperson, members present elected the Hon. Dr. Nyikal James Wambura, M.P to chair the meeting, pursuant to standing order No.188. Hon. Dr. Nyikal James Wambura, M.P called the meeting to order at 10.30am and said a prayer, followed by a round of introduction.

MIN. NO. NA/DC-H/2023/426: THE KENYA PRIVATE HOSPITALS ASSOCIATIONS SUBMISSIONS

1. The **Kenya Association of Private Hospitals (KAPH)** submitted as follows:
   (a) Amendment of Clause 2 by replacing the definition of "chronic illness" to mean "a serious and potentially life-threatening condition that demands urgent medical intervention and can have a severe adverse impact on a person's health, well-being, and quality of life";

   (b) Amendment of Clause 2 to maintain the term "health care provider" and not using it interchangeably with "health care services" and the former should be adopted in line with the Health Act, 2017 and deletion of the word "health care services" where it is used to mean healthcare providers;

   (c) Deletion of the definition of the term "spouse" and substitution with "the wife or husband of a contributor".

   (d) Amendment of Clause 5 (d) by adding a new provision to the effect that "a uniform contract for healthcare providers with incremental essential packages be signed as one goes up the levels in private hospitals. This will provide the minimum requirements for contracting and checklist per incremental level of health care and services as opposed to current discriminatory NHIF model that negated care up the levels for private hospitals;

   (e) Amendment of Clause 6(2) (e) by replacing the word "healthcare provider" with "a representative of the consortium of healthcare provider associations";

   (f) Deletion of private health facility in Clause 8(2) (d) since they are eligible under the provision of clause 7(h)(iii);

   (g) Deletion of Clause 14(1)(b) that the CEO ought to be an Advocate of the High Court of Kenya since the CEO should have a health-related background;

   (h) Expound on "how the services shall be purchased" in clause 20 and "purpose of the fund" in clause 20 (a) , (20 b), (25 a) and clause 28;

   (i) Amendment of clause 20(d) to define the deadline for settlement of claims by the Fund;

   (j) Amendment of Clause 30 to read "The Cabinet Secretary shall make regulations for the implementation of the Emergency, Chronical and Critical Illness Fund in consultation with stakeholders";

(k) Introduction of a new clause 31 (3) to read "The essential benefit package shall be accessible to beneficiaries in any healthcare facility of choice" as patients/beneficiaries have a right to access healthcare from any preferred healthcare provider be they public, private, faith based, community or non-governmental. This will obligate the Authority pay for a uniform benefit package of care for any service given across all levels of care;

(l) Amendment of Clause 32 (2) to state that "The cabinet secretary shall in consultation with the board other stakeholders prescribe the tariffs applicable to the benefits package under this Act";

(m) Introduction of a new section under Clause 33 to explicitly provide that the three Funds are run under the Social Health Authority and to introduce clauses showing interdependencies of the Funds;

(n) Amendment of Clause 34 (5) to state that "The authority shall terminate the contract with any health care provider where such health care provider or health care facility fails to meet the criteria prescribed by the cabinet secretary under subsection (3) , in accordance to the due process established by the cabinet secretary" so as to ensure that the parties are aware of their legal obligations under the Act and to introduce a due and fair process before contract termination;

(o) Amendment of Clause 35 (4) to state that "The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section in consultation with other stakeholders" as all major stakeholders should be involved in the process;

(p) Deletion of Clause 38 on Investment of funds as funds of the Authority should not be invested to avoid delays in settlement of claims;

(q) Amendment of paragraph 6 (1) of the First Schedule to the Bill as the transition period of one year transition period may not be; and

(r) A multidisciplinary committee comprising of all stakeholders to be established to oversee the transition so as to ensure that historical issues are satisfactorily settled before NHIF is winded up.

MIN. NO. NA/DC-H/2023/427: THE NATIONAL HEALTH INSURANCE FUND (NHIF) SUBMISSIONS

Define household as a nuclear unit of contributor, the declared spouse and children. The unit of contribution is a household.

2. **The National Health Insurance Fund (NHIF)** submitted that it fully supports the Bill considering its proposals as below:

(a) The definition of the term "household" to be amended to mean a nuclear unit of a contributor, the declared spouse and children as the unit of contribution is the household. A misinterpretation of the unit will have a significant impact on the resources allocated to or generated by the contributor;

(b) Include the Federation of Kenya employers in the Board of the Social Health Authority as employers are a major stakeholder in the Social Health Authority with regard to the payment of statutory contributions deducted from employees;

(c) Combination of paragraph (g) with paragraph (h) (ii) of subclause (1) to provide that "two persons, not being public officers, appointed by the Cabinet Secretary so as to remove ambiguity as the Bill does not define who the informal sector association is and there is no existence of such a body;

(d) Set out express provisions on the nominating institutions in clause 7 (ii) and (iii);

(e) Inclusion of the umbrella body representing all health care providers in the Board of the Social Health Authority or secondments from recognized affiliated bodies on a rotational basis in clause 7;

(f) The requirements in clause 8 (1)(c) are restricted to specific sectors namely ICT and health which has left out a myriad of people with wide experience as such the clauses are too prescriptive thus limiting the powers of the appointing authorities;

(g) Deletion of clause 8(2)(e) as its provisions are already provided for under clause 8(2)(a) and a breach of the provisions of Chapter six of the Constitution will be addressed by clause 8(2)(a) through criminal convictions;

(h) Amendment of clause 14 to remove the requirement that the CEO must be an Advocate is not appropriate for the position and objective as it limits other qualified professionals and to make a Master's degree a requirement for the CEO as per the Public Service Commission guidelines for directors and above;

(i) Insertion of the words "as per approval by the Board" in clause 22(1) and for the clause to make provision for regulations to stipulate the conditions for payment out of the Fund;

(j) Amendment of clause 25 to include investment income including but not limited to rental income so as to exempt the Authority's income from being subject to taxes as such income received from areas such as investments and rental income will be used to pay benefits.

(k) That the Cabinet Secretary must consult the Board of the Social Health Authority in matters of registration, making of regulations on implementation of the Emergency, Chronic and Critical Illness Fund, settlement of claims, stakeholder engagement in clause 26(4), clause 30, clause 36, clause 47(2) so as to take into account the Board's day to day operations on such matters;

(l) Deletion of clause 26(5) as the clause may raise operational challenges in access to government services;

(m) Amendment of clause 28 to provide guidance on who is able to access the funds under the Emergency, Chronic and Critical Illness Fund and the modalities of access to be addressed in the regulations. This will aid in preventing misuse of the funds therein as clause 28 does not provide the eligibility criteria for access to the Fund;

(n) Deletion of clause 33(2) and 33(4) so that enrolment into the panel of providers, contracting of the services should be a function of the Board and insertion of a provision for gazettement upon empanelment by the Board;

(o) Insertion of a requirement that publication of termination of contracts on the Authority's website in clause 34(6) as it informs the public and flows from the provision of gazettement upon empanelment;

(p) Specify that the Claims Management Office works under the directions of the Authority and the functions of claims management are functions of the Authority and where any delegation is required, the same should be at the discretion of the Board. The regulations under the clause 35 must also be in place at least 6 months after commencement of the Act for ease of transition;

(q) There is for clarification in whether the appropriate title is Committee or Tribunal. If it is an independent body, who will fund its operations and how its decisions will be enforced?

(r) On Part VIII, make provision for the role of the Board in managing complaints internally and have the tribunal as the next recourse platform;

(s) Deletion of clause 48(5) as digitization is an operational matter that does not require regulations;

(t) Deletion of paragraph 2 (2) in the First Schedule in its entirety as disposal of assets shall be guided by the provisions of the Public Procurement and Assets Disposal Act, No. 33 of 2015;

(u) Amendment of paragraph 6(1) in the First Schedule to increase transition period to two years as one year is too short to undertake the whole transition processes including the winding up of contracts;

(v) Deletion of paragraph 6(2), (3) and (4) and substitution with new paragraphs to provide that the current NHIF staff shall be transitioned and deemed to be staff appointed by the Authority under section 17 of the Act. The Authority to within, phased transition plan and not exceeding twenty-four months, review the qualifications of these staff and may retain those found suitably competent and qualified provided that such staff may opt to remain in the service of the Authority; and on such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Authority. An employed not retained should retire from the service of the Authority under such terms and conditions that are not detrimental to the staff (such as pension benefit, loans , medical cover etc.) or undertake early separation with suitable compensation; and

(w) Inclusion of clauses on the transition of pension scheme management and transition for the members of the Board who are eligible under the new Act until the end of their term.

MIN. NO. NADC-H/2023/428: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 12.30 P.m.

Sign.....Date 24/09/2023

HON. DR. ROBERT PUKOSE, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF HUNDRED AND NINETH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN PRIDE INN PARADISE MOMBASA COUNTY ON TUESDAY, 19TH SEPTEMBER, 2023 AT 2.00 P.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Titus Khamala, M.P.
6. The Hon. Prof. Jaldesa Guyo Waqo, M.P
7. The Hon. Owino Martin Peters, M.P
8. The Hon. Mary Maingi, MP
9. The Hon. Mathenge Duncan Maina, M.P
10. The Hon. Kibagendi Antony, M.P
11. The Hon. Oron Joshua Odongo, M.P
12. The Hon. Lenguris Pauline, M.P
13. The Hon. Muge Cynthia Jepkosgei, M.P
14. The Hon. Kipngor Reuben Kiborek, M.P

ABSENT WITH APOLOGY

The Hon. Wanyonyi Martin Pepela, M.P

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant I
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Ms. Abigel Muinde - Research Officer III
5. Mr. Abdi Salat - Serjeant At Arms III
6. Mr. Hillary Mageka -Media Relation

INATTENDANCE- THE STATE DEPARTMENT FOR MEDICAL SERVICES

1. Mr. Harry Kimtai - PS Medical Services
2. Mr. Benard loyd - Head DDHPR
3. Dr. Joyce Wamicwe - DDIHPR- MOH
4. Dr. David Mwai - Advisor OP
5. Dr. Abdi Mohamed - Technical Working group
6. Dr. Elnabett Wangie - Head HF
7. Ms. Edith Torome - Chief state counsel MOH
8. MS. Irine Ogambi - Director Legal
9. Dr. Muthkha Kangu - IGR Expert- COG
10. Mr. Justus Bundi - Advisor CS Office MOH
11. Ms. Naomi Wahu - COG
12. Mr. Robert Rapando - COG Health
13. Ms. Halima K. Yusuf - MOH Health Financing
14. Mr. Fred Angwenyi - HF
15. Ms. Anne K. Kibet - MOH Health Finance

MIN. NO. NA/DC-H/2023/423: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 10:00 a.m. with a word of prayer by the Chairperson Hon. Dr. Pukose Robert, M. P. He then welcomed everyone for the meeting and requested everyone for introduction.

MIN. NO. NA/DC-H/2023/424: PRESENTATION ON CLAUSE BY CLAUSE ON THE DIGITAL HEALTH BILL,2023 MINISTRY OF HEALTH, STATE DEPARTMENT FOR MEDICAL SERVICES

The following amendments were proposed:

a. Deletion of the word 'voluntarily' appearing in the definition of the words "health tourism" so as to encompass situations where a person is incapacitated;
b. Deletion of the word "pseudonymisation" and substituting therefor the word "pseudo-anonymisation" as the word pseudonymisation is also referred to as pseudo-anonymisation. The proposed amendment is therefore for clarity and uniformity purposes as both terms have been used in the Bill;
c. Insertion of the new definitions on de-identification, Medical Equipment data, Health Data and telehealth. The term "de-identification" is a type of health data that has been proposed for inclusion in the Bill while the terms "Medical Equipment data, Health Data Custodian and telehealth" have been mentioned in the Bill and needed to be defined;
d. Deletion of the word 'Cabinet Secretary' immediately after 'without the prior approval of and substitution with 'Parliament' in Clause 7(1) as the Digital Health Agency should only be allowed to charge or dispose of any immovable property with the approval of the National Assembly not the Cabinet Secretary;
e. Insertion of the words "in accordance with National Treasury Guidelines" in Clause 7(2)(e) as adherence to National Treasury Guidelines must be explicit to avoid misappropriation of funds under the guise of investments;
f. Increase of the representation of county governments in the Board of the Digital Health Agency as several functions of the Comprehensive Health Information System established under the Bill will be implemented in collaboration with the County Governments;
g. Deletion of Clause 10(2) on co-option of members into the Committees of the Board of the Digital Health Agency as there is a probability that the clause may be misused based on precedence.
h. Amendment of Clause 11(1) to provide that the Chief Executive Officer of the Digital Health Agency shall be competitively recruited by the Board and appointed on the terms determined by the Board in consultation with the Salaries and Remunerations Commission;
i. Introduction of a provision that the Chief Executive Officer shall be the accounting officer of the Agency and that the CEO must have a master's degree and has served in a management level for a period of at least five years;
j. Amendment of Clause 13 to make provision for the minimum qualifications and functions of the Corporation secretary;
k. Amendment of Clause 14 to delete the word 'appoint' and substitute the word 'recruit' as the Board recruits and does not appoint staff in accordance with the expertise required;
l. Redrafting of Clause 20 to the effect that the Chief Executive Officer may in accordance with the law relating to the management of public finance, open bank accounts on behalf of the Board with approval from the National Treasury and shall, as the accounting officer, be responsible for the proper management of the finances of the Agency;
m. Amendment of Clause 23 to provide that the Comprehensive Integrated Health Information system shall facilitate track and trace of health products

and technologies in the country. This will be for quality purposes as part of ensuring that only licensed HPTs are used in the country;

n. Amendment of Clause 25 by providing for a new category of de-identified, pseudo-anonymised, or anonymised individual-level health data which refers to the classification of health data which would fall under sensitive personal level health data that has been stripped of personal identifying information;

o. Amendment of Clause 31(2) by inserting a new exception on reasonably necessary for a lawful purpose in the storage of data in the Comprehensive Integrated Health Information system beyond ten years for alignment with section 39(1) and (2) of the Data Protection Act, No. 24 of 2019;

p. Amendment of Clause 35 by the cross reference of '15(2)' and replacing it with '30(2)' to correct the wrong cross reference;

q. Deletion of the words "aggregate data, medical equipment data or data related to health research, the" appearing in Clause 41 (1) and substituting therefor the words "health data", deletion of the words "sensitive personal" and substituting therefor the word "health" in the marginal note and deletion of the word "unintentionally" appearing in paragraph (g) of subclause (1) as Clause 41 deals with the breach of all data types not just sensitive personal data;

r. Deletion of the words 'five hundred thousand shillings' immediately after 'a fine not exceeding' and replacing it with 'five million shillings' in Clause 41(2) and insertion of the word "also" immediately after the words "the person shall" in Clause 41(3) as the penalty should take into consideration the impact of the crime and hence the proposal for stiffer penalties;

s. Deletion of the word 'a guardian' immediately after 'consent from' and substitution with 'the parent, an appointed guardian or next friend' in Clause 49(1)(h) and (i) so as to align with Clause 38 of the Bill which deals with the processing of personal data relating to a minor or a person without capacity;

t. Amendment of Clause 52(2) to specify that the requirements in paragraphs (b)-(d) in subclause (2) only apply in the case of health research or the conduct of a post-mortem;

u. Introduction of new provision to the effect that the Cabinet Secretary shall in consultation with the County Governments, and relevant lead agencies, develop guidelines on health tourism as there is need to develop regulations for health tourism in compliance with section 104 of the Health Act, No. 21 of 2017;

v. Deletion of the oath of the Board members provided in Clause 55;

w. Deletion of the word 'otherwise' immediately after 'disclose to any person' and substitution with 'other' in Clause 57(1) to correct a grammatical error;

x. Amendment of the penalties in the Bill to enhance the fines from two hundred thousand shillings to one million shillings and imprisonment from one year to two years in Clause 59(1) and (2).

MIN. NO. NADC-H/2023/425: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 5 p.m

Sign.....Date.....24/09/2023

HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF HUNDRED AND EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN PRIDE INN PARADISE HOTEL IN MOMBASA COUNTY ON TUESDAY, 19TH SEPTEMBER, 2023 AT 10.00 A.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Titus Khamala, M.P.
6. The Hon. Prof. Jaldesa Guyo Waqo, M.P
7. The Hon. Owino Martin Peters, M.P
8. The Hon. Mary Maingi, MP
9. The Hon. Mathenge Duncan Maina, M.P
10. The Hon. Kibagendi Antony, M.P
11. The Hon. Oron Joshua Odongo, M.P
12. The Hon. Lenguris Pauline, M.P
13. The Hon. Muge Cynthia Jepkosgei, M.P
14. The Hon. Kipngor Reuben Kiborek, M.P

ABSENT WITH APOLOGY

The Hon. Wanyonyi Martin Pepela, M.P

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant II
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Ms. Abigel Muinde - Research Officer III
5. Mr. Abdi Salat - Serjeant At Arms
6. Mr. Hillary Mageka -Media Relation

INATTENDANCE- THE STATE DEPARTMENT FOR MEDICAL SERVICES

1. Mr. Harry Kimtai - PS Medical Services
2. Mr. Benard loyd - Head DDHPR
3. Dr. Joyce Wamicwe - DDIHPR- MOH
4. Dr. David Mwai - Advisor OP
5. Dr. Abdi Mohamed
6. Dr. Elnabett Wangie - Head HF
7. Ms. Edith Torome - Chief state counsel MOH
8. MS. Irine Ogambi - Director Legal
9. Dr. Muthkha Kangu - IGR Expert- COG
10. Mr. Justus Bundi - Advisor CS Office MOH
11. Ms. Naomi Wahu - COG
12. Mr. Robert Rapando - COG Health
13. Ms. Halima K. Yusuf - MOH Health Financing
14. Mr. Fred Angwenyi - HF
15. Ms. Anne K. Kibet - MOH Health Finance

MIN. NO. NA/DC-H/2023/420: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 10:00 a.m with a word of prayer by the Chairperson Hon. Dr. Pukose Robert, M. P. He then welcomed everyone for the meeting and requested all for introduction.

MIN. NO. NA/DC-H/2023/421: PRESENTATION ON CLAUSE BY CLAUSE ON SOCIAL HEALTH INSURANCE BILL,2023

The following amendments were proposed;

a. Deletion of the word "may" and substitution with the word "shall" in clause 24 and 30
b. Deletion of funds for employee benefits and compulsory public service employee insurance benefit scheme from being part of the sources of monies of the Social Health Insurance Fund in clause 25
c. Amendment of clause 26 to require the production of proof of registration and contribution to the Social Health Insurance Fund so as to facilitate the enforcement of the mandatory requirement of complying with contributions and other requirements under the Bill.
d. Reduction of the ten percent for failure to pay contributions under the Bill to the five percent as the current fine is too punitive.
e. Deletion of clause 35 (3) and (4) and substituting with a new subclause to the effect that the Claims Management Office may delegate the performance of its functions under subsection (2)(a) and (b) to a medical insurance provider licensed by the Insurance Regulatory Authority under the Insurance Act in a manner to be prescribed in regulations by the Cabinet Secretary. This gives the Board of the Social Health Authority discretion to make the decision on the power to delegate the functions of validation and appraisal of medical claims and to separate these functions from the function of issuing pre-authorizations;
f. Deletion of the requirement of allowing the incurring of expenses for the purposes of pursuance of an authorization of the Board in clause 40 (4) to avoid any overtures by the Board;
g. That the Chairperson of the Dispute Resolution Committee ought to be appointed by the President and not the Cabinet Secretary so as to strengthen this Committee;
h. Amendment of the fines in clause 49 to make them commensurate to the offences committed by individuals and institutions in clause 49;
i. Deletion of the words "which shall be within a period of one month from the date of submission of the claim; and" in clause 50(2)(e) as validity of claims is not tied to any time frame; and
j. Insertion of the words "in consultation with Salaries and Remuneration Commission" immediately after the words "determined by the Board" in paragraph 6(2) of the First Schedule of the Bill as the Salaries and Remuneration Commission is mandated to advice on renumeration and other benefits for public officers.

MIN. NO. NADC-H/2023/422: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 4.30 p.m.

Sign.....Date 29/09/2023

HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF HUNDRED AND SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN PRIDE INN PARADISE HOTEL IN MOMBASA COUNTY ON MONDAY, 18TH SEPTEMBER, 2023 AT 2.00 P.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Titus Khamala, M.P.
6. The Hon. Prof. Jaldesa Guyo Waqo, M.P
7. The Hon. Owino Martin Peters, M.P
8. The Hon. Mary Maingi, MP
9. The Hon. Kibagendi Antony, M.P
10. The Hon. Oron Joshua Odongo, M.P
11. The Hon. Lenguris Pauline, M.P
12. The Hon. Muge Cynthia Jepkosgei, M.P
13. The Hon. Kipngor Reuben Kiborek, M.P
14. The Hon. Mathenge Duncan Maina, M.P

ABSENT WITH APOLOGY

The Hon. Wanyonyi Martin Pepela, M.P

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant I
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Faith Chepkemoi - Legal Counsel II
4. Ms. Abigel Muinde - Research Officer III
5. Mr. Abdi Salat - Serjeant At Arms

INATTENDANCE- THE STATE DEPARTMENT FOR MEDICAL SERVICES

1. Mr. Harry Kimtai - PS MOH
2. Mr. Benard loyd - Head DDHPR
3. Dr. Joyce Wamicwe - DDIHPR- MOH
4. Dr. David Mwai - Advisor OP
5. Dr. Abdi Mohamed - TWG
6. Dr. Elnabett Wangie - Head HF
7. Ms. Edith Torome - Chief state counsel MOH
8. MS. Irine Ogambi - Director Legal
9. Dr. Muthkha Kangu - IGR Expert- COG
10. Mr. Justus Bundi - Advisor CS Office MOH
11. Ms. Naomi Wahu - COG
12. Mr. Robert Rapando - COG Health
13. Ms. Halima K. Yusuf - MOH Health Financing
14. Mr. Fred Angwenyi - HF
15. Ms. Anne K. Kibet - MOH Health Finance

MIN. NO. NA/DC-H/2023/417: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 10:00 a.m with a word of prayer by the Chairperson Hon. Dr. Pukose Robert, M.P. He then welcomed everyone for the meeting and requested all for introduction.

MIN. NO. NA/DC-H/2023/418: PRESENTATION ON CLAUSE BY CLAUSE ON SOCIAL HEALTH INSURANCE BILL,2023 BY THE LEGAL COUNSEL FROM THE STATE DEPARTMENT FOR MEDICAL SERVICES

The legal counsel took the members through the bill clause by clause and the following amendments were proposed;

1. Section 2- the definition of board- removing the word "national"
2. Household- should include a family for the purposes of the Bill- related by blood, adoption, contracting marriage.
3. Deletion of the word "National" appearing in the definition of the words "Board" as Clause 4 of the Bill establishes the Social Health Authority.
4. Delete of the words "in the spirit of self-reliance and self-determination" in the definition of "primary health care" as the proposed amendment best captures the term.
5. Deletion of the words "who is for the time being named as such by the contributor for that financial year" in the definition of the term "spouse" which will provide protection of a spouse against removal by contributor.
6. Deletion of the term "risk spreading" and the reference to risk spreading in clause 52 as there is no risk spreading in social insurance practice since the scheme has only one pool.
7. Deletion of the words "investing" in clause 4 (2)(c), deletion of clause 6(2)(e) and clause 38 as the Social Health Authority is not expected to have a surplus of funds for investment.
8. Amendment to the composition of the Board of the Social Health Authority in Clause 7 to replace the Attorney-General with a representative of the CEC health caucus and to provide for representation of health providers from the faith based and private sector that are currently not well represented.
9. Removal of the restriction of directors or officers of private health facilities from being appointed as the members of the Board of the Social Health Authority in Clause 8 as well as the inclusion of parliamentary reports as a means of determining that a person who has been found culpable by parliament for contravening Chapter Six of the Constitution and therefore not fit to be appointed as a member of the Board of the Social Health Authority.
10. That the CEO of the Social Health Authority should have a master's degree;
11. Deletion of the requirement that the CEO must be an Advocate of the High Court of Kenya;

MIN. NO. NADC-H/2023/419: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 1.30p.m

Sign.....Date.....24/09/2023

HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

MINUTES OF HUNDRED AND SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN PRIDE INN PARADISE MOMBASA COUNTY ON MONDAY, 18TH SEPTEMBER, 2023 AT 10.00 A.M

PRESENT

1. The Hon. Dr. Pukose Robert, M.P – **Chairperson**
2. The Hon. Ntwiga Patrick Munene, M.P **-Vice-Chairperson.**
3. The Hon. Dr. Nyikal James Wambura, M.P.
4. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
5. The Hon. Titus Khamala, M.P.
6. The Hon. Prof. Jaldesa Guyo Waqo, M.P
7. The Hon. Owino Martin Peters, M.P
8. The Hon. Mary Maingi, MP
9. The Hon. Mathenge Duncan Maina, M.P
10. The Hon. Kibagendi Antony, M.P
11. The Hon. Oron Joshua Odongo, M.P
12. The Hon. Lenguris Pauline, M.P
13. The Hon. Muge Cynthia Jepkosgei, M.P
14. The Hon. Kipngor Reuben Kiborek, M.P

ABSENT WITH APOLOGY

The Hon. Wanyonyi Martin Pepela, M.P

COMMITTEE SECRETARIAT

1.	Mr. Hassan A. Arale	- Clerk Assistant I
2.	Ms. Gladys Kiprotich	- Clerk Assistant III
3.	Ms. Faith Chepkemoi	- Legal Counsel II
4.	Ms. Abigel Muinde	- Research Officer III
5.	Mr. Abdi Salat	- Serjeant At Arms
6.	Mr. Hillary Magega	-Media Relation

INATTENDANCE- THE STATE DEPARTMENT FOR MEDICAL SERVICES

1.	Mr. Harry Kimuai	- PS Medical Services
2.	Mr. Benard loyd	- Head DDHPR
3.	Dr. Joyce Wamicwe	- DDIHPR- MOH
4.	Dr. David Mwai	- Advisor OP
5.	Dr. Abdi Mohamed	
6.	Dr. Elnabett Wangie	- Head HF
7.	Ms. Edith Torome	- Chief state counsel MOH
8.	MS. Irine Ogambi	- Director Legal
9.	Dr. Muthkha Kangu	- IGR Expert- COG
10.	Mr. Justus Bundi	- Advisor CS Office MOH
11.	Ms. Naomi Wahu	- COG
12.	Mr. Robert Rapando	- COG Health
13.	Ms. Halima K. Yusuf	- MOH Health Financing

14. Mr. Fred Angwenyi - HF
15. Ms. Anne K. Kibet - MOH Health Finance

MIN. NO. NA/DC-H/2023/414: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 10:00 a.m. with a word of prayer by the Hon. Dr. Pukose Robert, M. P – Chairperson.He then welcomed all to the meeting and requested them for introduction.

MIN. NO. NA/DC-H/2023/415: PRESENTATION BY THE STATE DEPARTMENT FOR MEDICAL SERVICES

The state department presented as follows;

On an integrated pathway towards UHC: Kenyan Government Vision; they indicated the Proposed key changes in the move from NHIF to SHI which is guided by policy documents developed by the Sector including; The Universal Health Policy (2022), Health Financing Strategy (2022), Kenya Kwanza Manifesto (2022)
The goal was to ensure adequacy, efficiency and fairness in financing of health services in a manner that guarantees all Kenyans access to essential health services they require

They indicated that there are is a huge burden to households due to high out-of-pocket expenditure on health and the government has commenced reforming SHA to be vehicle for achieving UHC. Changes in the governance structure, revenue collection and the purchasing of health care services for Kenyans. The reforms target establishment of a new Social Health Insurance (SHI) product targeting 80% of household with Non pay roll incomes and there is great desire towards output-based financing to realize value for money.

a) SOCIAL HEALTH INSURANCE BILL, 2023

The agenda of the Bill was to enable setting up of a fully social health insurance compliant product for all the Kenyans without exclusions.

Shift from NHIF to SHA

1. Separate the function with the new body becoming a strategic purchaser.
2. Move from national insurer to social insurance

a) Increase the range of services from cover for waged employees to all Kenyans (including **80% in the non-wage employment**)
b) Move to premiums **based actuarial calculations**, and also based on income and not salaries/flat-rate
c) Removal of expensive **enhanced schemes** from SHA covering general public

3. Increasing efficiency in administration of the funds, Reducing the administration ratio of received funds from >5% to a legislated cap, Use of digital technology, end to end and use of only the necessary workforce to reduce wastage. Move from passive to strategic purchasing of services

4. Costing of **health services** to be covered for better negotiation with health facilities, Shift from capitation and **rebate system fee-for-service** reimbursements for each service

offered, Participating facilities to include **primary level health facilities** and Inclusion of cover for expensive services including **critical and emergency care.**

b) **DIGITAL HEALTH BILL NO.57 OF 2023.**
Digital superhighway

Set up a fully integrated and interoperable health information ecosystem to drive **patient centric services, prevent fraud, improve responsiveness, efficiency, transparency and** sharing of health data between health providers.

i. The system will provide **Interconnectivity/Inter-operability** in the health sector (private and public) unlocking efficiency at all levels through end-to-end visibility of the whole health ecosystem.
ii. Implement the Kenya Integrated Human Resource Information (IHRIS) system to track and manage the health workforce.
iii. Facilitate the use of telemedicine by caregivers
iv. Patient data portability across the providers

MIN. NO. NADC-H/2023/416: ADJOURNMENT

There being no any other business, the Chairperson, adjourned the meeting at exactly 1.30p.m

Sign.....Date.....20/09/2023

HON. DR. ROBERT PUKOSE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

Annexure 2: Report Adoption Schedule

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – SECOND SESSION (2023)

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ADOPTION LIST OF THE DEPARTMENTAL COMMITTEE ON HEALTH ON THE DIGITAL HEALTH BILL, 2023

We, the undersigned Members of the Departmental Committee on Health do hereby append our signatures to adopt this Report **Date:** 24/9/2023.

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

Annexure 3: Copy of the Newspaper Advertisement on Public Participation on the Bill

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
THE DIGITAL HEALTH BILL, 2023 AND THE SOCIAL HEALTH INSURANCE BILL, 2023

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Digital Health Bill, 2023 (National Assembly Bill, No. 57 of 2023) and the Social Health Insurance Bill, 2023 (National Assembly Bill, No. 58 of 2023) were Read a First Time on **Thursday, 14th September, 2023** and pursuant to Standing Order 127(1) of the National Assembly Standing Orders, committed to the Departmental Committee on Health for consideration and reporting to the House;

IT IS NOTIFED that–

1. **The Digital Health Bill, 2023 (National Assembly Bill No. 57 of 2023)** is a Bill sponsored by **the Leader of the Majority Party, The Hon. Kimani Ichung'wah.** The Bill seeks to provide a framework for the provision of digital health services, establish the Digital Health Agency, establish a comprehensive integrated digital health information system and provide for data governance and protection of personal health information, service delivery through digital health interventions, e-waste disposal and health tourism;
2. **The Social Health Insurance Bill (National Assembly Bill No. 58 of 2023)** is a Bill sponsored by **the Leader of Majority Party, The Hon. Kimani Ichung'wah**. The Bill seeks to provide for a comprehensive legislative framework to regulate the provision of social health insurance, establish the Social Health Authority, promote the implementation of the universal Health Coverage and to ensure that, all Kenyans have access to affordable and comprehensive quality health services;

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committee on Health hereby invites members of the public to submit memoranda on the two Bills.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **cna@parliament.go.ke to be received on or before Friday, 22nd September, 2023 at 5:00 pm.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

15th September, 2023

For the Welfare of Society and the just Government of the People

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution and the Senate Standing Orders require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

At its sitting held on 29th June, 2023, the Senate established an Ad Hoc Committee on the Compensation to the Kenyan Victims of the 1998 Bombing of the United States of America Embassy in Nairobi. The Ad Hoc Committee was mandated to –

i. Engage with the Ministry of Foreign and Diaspora Affairs to advance friendship and co-operation between the United States of America and Kenya by supporting the eligibility of Kenyan and American victims and their personal representatives, surviving spouses and the next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act;

ii. Coordinate with the Ministry of Foreign and Diaspora Affairs in the engagement of victims, their personal representatives, the Government of United States of America and other stakeholders in Kenya and abroad to pursue and accomplish the compensation of victims and families of the victims of Kenyan nationals; and

iii. Coordinate with the Ministry of Health to explore subsidized medical treatment for the surviving victims of the bomb blast.

The Ad Hoc Committee hereby invites interested members of the public and organizations to submit any representations that they may have by way of written memoranda on any of the above-mentioned matters falling within the mandate of the Committee.

The memoranda may be sent to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, First Floor, Main Parliament Buildings, Nairobi or by email to the Clerk of the Senate on the address: **clerk.senate@parliament.go.ke**, to be received **on** or **before Monday, 25th September, 2023 at 5.00 pm.**

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

> The dream never came to be, and whatever amount of money we had paid was never refunded as the company soon went under and so we didn't know who to talk to
>
> Jacqueline Nyaminde (Wilbroda)

panies, including some which have turned out to be rogue, have been competing for airtime during prime time, where directors cough millions to secure advertising slots to reach out to potential buyers as they seek to cash in on the high demand for property ownership.

Some firms even hire celebrities and media personalities as their ambassadors to create confidence, only to leave their clients in tears after failing to meet their end of the bargain, walking away with billions of investors' money.

To reverse the growing trend, MPs are working on legislation to rein in rogue real estate developers perpetuating fraud that has ruined lives of thousands of land and real estate investors in the Sh100 billion industry.

If enacted, the new law will require registration of real estate projects, ring-fencing payments made by investors to ensure completion of projects and guarantee the rights of purchasers including the provision for water, sanitation, electricity and other amenities and services as agreed to in contracts.

The new plan is contained in the Real Estate Regulation and Development Bill 2023 sponsored by Trans Nzoia Senator Allan Chesang'.

The bill seeks to put in place mechanisms for the registration of real estate agents, brokers and developers with the aim of streamlining operations within an industry bedeviled with mounting cases of fraud with the current regulatory regime faulted for being ineffective in regulating the sector.

rejected or revoked.

Maximum of 30 days

The board will also be tasked with advising the national and county governments on the regulation and development of the real estate sector and regulate real estate agents and real estate projects.

To protect the industry from rogue developers, the board will be expected to maintain a public database with names and photographs of developers who have defaulted on various projects including information on the defaulted projects.

It will appoint a registrar, who will be its chief executive officer, to ensure all developers, real estate agents and brokers are registered and the register maintained.

The registrar will be charged with keeping a register of all registered real estate agents, developers and brokers as well as that of consulting firms registered by the Institution of Surveyors of Kenya and approved by the board.

Failing to comply with such orders or continuing to be unregistered will see a developer liable to imprisonment for a term not exceeding three years or a fine of not less than 10 percent of the estimated cost of the real estate project, or to both, upon conviction.

For delays in completion of projects, penalties will include imposition of sanctions not exceeding Sh50,000 per violation per day for a maximum of 30 days.

Providing false information will see an individual liable to a penalty of five percent of the estimated cost of the real project, as determined by the board.

A real estate agent who fails to comply with orders of the board shall be liable to a penalty for every day during such default which may cumulatively extend up to five percent of the estimated cost of the plot, apartment or building.

"A person who fails to comply with, or contravenes any of the orders or directions of the court issued under this Act commits an offense and shall, upon conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding Sh10 million or to both," reads the bill in part.

The Board's boss will also be expected to publish in the Kenya Gazette and two newspapers of national circulation, by March every year, the name, address and qualification of each registered practicing

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
THE DIGITAL HEALTH BILL, 2023 AND THE SOCIAL HEALTH INSURANCE BILL, 2023

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Digital Health Bill, 2023 (National Assembly Bill, No. 57 of 2023) and the Social Health Insurance Bill, 2023 (National Assembly Bill, No. 58 of 2023) were Read a First Time on **Thursday, 14th September, 2023** and pursuant to Standing Order 127(1) of the National Assembly Standing Orders, committed to the Departmental Committee on Health for consideration and reporting to the House;

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1. **The Digital Health Bill, 2023 (National Assembly Bill No. 57 of 2023)** is a Bill sponsored by **the Leader of the Majority Party, The Hon. Kimani Ichung'wah.** The Bill seeks to provide a framework for the provision of digital health services, establish the Digital Health Agency, establish a comprehensive integrated digital health information system and provide for data governance and protection of personal health information, service delivery through digital health interventions, e-waste disposal and health tourism;
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NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committee on Health hereby invites members of the public to submit memoranda on the two Bills.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **cna@parliament.go.ke to be received on or before Friday, 22nd September, 2023 at 5:00 pm.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
16th September, 2023

For the Welfare of Society and the just Government of the People

Annexure 4: Letter inviting Stakeholders to submit views on the Bill

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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

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

When replying please quote

Ref. NA/DDC/DC-H/2023/ (088) **15th September, 2023**

Hon. Shadrack Mose
Solicitor General
Office of the Attorney General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

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

Ms. Mary Muthoni Muriuki, HSC
Principal Secretary
State Department for Public Health and Professional Standards
Ministry of Health
Afya House
NAIROBI

Mr. Joash Dache
Secretary /Chief Executive Officer
Kenya Law Reform Commission (K.L.R.C)
P.O Box 34999-00100
NAIROBI

Eng. John K. Tanui MBS
Principal Secretary
State Department for ICT and digital Economy
Ministry of Information, Communication and the Digital Economy
NAIROBI

Dr. Samson Kuhora
Ag. Chief Executive Officer
National Health Insurance Fund
P.O. Box 30195-00100,
NAIROBI

Mr. Stanley Kamanguya
Chief Executive Officer
Information Communication Technology (ICT)
NAIROBI

Dr. David G. Kariuki
Chief Executive Officer,
Kenya Medical Practitioners and Dentists Council,
KMP & DC House,
Woodlands Rd, off Lenana Rd
P.O. Box 44839-00100
NAIROBI

Ms. Immaculate Kassait, MBS
Data Commissioner
Office of the data protection Commissioner
P.O. Box 30920-00100
NAIROBI.

Mr. Benard Mogesa PhD, CPM
Commission Secretary/Chief Executive Officer
Kenya National Commission on Human Rights (**KNCHR**)
P.O. Box 74359-00200
NAIROBI

Ms. Betty Sungura, MBS
Commission Secretary /CEO
National Gender and Equality Commission (**NGEC**)
P.O Box 27512-00506
NAIROBI

Ms. Mary Wambua
Commission on Administrative Justice
2nd floor, West End Towers
Opposite Aga Khan High School
Off Waiyaki Way, Westlands
P.O. Box 20414-00200
NAIROBI

Ms. Mary Mwiti
Chief Executive Officer
Ms. Council of Governors
P.O Box 40401-00100
NAIROBI

Ms. Judy Oduma
Chief Executive Officer
County Assembly Forum
Flamingo Towers, 5th Floor Wing B, Mara Road
P.O. Box 73552-00200
NAIROBI

Dear Dr. Kuhora,

RE: CONSIDERATION OF THE DIGITAL HEALTH BILL (N.A. BILL NO. 57) 2023 AND THE SOCIAL HEALTH INSURANCE BILL (N.A. BILL NO. 58) 2023

The Departmental Committee on Health is established under Standing Order 216 and is mandated to "*study and review all legislation referred to it*".

Pursuant to the provisions of Standing Order 127(1) the Digital Health Bill (NA. Bill No. 57) 2023 and the Social Health Insurance Bill (NA. Bill No. 58) 2023 were committed to the Committee for consideration.

The principal objective of the Digital Health Bill (NA. Bill No. 57) 2023 is to provide a framework for the provision of digital Health services, to establish the Digital Health Agency, to establish a comprehensive integrated digital health information system and to provide for data governance and protection of personal health information, service delivery through digital health interventions, e-waste disposal and health tourism.

The principal objective of the Social Health Insurance Bill (NA. Bill No. 58) 2023 is to provide for a comprehensive legislative framework to regulate the provision of social health insurance, to establish the Social Health Authority, to promote the implementation of the universal Health Coverage and to ensure that, all Kenyans have access to affordable and comprehensive quality health services.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly, the Committee resolved to invite relevant stakeholders to submit memoranda on the said Bills. This is therefore to invite you to submit any representation you may have on the Bills for consideration by the Committee.

In view of short timeline within which the Committee is required to consider the Bills and report to the House, we will appreciate if the memoranda reach the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Friday, 22nd September, 2023**. Soft copies of the memoranda may be emailed to cna@parliament.go.ke.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke/the-national-assembly/house-business/bills.

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

Yours Sincerely,

PETER K. CHEMWENO
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: -

Hon. Justin B. N. Muturi, E.G.H
The Attorney General of the Republic of Kenya
Office of the Attorney General and Department of Justice
Sheria house
Harambee Avenue
NAIROBI

Ms. Susan Wafula
Cabinet Secretary
Ministry of Health
Afya, House
NAIROBI

Mr. Eliud O. Owalo
Cabinet Secretary
Ministry of Information, Communication and the Digital Economy
NAIROBI

Mr. Stanley Kahinga
Chairman
Kenya Medical and Dentists Council Board
P.O. Box 44839-00100
NAIROBI

Eng. Michael S.M. Kamau, HSC, CBS
Board Chairman
National Health Insurance Fund
P.O Box 27512-00506
NAIROBI

Hon. Sylvanus Maritim
Chairman
I.C.T Authority Board
NAIROBI



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

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

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

When replying please quote

Ref. NA/DDC/DC-H/2023/ (089) **15th September, 2023.**

Mr. Francis Atwoli
Secretary General
Central Organization of Trade Unions Kenya
Solidarity Building Digo Road, Gikomba,
P.O. Box 13000-00200
NAIROBI.
info@cotu-kenya.org

Mr. Anthony Mwangi
The Chief Executive Officer
Kenya Association of Manufacturers
P.O. Box 30225-00100
NAIROBI.

Dr. Simon Mucara Kigondu
The President
The Kenya Medical Association
KMA Centre, 4th Floor, Chyulu Road, Upper Hill
P.O. Box 48502-00100
NAIROBI

Mr. Eric Theuri
President
Law Society of Kenya
Gitanga Road
P.O. Box 72219-00200
NAIROBI

Ms. Jacqueline Mugo, EBS
Chief Executive Officer
Federation of Kenya Employers (FKE)
Waajiri House, Argwings Kodhek Road
P. O. Box 48311- 00100
NAIROBI
fkehq@fke-kenya.org

Ms. Carole Kariuki
Chief Executive Officer
Kenya Private Sector Alliance
5th Floor, Shelter Afrique House, Mamlaka Road
P.O. Box 3556-00100
NAIROBI
info@kepsa.or.ke

Mr. Stephen Mutoro
Secretary General
Consumers Federation of Kenya
Rehema Place, Block F-45 Ngong Road/Ring Rd Kilimani Junction
P.O. Box 28053-00200 City Square
NAIROBI

Dr. Makamu Lishenga
Chairman
Rural Private Hospitals Association of Kenya
2nd Floor Lungalunga Square, Off Lungalunga Street, Industrial Area
NAIROBI
info@rupha.co.ke

Dr. Tomothy Olweny
Secretary General
Kenya Association of Private Hospitals
Hurlingham Medicare Plaza, 5th floor, Suite 517
NAIROBI
info@kaph.co.ke

Dear Dr. Lishenga,

RE: CONSIDERATION OF THE DIGITAL HEALTH BILL (N.A. BILL NO. 57) 2023 AND THE SOCIAL HEALTH INSURANCE BILL (N.A. BILL NO. 58) 2023

The Departmental Committee on Health is mandated under Standing Order 216 (5) (c) and is mandated to "*study and review all legislation referred to it*".

Pursuant to the provisions of Standing Order 127(1) the Digital Health Bill (NA. Bill No. 57) 2023 and the Social Health Insurance Bill (NA. Bill No. 58) 2023 were committed to the Committee for consideration.

The principal objective of the Digital Health Bill, (NA. Bill No.57) is to provide a framework for the provision of digital Health services, to establish the Digital Health Agency, to establish a comprehensive integrated digital health information system and to provide for data governance and protection of personal health information, service delivery through digital health interventions, e-waste disposal and health tourism.

The principal objective of the Social Health Insurance Bill (NA. Bill No. 58) is to provide for a comprehensive legislative framework to regulate the provision of social health insurance, to establish the Social Health Authority, to promote the implementation of the universal Health Coverage and to ensure that, all Kenyans have access to affordable and comprehensive quality health services.

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In view of short timeline within which the Committee is required to consider the Bills and report to the House, we will appreciate if the memoranda reaches the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Friday, 22nd September, 2023 at 5.00 pm**. Soft copies of the memoranda may be emailed to cna@parliament.go.ke.

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

Yours Sincerely,



PETER K. CHEMWENO
For: CLERK OF THE NATIONAL ASSEMBLY

Annexure5:Analysis of Submissions by Stakeholders on the Bill

STAKEHOLDER VIEWS ON THE DIGITAL HEALTH BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 57 OF 2023)

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
1)	Clause 1	KANCO and 4 Other CSOs	Rename the Bill to Health Data Governance Bill.	The Bill deals with general health data issues with the digital aspect being a mere component.	**Rejected.** The name of the Bill is in order.
2)	Clause 2	MOH	Delete the word 'voluntarily' appearing in the definition of the words "health tourism".	The definition of health tourism should encompass situations where a person is incapacitated.	**Adopted.** To provide for situations where a person is incapacitated.
			Delete the word "pseudonymisation" and substituting therefor the word "pseudo-anonymisation".	Pseudonymisation is also referred to as pseudo-anonymisation. The proposed amendment is for clarity and uniformity purposes as both terms have been used in the Bill. The term "pseudo-anonymisation" has been used.	**Adopted.** The words "pseudonymisation" and "pseudo-anonymization" are synonymous however the latter has been used in the Bill.
			Insert the following new definitions— De-identification means removing or hiding personal information from records in such a way that the remaining information cannot be used to	The term "de-identification" is a type of health data that will be included in the Bill; hence it is imperative to define it. The terms "Medical Equipment data, Health Data Custodian and telehealth" have	**Adopted with amendments.** The proposed definitions are not defined and yet they are used in the Bill.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			identify an individual." Medical Equipment data: refers to data about medical equipment and contains manufacturer-provided information, as well as client-created inventory information about the equipment. It may contain exhaust digital data as well as individual data that may be classified as sensitive data in the DPA, 2019. Health Data Custodian refers to a person or organization that possess legal custody over health data. Telehealth means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration. Technologies include videoconferencing, the internet, store-and-	been mentioned in the Bill and need to be defined.	

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			forward imaging, streaming media, and terrestrial and wireless communications.		
3)	Clause 2	FKE	Amend the definition of the term "Data commissioner" to insert the words "as amended from time to time" immediately after the words "Data Protection Act, 2019"	Not to render the reference obsolete should the referenced Act be amended.	**Rejected.** The definition as drafted is in order.
4)	Clause 2	ODPC	Amend the definition of "health data processor" to mean "a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller."	For standardization of the definition of the term "Data processor"	**Rejected.** The definition as drafted is sufficient.
			Delete the definition of data privacy.	The definition is too limiting. The matter should be left open to align to the right to privacy.	**Rejected.** The definition as drafted is sufficient
5)	Clause 2	KELIN	Substitute 'e-waste' with 'e-health waste'.	To limit the Bill to health matters.	**Rejected.** There is no need to limit the Bill to e-health waste as some of the data may need to be disposed.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
6)	Clause 2	Dr. Peter Ongwae	Define the word 'Tele-pharmacy' to mean the use of telecommunications technology to facilitate or enable the delivery of high-quality pharmacy services in situations where the patient or healthcare team does not have direct (in-person) contact with pharmacy staff.	Tele-pharmacy is one of the critical components of telemedicine or e-health.	**Rejected,** As drafted the definition of telemedicine includes matters of digital pharmacy.
7)	Clause 2	Dr Emmanuel Mulaa	Amend the e-health to delete the words "including telemedicine" Combined use of electronic communication and information technology in the health sector.	The definition should be wide enough to include areas such as tele-dentistry, tele-radiology, tele-pharmacy amongst others.	**Rejected**. The definition adopted is similar to the definition of the Health Act, No. 21 of 2017.
8)	Clause 4	Hakijamii	Amend clause 4 to include the following sub-clause after sub-clause 4 (d)— e) Every person has the right to the highest attainable standards of health	To emphasize the right to healthcare services as provided for in Article 43 (1) (a)of the Constitution of Kenya, 2010	**Rejected.** The clause as drafted is in order.
9)	Clause 5	COG	Change the name of the Digital Health Agency to Digital Health Service.	Agency pre-supposes a principal-agent relationship yet the institution as conceptualized is independent.	**Rejected.** The use of 'Agency" is appropriate as the entity established is performing

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
					specialized functions similar to other agencies such as the Anti-Doping Agency.
10)	Clause 6	KPMDC	Amend clause 6(b) to list KMPDC as one of the statutory authorities	KMPDC is one of the statutory authorities contemplated in the clause.	**Rejected.** It was not necessary to prescribe the statutory authorities.
11)	Clause 6	HRIM Association of Medical Records Officers (Kenya)	Delete Clause 6 (f-k) (J)(n)(o)	There is duplication of functions outlined in the Health Act, 2017 and which HRIM officers on a day-to-day basis. There exists no vacuum in the practice. The inclusion of the functions in the proposed digital health bill shall conflict with the HRIM Act and Health Act.	**Rejected.** There is no conflict as the Bill deals with the management of digital health data.
12)	Clause 6	BYON8	Amend to provide clarity on the licensure of telemedicine providers.	To prevent conflict as licensure of telemedicine providers is currently being done by KMPDC.	**Rejected.** There is no conflict as the Bill deals with the management of digital health data.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
13)	Clause 7	MOH	Delete the word 'Cabinet Secretary' immediately after 'without the prior approval of' and replace with 'Parliament' in clause 7(1).	The Agency should only be allowed to charge or dispose of any immovable property with the approval of the National Assembly not the Cabinet Secretary.	**Rejected.** The clause as drafted is in order.
			Insert the words "in accordance with National Treasury Guidelines" in clause 7(2)(e).	Adherence to National Treasury Guidelines must be explicit to avoid misappropriation of funds under the guise of investments.	**Adopted with amendments.** A new clause on investments and adherence to the National Treasury Guidelines on the same introduced in compliance with the Public Finance Management Act, No. 18 of 2012.
14)	Clause 7	FKE	Replace "Authority" with "Agency" in clause 7(2)(a)	To correct a typographical error in the name of the agency.	**Adopted.** Clause 5 of the Bill establishes the Digital Health Agency.
15)	Clause 8	MOH	Delete the word 'competitively' in 8 (1)(a).	The chairperson is not competitively recruited.	**Adopted with amendments.** Board Chairs of SAGAs are appointed.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
16)	Clause 8	MOH	Merge paragraphs (f) and (g) in clause 8(1) and delete the words 'Cabinet Secretary' immediately after the words 'to be appointed by the' and replace with the words 'Council of Governors' in Clause 8(1)(h) as follows— (f) three persons, not being Governors, nominated by the Council of County Governors with two having knowledge and experience in digital health:	Several functions of the established Comprehensive Health Information System fall under implementation or will be conducted in collaboration with the County Governments hence the argument to increase their representation in the Board of Agency.	**Adopted with amendments.** To increase the representation of counties in the Board of the Digital Health Agency as health is devolved under Part 2 of the Fourth Schedule to the Constitution.
			In clause 8(2), delete '(g), delete 'Cabinet Secretary' and replace it with 'Council of Governors' and delete the word 'appointing' immediately after 'In' and replace it with 'nominating' as follows— (3) In nominating the two persons as members of the Board under subsection (1)(f), the Council of Governors shall ensure that the appointments afford equal opportunity to men and women, youth, persons with	Given that paragraph (h) was amended from Cabinet Secretary to the Council of Governors as the nominating party for the two experts.	**Rejected.** The clause as drafted is in order.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			disabilities, minorities, and marginalised groups and ensure regional balance.		
17)	Clause 8	KPMDC	Amend the composition of the Board in clause 8(1)(g) to replace the private sector representative with the Director-General of Health or a Representative of a health regulatory body.	As per Section 17 of the Health Act, the Director-General of Health is the technical advisor to the Government on all matters relating to health within the health sector. Digital health is health-related, only that the health provision is being done on various digital platforms.	**Rejected.** The Private sector is a huge stakeholder on matters of digital health and need not be restricted to health.
18)	Clause 8	KMPDC	Insert "in health" after the words private sector to read as follows: 8 (g) one person appointed by the Cabinet Secretary representing the private sector in health	To specify that the representative of the private sector should be someone from the health sector.	
19)	Clause 8	COG	Review Clause 8 to increase the membership of the Council of County Governors from one representation to three.	County Governments are the main source of health data.	**Adopted.** To increase the representation of counties in the Board of the Digital Health Agency as health is devolved

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
					under Part 2 of the Fourth Schedule to the Constitution.
20)	Clause 8	HRIM officers and Association of Medical Records Officers (Kenya)	Amend to include HRIM professionals in the Board	HRIM professionals are the core custodians and players in the data cycle. Health Records and Information Managers are the backbone of the health sector in terms of data management and systems management	**Rejected.** The interests of HRIM professionals will be represented by the Principal Secretary responsible for health.
21)		KMA	Have KMA representation on the board- subsection (h) of the clause	KMA is the best placed representative as physicians are the team leads in healthcare delivery teams.	**Rejected.** The COG must be given discretion to determine its nominee under Clause 8(1)(g).
22)		FKE	Amend clause 8(1)(g) as follows— (g) one person nominated by the most representative Employers body, Federation of Kenya Employers and appointed by the Cabinet Secretary to represent the private sector;	To provide clear criteria for nomination of the private sector representative to be appointed	**Rejected.** The CS will determine how the representative of the private sector will be nominated under Clause 8(1)(g).

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
23)		KANCO and 4 Other CSOs	Amend the section to include a CSO nominee.		**Noted.** The non-executive chairperson and nominees of COG may come from CSOs or be a member of the public. Under clause 8(3), the Cabinet Secretary is required to afford equal opportunities to the youth.
24)	Clause 8	KCEN	Inclusion of a member of the public, selected through a transparent and participatory process, to serve as a non-executive member of the Board of Directors.	The member will represent interests and perspectives of the broader community, ensuring the Board's decisions and actions are informed by the experiences and expectations of the citizens who will be directly affected by the Agency's operations. This will enhance transparency, accountability and citizen engagement in the governance of the Agency.	
25)		KCEN	Allocation of a dedicated and substantial space for youth representation on the Board, reflecting the importance of involving young individuals in decision-making processes related to digital health.	This will ensure that voices, perspectives and contributions of youth are actively considered and integrated into the governance of the Agency, fostering intergenerational collaboration and innovation.	
26)		ODPC	The Bill should provide for a clause that states as follows "The Agency may, in the performance of its functions collaborate with the Office of the Data Protection Commissioner."	The current provision will contradict the provisions of the Data Protection Act and may cause a situation of conflict that may affect the independence of the Office.	**Noted.** There is no conflict as clause 61 requires persons processing data under the Bill to comply with the

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
					Data Protection Act, No. 24 of 2019.
27)		KELIN	Qualified individuals should be appointed to the Board with minimal political influence to ensure the effective governance of health data. There is no criteria for the appointment of the representative of the private sector so as to ensure that individuals with the relevant expertise and experience are chosen The Bill should elaborate on the appointment of the two individuals who are not public officers but are chosen based on their knowledge and experience.		**Noted.** Clause 8 sets out the minimum qualifications that the Board members should have.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			Add more representations in the Board as follows: (j)One person representing civil society organisations appointed from amongst indigenous organizations registered and recognised by the government of Kenya with knowledge on digital health. (k)One person representing the developers, manufacturers, digital health service providers. (l)One person representing professional pharma and medical associations.	Ensuring adequate representation of the CSOs and digital health developers will go a long way to facilitate regulation oversight and accountability of contemporary and emerging technologies in digital health because its ever evolving.	**Noted.** The non-executive chairperson and nominees of COG may come from CSOs or be a member of the public. Under clause 8(3), the Cabinet Secretary is required to afford equal opportunities to the youth.
28)		Dr Peter Ongwae	A clear criterion needs to be provided for the representative of the private sector in Clause 8(1)(g)	To ensure that the Board is constituted by competent persons.	**Noted.** Clause 8 sets out the minimum qualifications that the Board members should have.
29)			The nominating professional organisations need to be specified Clause 8(1)(h) as follows:	KMA and PSK are professional organisation with integrity and can be trusted to nominate competent health care providers to the board.	**Noted.** The non-executive chairperson and nominees of COG may come from CSOs or be a

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			(a)Kenya Medical Association (KMA) (b) Pharmaceutical Society of Kenya (PSK).		member of the public. Under clause 8(3), the Cabinet Secretary is required to afford equal opportunities to the youth.
30)		Dr Emmanuel Mulaa	Amend Clause 8(1)(f)to: 'one person nominated by the Council of Governors from among the County Directors of Health.'	The counties need representation to this board because most of healthcare service provision occurs at county level thus most data will be generated by county health facilities. Furthermore, the county director is the highest technical representation in the county health system.	**Adopted with amendment**. The representation of counties increased to three members and COG given discretion on who to nominate.
31)			Amend Clause 8(1)(g) to 'The Director General of Health'.	The Director General is the technical advisor to the Ministry of Health.	**Rejected.** MOH will be represented by the Principal Secretary.
32)			Amend Clause 8(1)(h) to 'two persons appointed by the cabinet secretary, one being a representative of patients' interests selected from patient interest groups and the other being a health	The board should have a representation of patient interest since patients are the owners of the data being managed by the Digital Health Agency. The health professional with experience	**Noted.** The non-executive chairperson and nominees of COG may come from CSOs or be a

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			professional with knowledge and experience in digital health.	and knowledge of digital health protects health care worker interests	member of the public.
33)		Hakijamii	Amend the provision to include the following immediately after clause 8 (1)(i); (j) One person, not being a public officer nominated by the informal sector association.	To ensure inclusivity and that the interests of communities are safeguarded.	
34)	Clause 10	MOH	Delete Clause 10(2).	There is a probability that the clause may be misused based on precedence.	**Rejected.** The Board should be given discretion to co-opt the necessary expertise on a need basis.
35)	Clause 11	MOH	Amend Clause 11(1) by deleting 'appointed' immediately after 'who shall' and replacing it with 'competitively recruited' as follows— "There shall be a Chief Executive Officer who shall be competitively recruited by the Board".	The CEO must be competitively recruited in accordance with the qualifications outlined.	**Adopted with amendments**. For accountability, the CEO to be recruited through a competitive process and to provide for the involvement of the Salaries and Remuneration Commission which is responsible for

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			Amend Clause 11(3) by deleting 'appointed' and substituting with 'recruited' and inserting the words 'in consultation with the Salaries and Remunerations Committee' immediately after 'in writing from time to time' as follows— "(3) Subject to this Act, the Chief Executive Officer shall be recruited on such terms and conditions of service as shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time, and in consultation with the Salaries and Remunerations Committee".		advising the national and county governments on the remuneration and benefits of all public officers under Article 230 of the Constitution.
36)	Clause 12	MOH	Introduce the following clause immediately after Clause 12(2)— "The Chief Executive Officer shall be the accounting officer of the Agency".	Owing to the importance of the role, the CEO requires a minimum of a master's degree in the relevant field.	**Adopted with amendments**. To specify that the Chief Executive Officer is the accounting officer of the Agency in compliance with the Public Finance Management Act, No. 18 of 2012.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
37)		KMA	Amend Clause 12 (1)(a) by deleting 'bachelor's' immediately after 'has a minimum of a' and replacing it with "masters." Amend under Clause 12(1) by adding 1(c) as follows— "Has served in a management level or a period of at least five years"		**Adopted.** To ensure that the person appointed as CEO has sufficient technical expertise and knowledge.
38)		Kenya Faith Based Health Services Consortium	Provide that the CEO will hold office for three years renewable once' instead of five years.	A five year-term may not be consistent with other proposed terms in similar parastatals.	**Noted.** This is already provided for.
			Delete Clause 13 (4) as this is not a competitive process.	Such an office should go through interviews like others.	**Adopted with amendment.** The CEO of the Agency to be competitively recruited.
39)	Clause 13	MOH	Amend Clause 13 to add the following new clauses— (2) A person qualifies for appointment as the Corporation Secretary if that person— (a) holds a bachelor's degree in law from a university recognised in Kenya. (b) is an Advocate of the	The minimum qualifications and function of the Corporation secretary must be included in the Bill.	**Adopted.** To make provisions for the qualifications and functions of a Corporation Secretary of the Digital Health Agency.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			High Court of Kenya. (c) has at least five years' experience as a corporation secretary or a similar governance role. (d) is a member in good standing of the Institute of Certified Public Secretaries of Kenya; and (e) meets the requirements of Chapter Six of the Constitution (3) The Corporation Secretary shall be the Secretary to the Board and shall— (a) in consultation with the Chairperson of the Board, issue notices for meetings of the Board. (b) keep, in custody, the records of the deliberations, decisions, and resolutions of the Board. (c) transmit decisions and resolutions of the Board to the Chief Executive Officer for		

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			execution, implementation, and other relevant action. (d) provide guidance to the Board on their duties and responsibilities on matters relating to governance; and (e) perform such other duties as the Board may direct.		
40)	Clause 14	MOH	Delete the word 'appoint' immediately after 'The Board may' and replace with 'recruit' in clause 14.	The Board recruits and does not appoint in accordance with the expertise required.	**Rejected.** The clause as drafted is in order.
41)	Clause 18 and 19	KCEN	The Bill should make provision for the following: Public Access to Financial Information: The Agency should proactively make its financial information, including audit books, record accounts, and financial statements, easily accessible to the public. Plain Language Summaries: The Agency should provide plain language summaries that explain the key financial figures and trends, designed to be easily understandable by the general public, without		**Noted.** Some of the issues are addressed in Part III of the Bill.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			requiring specialised financial knowledge. Public Consultation on Annual Reports: Before finalising the report, The Agency should seek public input on its content and format, through public consultations, surveys, or town hall meetings where citizens can provide feedback on what they consider relevant information to be included. Engagement with Stakeholders: the Agency to collaborate with civil society organisations, community groups and local media to ensure that the annual report reaches a wider audience. The organisations can help disseminate information and facilitate discussions around the report's findings. Feedback mechanism: the Bill to establish a feedback mechanism for citizens to ask questions or seek clarification		

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			on the annual report. This can include a dedicated email address or hotline where inquiries are expressed promptly.		
42)	Clause 20	MOH	Redraft clause 20 as follows— The Chief Executive Officer may in accordance with the law relating to the management of public finance, open bank accounts on behalf of the Board with approval from the National Treasury and shall, as the accounting officer, be responsible for the proper management of the finances of the Agency.		**Adopted with amendments.** To enhance financial accountability as contemplated under the Public Finance Management Act, No. 18 of 2012.
43)	Clause 21	HRIM officers Association of Medical Records Officers (Kenya)	Delete clause 21(1) and (3).	The Health Act of 2017 envisaged that a number of policy guidelines shall be developed under Section 105 (3) to accomplish comprehensive integrated health information under the guidance of CS, Health and the Director-General for Health. The proposal to place this responsibility under the	**Rejected.** There is no conflict as the Bill deals with matters of digital health and is conformity with the Health Act, No. 21 of 2017.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
				Digital Health Agency is a direct conflict and subversion of the intent of the drafters and legislators of the Health Act, 2017.	
44)	Clause 22	HRIM officers Association of Medical Records Officers (Kenya)	Delete clause 22.	Section 2 of the HRIM Act, 2016 defines a Health Records and Information Manager as an officer trained in health records and information with several responsibilities which is a direct conflict between the two laws.	
45)	Clause 23	HRIM officers Association of Medical Records Officers (Kenya)	Delete clause 23.	Section 2 of the HRIM Act, 2016 defines a Health Records and Information Manager as an officer trained in health records and information with several responsibilities which is a direct conflict between the two laws.	
46)		MOH	Amend Clause 23 by inserting the following the following new paragraph— (g) facilitate track and trace of Health products and technology in the country	To cover the track and trace component of health products and technologies for quality purpose as part of ensuring that only licensed HPTs are used in the country.	**Adopted with amendments**. For quality purposes which will ensure that only licensed health products and

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
					technologies are used in the country.
47)	Clause 25	MOH	Amend under Clause 25 by inserting a new paragraph as follows— (b)de-identified, pseudo-anonymised, or anonymised individual-level health data	This classification of health data refers to that which would fall under (a) but has been stripped of personal identifying information.	**Adopted.** To make provision for sensitive personal level health data that has been stripped of personal identifiable information.
48)		KMA	Private sector digital health should not be limited by the Bill.	Digital health represents a new model for doctors to package, utilise and commercialise their knowledge	**Rejected.** The Bill regulates all health data in the country.
49)		ODPC	Define sensitive health data and aggregate health data in Clause 25 and	Provision of a clear understanding to avoid misconstruction.	**Rejected.** The terms are used in their ordinary sense.
50)	Clause 26	KANCO and 4 Other CSOs	The Bill to provide for multi-language Accessibility by ensuring that financial information and summaries are available in multiple languages commonly spoken in Kenya to maximise accessibility to a diverse population.	The provision of health data principles should consider the issues of protecting the people, promoting health value and prioritising equity.	**Rejected.** The clause as drafted is in order.

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51)		Hakijamii	Amend the clause 26 to include the following principles after clause 26 (e) f) highest attainable standards of health for all g) the right to healthcare services	The governing principles of health data should include the right to the highest attainable standards of health, which includes the right to healthcare services, as provided for in Article 43 (1) (a) in the Constitution of Kenya 2010.	**Rejected.** The clause as drafted is in order.
52)	Clause 27	KELIN	Insert Clause 27 (2) (h) establish standards for governance for governance of (digital) health data during health emergencies		**Rejected.** The proposed amendment is too specific and may be covered under clause 27(1).
53)			Insert "collectors" after health data.	Controllers and processors do not include collectors, yet they ought to be captured under this phrase	**Rejected.** The Data Protection Act recognizes a data processor and a data controller. The latter collects information for a particular purpose.
54)	Clauses 28	BYON 8	Amend by subsisting a new clause as follows— (28) The Agency shall enforce a specific interoperability standard that would be utilised to enhance data	The Digital Health Agency would be best suited to enforce a specific interoperability standard that would be utilised to enhance data portability	**Rejected.** The proposed amendment is too specific and may be covered under clause 28.

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			portability across several digital interventions.	across several digital interventions. The Health Information/ Data bank should be under the jurisdiction of the Ministry of Health.	
55)		Kenya Faith Based Health Services Consortium	Amend Clause 28 (2)(a-c)to avoid duplication.	Centralise the functions in the clause within the National Government, with limited delegation of roles to the counties. Avoid duplication of Agency's roles with that of the county.	**Noted.** There is no duplication on the roles of the two levels of government.
56)	Clause 28	HRIM Officers Association of Medical Records Officers (Kenya)	Delete the entire clause.	Health data belongs to the patient, and it is held in trust by the state on behalf of the patient. The Cabinet Secretary for health is obligated to facilitate safe custody of patient data for easy access and use to facilitate care and treatment of patients. The same data is kept securely under the care of Health Records and Information Managers who ensure that the	**Rejected.** There is no conflict as the Bill deals with matters of digital health.
57)	Clause 29	HRIM Officers Association of Medical Records Officers (Kenya)	Delete the entire clause.		

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				same is collected and stored safely. The proposal to shift this responsibility to the proposed digital health agency which is a body corporate with own governance structure is likely to complicate this since there will be shared authority between the Ministry and the agency with HRIM officers being unable to perform their duties and responsibilities.	
58)	Part VI	KANCO and 4 Other CSOs	Part VI should be amended to expound further on the issues of purpose limitation, data minimisation, the responsibilities of healthcare institutions in data processing, and healthcare practitioners' responsibilities in data processing should be more concise.	Clause 25 of the Data Protection Act provides the principles of Data Protection that should all be provided.	**Rejected.** The Bill has incorporated the principles of data protection. Further, clause 61 requires persons processing data under the Bill to comply with the Data Protection Act, No. 24 of 2019.
59)	Clause 30	KELIN	There is need for more explicit language and guidelines on how this responsibility and Cabinet Secretary's mandate to ensure	Vague provisions can lead to uncertainty in enforcement.	**Noted.** The proposed amendments are too specific.

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			privacy and confidentiality will be fulfilled.		
60)	Clause 31	MOH	Amend under Clause 31(2) by inserting a new paragraph as follows— (c) reasonably necessary for a lawful purpose;	To align to section 39(1) and (2) of the Data Protection Act, 2019.	**Adopted.** For alignment with section 39(1) and (2) of the Data Protection Act, 2019.
61)		KANCO and 4 Other CSOs	Recommend the provision of a ridder to provide for the transition from the source to the National Data Bank.	The retention and disposal of health data, which has been provided for twenty (20) years, should have a ridder to provide for the transition from the source to the National Data Bank.	**Noted.** The exemptions provided are sufficient.
62)		KELIN	Amend 31(1) by providing that the Cabinet Secretary in consultation with the Agency shall develop comprehensive guidelines on guidance on implementation of modern technological safeguards	The Bill should provide a detailed guidance on how these modern technological safeguards should be implemented	**Noted.** This will be done through regulations.
63)		ODPC	Amend to read as follows: "or, historical, statistical and research purposes where the data is anonymised."	Clause does not align with principles of data protection. The proposal will ensure that	**Adopted with amendment.** To comply with the principle of

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
				the principle of confidentiality and integrity is upheld.	confidentiality and integrity.
64)	Clause 32	HRIM Officers Association of Medical Records Officers (Kenya)	Amend to place the responsibility of establishment of Health Data Banks to the Agency.	The shift in responsibility from the proposed digital health agency to the office of the Cabinet Secretary who delegates the functions to HRIM managers would create conflicts and confusion in service delivery.	**Noted.** The clause as drafted is in order.
65)	Clause 35	MOH	Amend Clause 35 by deleting '15(2)' appearing and replacing it with '30(2).	The Clause referred to was incorrect.	**Noted.** The error no longer subsists.
66)	Clause 37	KANCO and 4 Other CSOs	Amend the definition of 'consent' in the proposed law.	The provision for consent should consider the unique nature of the health sector.	**Noted.** The definition provided is sufficient.
67)	Clause 39	ODPC	Amend by deleting the word "date" appearing immediately after the words "integrity of the" in sub-clause (1) and substituting therefor the word "data".	To correct a spelling error	**Adopted.** For correction of an error.
68)	Clause 41	MOH	Delete the words "aggregate data, medical equipment data or data related to health research, the" appearing in subclause (1) and substituting therefor the words "health	Clause 41 deals with the breach of all data types of not just sensitive personal data. Sharing of data is a huge breach and all measures should	**Adopted.** The provision ought to cover all categories of health data.

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			data". Delete the words "sensitive personal" and substituting therefor the word "health" in the marginal note. Delete the word "unintentionally" appearing in paragraph (g) of subclause (1).	be taken to ensure that there is clear safeguarding of data.	
69)			Delete the words 'five hundred thousand shillings' immediately after 'a fine not exceeding' and replacing it with 'five million shillings' in Clause 41(2). Add the word "also" immediately after the words "the person shall" in Clause 41(3).	The penalty should take into consideration the impact of the crime and hence the proposal for stiffer penalties.	**Adopted.** To enhance the fines to make them more deterrent and commensurate to the offences of mishandling health data.
70)		Haki Yetu Organisation	Offences and penalties for breach	The Bill relies more on the general offences and penalties provided under the Data Protection Act. It would be more prudent to consider the principles of sentencing while formulating the penalties with the aim of determining data	**Adopted.** The offences have been proposed for amendment.

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				holders from misusing confidential information.	
71)		KELIN	Substitute Clause 41 (1) (c) with "fails to disclose inauthentic access to the dater governed by this Act.	Disclosure of inauthentic access to date cannot purposively be an offence.	**Rejected.** The clause as drafted is in order.
72)			The ambiguity specifically regarding what constitutes a "breach", "abuse of privilege" and the definition of "privilege" in handling health data.	Further clarification and definitions are essential to ensure a common understanding of these terms and to establish the legal boundaries for handling health data. The Act needs to highlight the consequences to these actions	
73)			Substitute Clause 41 (1) (d) with "Improperly disposes sensitive data"	The offence uses the words unnecessary but sensitive data, which is confusing, ambiguous thus causing uncertainty in prescribing the offence which offends the principle of legality	
74)			Substitute Clause 41 (1) (g) with "shares health data under this Act to unauthorised party	This offence is ironic and ambiguous. It creates a feeling the "intentional" sharing of sensitive data and other types	

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				of data to unauthorized is lawful which is in fact wrong.	
75)	Clause 42	KANCO and 4 Other CSOs	Amend the clause to ensure that access is seamless. With the onset of technology, access can/should be a button press away. A provision of penalty should be considered for refusal to provide access.	Access to Health Data should not be circumlocution.	**Noted.** The Bill already recognizes the absolute right to access health data.
76)		Dr Peter Ongwae	Include tele-pharmacy in clause 42 (1).	Tele-pharmacy is a critical component of e-Health	**Noted.** Tele-pharmacy is already covered under clause 47(1)(f).
77)	Clause 45	KELIN	Inclusion of maximum retention period for data.	If well-defined guidelines are not provided a data that should no longer be stored may continue to exist in digital archives Unauthorised access to retained data can result in the exposure of sensitive health information. Regulations should outline the methods and technologies to be used for data erasure, ensuring that data is irreversibly	**Noted.** This is already provided for in clause 31.

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				destroyed or anonymised when it reaches the end of its retention period.	
78)	Clause 47	KPMDC	Delete clause 47(1)(d).	No clear mechanism to regulate e-healthcare providers outside the borders of Kenya	**Rejected.** This will be effected through equation of the licence issued in the respective foreign country.
79)	Clause 49	KPMDC	Insert (j) to include issues of scope of practice to read as follows: 49. (1) In the provision of e-health services to a client, a healthcare provider shall— (j) ensure that the provide services within their scope of practice.	This is to ensure that practitioners offering e-health services do so within their scope of practice.	**Rejected.** Matters of practice are regulated in the respective cadre-based practice laws.
80)		MOH	Delete the word 'a guardian' immediately after 'consent from' and replacing it with 'the parent, an appointed guardian or next friend' in Clause 49(1)(h) and (i).	To align with Clause 38 of the Bill.	**Adopted with amendments.** For alignment with clause 38 of the Bill on processing of personal date relating to a minor

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
					or a person without capacity.
81)	Part IX	KANCO and 4 Other CSOs	Amend Part IX of the Bill to provide for the sharing of patients' data for emergency purposes.	Part IX does not provide for modalities for urgent sharing of patients' health data to persons outside the Kenyans frontiers.	**Noted.** The proposed amendment is too specific and has been covered under clause 52 (1)
82)	Clause 52	MOH	Delete subclause (2) and inserting the following new subclauses— (2) A data controller, who being a custodian of, and who transfers outside Kenya, biological specimens, health images, human tissues and organs of a Kenyan citizen shall ensure confidentiality of personal health information: Provided that where such transfer is for purposes of health research or post-mortem, the Data controller shall—	To specify that the requirements in paragraphs (b)-(d) in subclause (2) only apply in the case of health research or the conduct of a post-mortem. There is also needed to develop regulations for health tourism in compliance with section 104 of the Health Act, No. 21 of 2017 and as alluded to in the marginal note of clause 52.	**Adopted.** To specify that the requirements in paragraphs (b)-(d) in subclause (2) only apply in the case of health research or the conduct of a post-mortem and to comply with the need to develop regulations for health tourism in compliance with section 104 of the Health Act, No. 21 of 2017

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			(a) provide a report to the Director-General for Health stating the findings; (b) not share the health information without notifying the Cabinet Secretary; and (c) seek guidance from the Cabinet Secretary in the manner the health information shall be stored, processed and destroyed. (3) The Cabinet Secretary shall in consultation with the County Governments, and relevant lead agencies, develop guidelines on health tourism.		
83)	Clause 53	ODPC	Personal health data should be defined Clause 53.		**Noted.** The term is used in its ordinary sense.
84)	Clause 55	MOH	Delete Clause 55.		**Adopted.** The Members of the Board of the Digital Health Agency are bound by the Constitution, the Data Protection Act,

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					No. 24 of 2019 and the Oath of Secrecy signed under the Official Secrets Act, cap. 187.
85)	Clause 57	MOH	Delete the word 'otherwise' immediately after 'disclose to any person' and replacing it with 'other' in Clause 57(1).	This is a grammatical error	**Adopted.** To correct a minor error.
86)	Clause 59	MOH	Delete the words 'two hundred thousand shillings' immediately after 'a fine not less than' and replacing it with 'one million shillings and the words 'one year' immediately after 'not less than' and replacing it with 'two years' in Clause 59(1).		**Adopted**. To enhance the fines to make them more deterrent and to make them commensurate to the offences committed under the Bill.
87)			Delete the words 'two hundred thousand shillings' immediately after 'a fine not less than' and replace it with 'one million shillings and the words 'one year' immediately after 'not less than' and replace it with 'two years' in Clause 59(2).		

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
88)	General Comments	KELIN	(a) Use of complex technical language which makes it difficult for the average person to understand. (b) The importance of providing more information on data handling particularly addressing concerns related to data misuse should be emphasized. (c) Use customer care response line to address people's concerns or issues related to the Superhighway that is proposed by the Bill. It is an essential aspect of ensuring efficient service provision, as it allows individuals to seek assistance or report problems they encounter. (d) Clearly define the responsibilities and roles of county		The comments noted by the Committee.

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			governments in the implementation of the Bill. (e) Clear guidelines on how health data should be collected, stored, shared and protected to maintain trust and security (f) Insert a clause on aiding and abetting as a catch all phrase (g) Insert a clause on attempts to addressed incomplete offences (h) Absence of information regarding the role of county governments and the potential impact of the Bill to counties.		
89)		Dr Emmanuel Mulaa	Data controller, appointed by the Cabinet Secretary, to maintain and transmit health data at national level be a health professional who understands the vitalness of such data and therefore facilitate fast transmission of such data (biological		**Noted.** This will be addressed administratively.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			specimens, health images, human tissues and organs) as need be. Similar qualification should apply to the data controller at country level		
90)		ODPC	Amend to include a new provision that reads: "Any processing of personal and sensitive personals data shall be done in accordance with the Data Protection Act No. 24 of 2019." The amendment will require a deletion of proposed Clause 41 of the Bill.	The addition will ensure any processing of personal or sensitive personal data is done in accordance with the Data Protection Act and the Data Protection Principles which prompt transparency, confidentiality and integrity and accountability.	**Noted.** This is already provided for in the Bill.
91)		COG	Amend to include transitional provisions	This is missing in the Bill yet it's critical. Its inclusion will ensure that the current information systems and gains made are not lost. Further, the human resources in the Department if any dealing with digital health information are preserved and transitioned	**Adopted.** Transitional provisions proposed in the amendments made to the Bill by the Committee.
92)		BYON8	The ODPC through the Agency to clearly define the protocols required for health	There is a clear distinction between general-purpose data controllers and data processors with included definitions of	**Noted.** This will be addressed administratively and through regulations.

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/ COMMENT	RATIONALE	COMMITTEE RESOLUTION
			data protection owing to the sensitivity of such data	health data controllers and data processors.	
93)		HRIM Officers Association of Medical Records Officers (Kenya)	The cadre of HRIM professionals is left out in the proposed bill. This omission obliterates this noble profession and eventually sacks thousands of officers working in the public and private sector. Their livelihoods are at stake and There is one representative from this noble profession to safeguard the interests of the members of this profession.		The comments noted by the Committee.

Annexure 6: Submissions by stakeholders

REPUBLIC OF KENYA

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

Telephone: Nairobi 254-20-2717077
Fax: 254-20-2719008
Email: ps.medical@health.go.ke

AFYA HOUSE
CATHEDRAL ROAD
P. O. Box 30016 -00100
NAIROBI

When replying please quote

Ref: MOH/ADM/1/2 **Date: 22nd September, 2023**

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

Dear Mr Njoroge

RE: SUBMISSION OF MEMORANDA ON THE DIGITAL HEALTH BILL (N.A. BILL NO.57) 2023 AND THE SOCIAL HEALTH INSURANCE BILL (N.A. BILL NO. 58) 2023

We make reference to the above subject matter.

The National Assembly has invited for submission of Memoranda on the Digital Health Bill and the Social Health Insurance Bill (National Assembly Bills, No. 57 and 58) 2023.

The Ministry conducted Stakeholder Engagement on the Proposed Bills and we propose certain amendments to the Bills as highlighted in the Memoranda. The Memoranda prepared and attached herewith is a true reflection of the recently concluded Engagement.

Kindly, therefore, find attached the Memoranda on the Digital Health Bill and the Social Health Insurance Bill together with the consolidated feedback received from the Stakeholder Engagement.

Yours Sincerely

Harry Kimtai, CBS
PRINCIPAL SECRETARY

Encls

NATIONAL ASSEMBLY
RECEIVED
22 SEP 2023
OFFICE
NAIROBI

MEMORANDUM DIGITAL HEALTH BILL, 2023

S/No	Clause of the Bill	Proposed Amendment	Justification
1.	**Definitions** "health tourism" means a situation where a patient travels voluntarily across international borders to receive medical treatment;	The Bill is amended under definition of 'health tourism' by deleting the word **'voluntarily', it will then read as** "**health tourism**" means a situation where a patient travels across international borders to receive medical treatment;	The definition of health tourism should be encompassing to include situations where a person is incapacitated, thus, the proposed amendment.
2.	**Definitions** The definition of De-identified and anonymized data is missing. Amend the word pseudonymization	- The Bill is amended under the section on definitions by changing the word 'pseudonymization; to '**pseudo-anonymization**' *pseudo-anonymization and anonymized* data are already defined. - The Bill is amended under the section on definitions by adding a definition for the following term, *de-identification.* "**De-identification** means removing or hiding personal information from records in such a way that the remaining information cannot be used to identify an individual."	The term de-identification is a type of health data that will be included in the Bill, hence it is imperative to define it. Pseudonymization is also referred to as pseudo-anonymization, for clarity and uniformity sake as both terms have been used in the Bill, the term pseudo-anonymization has been used.

		Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.	provided. An example of telehealth is provision of patient education so as to promote good health through videoconferencing. This is part of provision of quality of services. Telehealth also includes e-learning which is included in Clause 47(1)d. This has also been called out as it is a modality that is really used to train health care professionals as part of ensuring provision of quality health services. Ref: Consolidated telemedicine implementation guide. Geneva: World Health Organization; 2022. (https://www.who.int/publications/i/item/9789240059184) accessed 20 Sep 2023 What is telehealth? How is it different from telemedicine? In: HealthIT.gov [website]. Washington (DC): Office of the National Coordinator for Health Information Technology; 2019 (https://www.healthit.gov/faq/what-telehealth-howtelehealth-different-telemedicine) accessed 20 Sep 2023

7.	**8. Board of Directors** (a) a non-executive chairperson who shall be competitively recruited and appointed by the President;	The Bill is amended under clause (e) by deleting the word 'competitively' immediately after 'chairperson who shall be' to therefore read as- **(a) a non-executive chairperson who shall be recruited and appointed by the President;**	The non-executive chairperson is not competitively recruited.
8.	**8. Board of Directors** (h) two persons, not being public officers or employees of the Agency, to be appointed by the Cabinet Secretary by virtue of their knowledge and experience in digital health; and Merge (f) and (g) Include the bit about the nomination excluding Governors as per the way it has been done in SHI Bill	The Bill is amended under Clause 8(h) by deleting the words 'Cabinet Secretary' immediately after the words 'to be appointed by the' and replacing it with 'Council of Governors' hence will read as: **(f) three persons, not being Governors, nominated by the Council of County Governors with two having knowledge and experience in digital health;**	Several functions of the established Comprehensive Health Information System fall under(implementation) or will be conducted in collaboration with the County Governments hence the argument to increase their representation in the Board of agency. Thus, the proposed amendment ****Legal team to check if the merge of (f) and (h) has been done appropriately.**
9.	**8. Board of Directors** (3) In appointing persons as members of the Board under subsection (1)(g) and (h), the Cabinet Secretary shall ensure that the appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups	The Bill is amended by deleting the word 'appointing' immediately after 'In' and replacing it with 'nominating' Deleting '(g) and' immediately after 'Board under subsection Deleting 'Cabinet Secretary' immediately after '(h) the' and replacing it with 'Council of	Since (h) was amended from Cabinet Secretary to the Council of Governors as the nominating party for the 2 experts, this clause should be amended to reflect the amendment to (h) ****Legal team to check if the merge of (f) and (h) has been done**

11	**11. Chief Executive Officer** (3) Subject to this Act, the Chief Executive Officer shall be appointed on such terms and conditions of service as shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.	The Bill is amended under clause (3) by adding changing 'appointed' to 'recruited' and adding 'in consultation with the Salaries and Remunerations Committee' immediately after 'in writing from time to time' to therefore read as: - (3) Subject to this Act, the Chief Executive Officer shall be **recruited** on such terms and conditions of service as shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time, **and in consultation with the Salaries and Remunerations Committee**	
12.	**12. Qualification for appointment as a Chief Executive Officer** (1) A person shall be qualified for appointment as the Chief Executive Officer of the Authority if that person— (a) has a minimum of a bachelor's degree from a university recognized in Kenya; (b) has at least ten years' knowledge and experience in health information science, data science, data governance, health informatics, digital health or any other relevant field	The bill is amended under clause 1(a) by deleting 'bachelor's' immediately after 'has a minimum of a' and replacing it with 'master's' The Bill is amended under Section 12(1). By adding 1(c) has served in a management level or a period of at least five years to read as:- (1) A person shall be qualified for appointment as the Chief Executive Officer of the Authority if that person— (a) has a minimum of a **masters** degree from a university recognized in Kenya; (b) has at least ten years' knowledge and experience in health information science, data science, data	Owing to the importance of the role, the CEO requires a minimum of a Master's degree in the relevant field as well as experience in management to compliment the knowledge

		(d) meets the requirements of Chapter Six of the Constitution **(3) The Corporation Secretary shall be the Secretary to the Board and shall—** **(a) in consultation with the Chairperson of the Board, issue notices for meetings of the Board;** **(b) keep, in custody, the records of the deliberations, decisions, and resolutions of the Board;** **(c) transmit decisions and resolutions of the Board to the Chief Executive Officer for execution, implementation, and other relevant action;** **(d) provide guidance to the Board on their duties and responsibilities on matters relating to governance; and** **(e) perform such other duties as the Board may direct**	
	14. Staff The Board may appoint such staff as may be necessary for the proper discharge of the functions of the Agency under this Act, upon such terms and conditions of service as the Board may determine	The Bill is amended under Section 14. By deleting 'appoint' immediately after 'The Board may' and replacing it with 'recruit' to read as:- The Board may **recruit** such staff as may be necessary for the proper discharge of the functions of the Agency under this Act, upon such terms and conditions of service as the Board may determine	The Board is not allowed to appoint staff but recruit in accordance with the expertise required

	compliance with section 15(2) of this Act.	**35. Request for information by authorised person** A person authorized by the data controller to enter sensitive personal data into the system shall ensure compliance with section **30(2)** of this Act.	
9.	**41. Clause title** Breach of sensitive personal data.	The Bill is amended under clause 41. by deleting 'sensitive health data' immediately after the words 'breach of' and replacing it with 'health data' to therefore read as: **41. Clause title** Breach of **health data**	Clause 41. speaks to the breach of all data types not just the sensitive personal data.
10.	**41. Breach of Sensitive personal data** (1) In relation to aggregate data, medical equipment data, research for health data, a person commits an offence if that person— (a) tampers with the data; (b) abuse a privilege; (c) discloses inauthentic access to the data; (d)improperly disposes of unnecessary but sensitive data; (e) loses data; (f) steals data; or (g) unintentionally shares sensitive personal data to an unauthorised party.	The Bill is amended: - to refer to health data hence the various categories of health data have been removed. - under clause 41. (g) by removing the word 'unintentionally' immediately before the words 'shares sensitive personal data' to therefore read as: **41. Breach of Sensitive personal data** (1) In relation to **health data** a person commits an offence if that person— (a) tampers with the data; (b) abuse a privilege; (c) discloses inauthentic access to the data; (d)improperly disposes of unnecessary but sensitive data;	All forms of health data have been included in this clause. The sharing of data is a huge breach and all measures should be undertaken to ensure that there is clear safeguarding of data. Hence the proposed amendments

	delivery involves a minor, her or she obtains consent from a guardian; and (i) ensure that when e-health service delivery involves a mentally ill person, he or she obtains consent from a guardian.	49. (1) In the provision of e-health services to a client, a healthcare provider shall— (h) ensure that when e-health service delivery involves a minor, he or she obtains consent from **the parent, an appointed guardian, or next friend** (i) ensure that when e-health service delivery involves a mentally ill person, he or she obtains consent from **the parent, an appointed guardian, or next friend**	
13.	**52. Development of guidelines on Health Tourism** (1) The Cabinet Secretary shall take all necessary measures to safeguard the transfer of a client's medical records to and from facilities outside Kenya	The Bill is amended under clause 52 by adding as **Clause 52(2) 'The Cabinet Secretary shall in consultation with County Governments, and relevant lead agencies, develop guidelines for Health Tourism'** immediately after (1)	There is a need to develop regulations for Health Tourism in compliance with the Health Act, 2017 section 104. Thus, the proposed amendment. The marginal note indicates the development of such a framework but this has not been mentioned on the actual Clause.
14.	**52. Development of guidelines on Health Tourism** (2) A data controller who is a custodian of biological specimens, health images, human tissues and organs of a Kenyan citizen and is transferring these outside Kenya shall— (a) ensure confidentiality of personal	The Bill is amended under *clause 52(2)* by adding 'For biological specimens, health images, human tissues and organs of a Kenyan citizen transferred outside Kenya for the purposes of health research or postmortem, the Data controller shall-' immediately after	The Bill should specify that the provisions (b)-(d) only apply in the case of health research or the conduct of a post-mortem ****Legal team please check if this has been done as guided so that it clear.**

	consent in writing given by, or on behalf of, the Board, publish or disclose to any person otherwise than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.	'other' to therefore read as: - (1) A member of the Board or staff of the Agency may not without the consent in writing given by, or on behalf of, the Board, publish or disclose to any person **other** than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.	
	59. Offences (1) A person who— (a) obstructs, hinders or threatens a member, an officer, employee or agent of the Board acting under this Act or disregards an order of Board; (b) submits false or misleading information to the Board; or (c) makes a false representation to, or knowingly misleads a member, an officer, employee or agent of Board or acting under this Act, commits an offence and is liable, on conviction, to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than one year, or to both	The Bill is amended under clause (1) by deleting 'two hundred thousand shillings' immediately after 'a fine not less than' and replacing it with 'one million shillings' Deleting 'one year' immediately after 'not less than' and replacing it with 'two years' to read as:- (1) A person who— (a) obstructs, hinders or threatens a member, an officer, employee or agent of the Board acting under this Act or disregards an order of Board; (b) submits false or misleading information to the Board; or (c) makes a false representation to, or knowingly misleads a member, an officer, employee or agent of Board or acting under this Act,	

HF/C/893 'B'/VOL.V/23

22nd September 2023

The Clerk
National Assembly,
Parliament Building,
P. O. Box 41842 - 00100
NAIROBI

ATTN: PETER K. CHEMWENO

RE: THE NATIONAL HEALTH INSURANCE FUND'S MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL, 2023

1. INTRODUCTION

This letter seeks to outline the legal and operational implications that undergird the operationalization of the Social Health Insurance Bill 2023, through the Social Health Authority.

It highlights the legal and policy frameworks that may have an impact on the provision of health services in the context of Social Health.

As the letter presents an analysis of the Bill, it also seeks to consider the legal reforms that the Government has undertaken to guarantee health to all Kenyans by looking at the following:

1. *The Constitutional imperative in respect to the right to healthcare.*
2. *The Inter linkages between the NHIF Act, the Health Act and all the Laws relating to healthcare provision.*
3. *Healthcare financing taking into consideration the provisions of the legislative framework governing both the National Government and the County Governments.*
4. *The Health pillar of the Bottom-up Economic Transformation Agenda*

2. BACKGROUND

The World Health Organization defines Universal Health Coverage as access to necessary promotive, preventive, curative, rehabilitative and palliate health services without exposure to financial hardship. Thus, Social Health Insurance is achieved when virtually all the health care needs of the population, particularly those who are economically weak and vulnerable are met without subjecting them to financial catastrophe.

Article 43 of the Constitution of Kenya 2010 guarantees to every Kenyan the right to the highest attainable standards of health including the right to healthcare services and reproductive healthcare. This Constitutional edict binds the Government to take measures that are necessary for the attainment of goals such as Social Health Insurance, an obligation made by Kenya through instruments such as the *Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural rights, the Alma-Ata Principles on Primary Healthcare, the African Charter on Human*

National Health Insurance Fund, Ragati Road P. O. Box 30443-00100 Nairobi, Kenya
Tel: 020-2731252/53/54/55 or 2714820 Toll free 0800 720 601 Email: info@nhif.or.ke website: www.nhif.or.ke

and Peoples Rights, amongst others, and further elaborated in key institutional documents on health such as the *Constitution of the World Health Organisation.*

The Government of Kenya has shown a commitment towards achievement towards achieving Social Health Insurance as is clearly evident in the policy, institutional and legislative measures that it has progressively undertaken over the years, as well as the health trajectory set in the significant legislative changes made under the NHIF Act 2022.

Moreover, Kenya has enacted the Health Act, a piece of legislation that specifically mentions Social Health Insurance and at Section 86 puts an obligation on the Department of health to ensure progressive financial access by *inter alia,* developing policies and strategies that ensure realisation of Universal Health Coverage. Besides these, the Government has actively and deliberately pursued amendments to the Law with a view to establishing a framework that will help in meeting the commitment to attain Universal Health Coverage culminating in the Social Health Insurance Bill, 2023, a Bill that provides a comprehensive and unified legal framework dedicated to making the promise a reality.

3. EXISTING LAWS THAT HAVE AN IMPLICATION ON SOCIAL HEALTH INSURANCE.

Until the adoption of the Constitution of Kenya 2010, health had not been deemed a constitutionally tenable right in Kenya. In many ways therefore, the Article 43 recognition of the right to the highest attainable standard of health for all, set the pace for further crystallization of the concept of health as a right available under the Constitution. Such recognition however, without more, has tended to be of limited use to citizens who are daily beset by challenges related to the attainment of health, key among which has been generalised high incidence of poverty, making it difficult for Kenyans to invest in health without simultaneously exposing themselves to economic catastrophe.

The normative frameworks established by the instruments listed below, have both general and specific implications on the attainment of Social Health Insurance.

3.1. The domestic normative framework on Social Health Insurance

(a) The Constitution of Kenya;
(b) Health Act, No. 21 of 2017;
(c) National Health Insurance Act, No. 9 of 1998;
(d) Public Health Act, Chapter 242;
(e) The Public Private Partnership Act, No 15 of 2013;
(f) Medical Practitioners and Dentists Act, Chapter 253;
(g) Pharmacy and Poisons Act, Chapter 244;
(h) Mental Health Act, Chapter 248;
(i) Public Health Officers (Training, Registration and Licencing) Act, No. 12 of 2013;
(j) Occupational Safety and Health Act, No. 15 of 2016;

(k) Health Records and Information Managers Act, No. 15 of 2016;
(l) Nurses Act Chapter 257;
(m) Persons with Disabilities Act No. 14 of 20023;
(n) Children's Act No. 8 of 2001;
(o) Clinical Officers (Training, Registration and Licencing) Act, Chapter 260;
(p) Medical Laboratory Technicians and Technologists Act, No. 10 of 1999; and
(q) Food Drugs and Chemical Substances Act, Chapter 254.

3.2. Policies concerning the Provision of Healthcare.

(a) Vision 2030;
(b) Kenya Health Policy 2014-2030;
(c) Kenya Health Financing Strategy 2016-2030; and
(d) Sessional Paper No. 7 of 2012 on the policy on Universal Healthcare Coverage.
(e) Universal Health Coverage policy, 2022

4. A COMPARATIVE STUDY OF HEALTHCARE FINANCING MODELS.

Social Health Insurance models adopted by other countries fall under the following categories:

(a) *Single payer model*: The Government taxes citizens and pays for their healthcare e.g., United Kingdom, In such a case, both the service and the service providers are from Government.
(b) *Insurance mandate*: The Government compels all citizens to buy insurance e.g., Germany.
(c) *Two tier approach*: The Government taxes its citizens to pay for basic government health services but then allows them to also opt for compulsory services with supplemental private insurance e.g., France.
(d) *The Rwanda, India, Indonesia, Ghana approach, where the Government obtains fund from various sources categorises the said funds*

4.1. Germany

In Germany, anyone residing in the country is required to take out health insurance. Majority of the citizenry meet this requirement by signing up with any of the country's 124 non-profit Krankenkassen or 'sickness funds 'which are public insurers, many of which are small and linked to trade unions. Membership rates are about 15% of monthly salary, half of which is paid by employers.

4.2. France

France has embarked on deliberately attempting to reduce out of pocket payments which has been a big problem there. Some of the measures taken include the expansion of complementary insurance to a larger share of the population and controls on billing. Aside from Insurance, the

French government has implemented other systemic reforms such as incentivizing health personnel to work in undeserved areas, providing infrastructure, reducing start-up costs, and enabling holiday cover. In addition, new methods of healthcare organisation and the use of information technologies such as tele-health have been encouraged since 2010.

4.3. Countries in Africa – Rwanda, South Africa, Nigeria

4.3.1 Rwanda

The Rwandan system is a referral system with the disease burden being addressed through a pyramid structure with the Community Health Worker at the Bottom and scaling up the referral chain up to the Provincial and National referral hospitals. Rwanda operates a UHC system built around its Community-Based Health Insurance (CBHI) programme which subsidises care for citizens and allows them to access care and pay for services based on a tiered premium payment system. The premium payable is based on the citizen's socio-economic standing. The rest of the cost is supported by government funding and external donors. Although Rwanda has achieved 17% of the annual budget on the health sector in line with the Abuja Declaration, it still relies heavily on external (foreign) funding to sustain its health system. Nevertheless, the resilience of the Rwandan system was demonstrated by the high level of preparedness for the Covid-19 pandemic which saw the country achieve a high vaccination rate and comparatively low infection rate.

The following are the sources of funding for Rwanda's CBHI (as at 2021):

1. Rwandan Franc (RwF) 6 Billion as annual Government of Rwanda' budget allocation (as well as budgetary support from donor partners)
2. RwF 3,000 per annum per needy person in CBHI Category
3. 50% of the registration fees for pharmaceutical products and medical devices
4. 100% of medical research fees collected.
5. 10% of the fees charged on services offered by gaming companies.
6. 50% of motor vehicle mechanical inspections fees
7. 10% of road traffic fines
8. All amounts (100%) paid in penalties for the trade of sub-standard products.
9. RwF 100 per hour from parking fee levied on vehicles in City of Kigali
10. 0.5% of the net salaries of employees, paid by the employer.
11. 10% of tourism revenues shared to beneficiary districts.
12. Levies on transfer of ownership of cars
    a. Cars: RwF 20,000
    b. Motorcycles RwF 10,000
13. Levy on different land types per beneficiary district

a. Marshland: RwF 4,000 per hectare
b. Hillside: RwF 5,000 per hectare
c. Radical terrace: RwF 2,000 per hectare

14. Yearly contributions received by other health insurance entities in Rwanda.
15. Annual turnover of telecommunication companies in Rwanda
16. RwF 20 per litre of fuel sold by each fuel trade company in Rwanda.

4.3.2 South Africa

In South Africa the National Health Insurance Bill (NHI) was passed by the National Assembly of South Africa in 2023. The bill aims to provide universal access to quality health care services in the country, establish a National Health Insurance Fund, and create mechanisms for the equitable, effective, and efficient utilization of the resources of the fund to meet the health needs of the population. There will be one pool of healthcare funding for private and public healthcare providers alike. The expectation is that cost of healthcare in South Africa, which is currently the most expensive in the world, will be reduced.

The sources of funding for the South African NHIF will be:

- Reallocation of medical scheme tax credits
- General tax revenue
- Payroll tax
- A surcharge on personal income tax
- Contributions of persons earning above a set amount

The cost of implementing the NHI is estimated to be R.225 Billion by 2025 (Approx.$11.8bn as at 18th September 2023 official exchange rate).

4.3.3 Nigeria

The National Health Insurance Scheme (NHIS) was established in 1999 and began operation in 2005 to regulate health insurance in Nigeria. It aimed to provide universal coverage and access to good health care services by pooling funds from contributors and paying through Health Management Organizations (HMOs). However, the model achieved less than 10% of the population, mainly public service workers and their families.

To address these, the National Health Insurance Authority Act, 2021 ("the Act") was recently enacted by the National Assembly. The Act repeals the National Health Insurance Scheme (NHIS) Act, Cap. N42, LFN, 2004 and aims to facilitate health coverage for all Nigerian residents by overseeing the promotion, regulation, integration of health insurance schemes and other related matters in Nigeria. In this act, the private health insurance providers are accredited and regulated by the NHIA.

4.4. Funding under the Social Health Insurance Bill 2023.

The Bill places a mandatory obligation upon every Kenyan Citizen to contribute a prescribed amount to the Social health Insurance Fund. The Bill has created three Funds namely;

a) The Primary Healthcare Fund whose object shall be for the purchase of primary healthcare services from healthcare facilities;
b) The Social Health Insurance Fund; and
c) The Emergency, Chronic and Critical Illness Fund.

The object of the Bill is to provide Social Health Insurance cover to all Kenyans.

The Bill imposes criminal sanctions in the form of financial penalties for any person or healthcare provider who fails to make contributions or defrauds the Authority as prescribed in the Act.

4.5. Health as a devolved function.

The Social Health Insurance adopted under the Bill must contend with the fact of devolution, where health services are subject to decisions of two levels of Government. The question as to who should take leadership and/ provide resources must be looked at in the context of the Constitution and relevant legislation. There may be conflicts, gaps, or perhaps even imbalances that may pose a challenge in the implementation of the Act. Even when leadership in the area of health financing has been placed in the hands of the National Government, County Governments are not barred from devising their own financing models, as best suits their circumstances, as apparent from the combined effects of section 15, 20, 85 and 86 of the Health Act.

5. ANALYSIS OF THE SOCIAL HEALTH INSURANCE BILL 2023

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
Interpretation	Section 2 "household" means a social unit comprising of an eligible contributor, whether contributing by self or paid for, and their beneficiaries, or who share the same social-economic needs associated with consumption and production	**Gap:** The definition of a household is subject to many interpretations	**Proposed:** Define a household as a nuclear unit of a contributor, the declared spouse and children	The unit of contribution is the household. A misinterpretation of the unit will have a significant impact on the resources allocated to or generated by the contributor.
Functions of the Authority	Section 5 (a) Register Beneficiaries in accordance with the Act.	clarity	5 (a) to read Register Contributors and Beneficiaries in accordance with the Act.	Registration of contributors will enable the authority for purposes of tracking contribution.
The Board of the Authority.	Section 7 (1) The Authority shall be managed by a	stakeholder to the Authority in respect to payment	1. Proposed amendment of Section 7(1) (g)	Removal of ambiguity in the Bill. It does not

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	Board which shall consist of – (g) one person, not being a public officer with proven experience in matters of health insurance, health financing, financial management, health economics, healthcare administration.	Gap: The Bill does not define the Informal Sector Association. c) the Healthcare Providers Organisation to have representation in the Board	and merged with subsection 7(1)(h)(ii) to read as follows :- "two persons, not being public officers, appointed by the Cabinet Secretary. 2. An amendment to sections 7 (1) (h) (ii) and (iii) have express provision on the nominating Institutions.	define the Informal Sector Association.
Qualifications for appointment	Section 8	**Gap:** The requirements are	The Clause to read:	The clauses are too prescriptive thus

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
		c) the Healthcare Providers Organisation to have representation in the Board		
Qualifications for appointment	Section 8 8. (1) A person shall be eligible for appointment as a Chairperson or member of the Board under section 7(1)(a), (g) , (h)(i), (iii) and (iv) if that person— (a) is a citizen of Kenya; (b) holds a minimum of a bachelor's degree from a university recognized in Kenya; (c) has knowledge and	**Gap:** The requirements are restricted to specific sectors; ICT and health. This has left out a myriad of people with wide experience.	The Clause to read: "A Chairperson appointed by the President by virtue of his or her knowledge and experience in matters relating to insurance, financial management, public administration, economic, health or business administration.	The clauses are too prescriptive thus limiting the powers of the appointing authorities.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	experience of not less than ten years in data science, information technology, health governance, health administration, health policy, finance, or economics, five of which shall be at managerial level; and (d) meets the requirements of Chapter Six of the Constitution. (2) A person shall not be eligible for appointment as a member of the Board under section 7 if that person— (a) has at any time been convicted of a criminal offence and sentenced to a		2. Clarification on Section 8(2),(e) meaning in relation to Section 8(2)(a) or proposed deletion of the subsection.	Provisions of Section 8(2),(e) are already provided for under Section 8(2)(a). A breach of provisions of Chapter 6 of the Constitution will be addressed by Section 8(2)(a) by criminal convictions.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	term of imprisonment exceeding six months; (e) has been found in accordance with any law to have misused or abused a state office or public office or in a way to have contravened the provisions of Chapter Six of the Constitution.			
Qualification for appointment as Chief Executive Officer	Section 14 - Qualifications to appointment as Chief Executive Officer 1. (1) A person shall be qualified for appointment as the Chief Executive Officer of the	**Gap** a. Requirements does not include a postgraduate degree.	Amendment to Section 14, to adopt the qualifications as provided below: (2) A person is qualified for appointment as a chief executive officer if the person -	1.The requirement that the CEO must be an Advocate is limiting. 2. Masters degree is a requirement as per the Public Service Commission guidelines for directors and above.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	Authority if that person—— (a) has a minimum of a bachelor's degree from a university recognized in Kenya; (b) is an Advocate of the High Court of Kenya: (c) has at least ten years' knowledge and experience in health insurance, health financing, health economics, healthcare administration or any other relevant field; (d) has served in a management level for a period of at least five years;		(a) has at least a Master's degree from a university recognized in Kenya; (b) has at least ten years' experience at a senior management level with skills in health insurance, health financing, financial management, health economics, healthcare, administration, law, or business administration; and (c) has not been convicted of an offence and is not serving a term of imprisonment; and (d) meets the requirements of Chapter Six of the Constitution.	

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	(e) has not been convicted of an offence and is not serving a term of imprisonment; and (f) meets the requirements of Chapter Six of the Constitution.			
Part III – Primary Healthcare Fund	Section 22 – Expenditure out of the Fund.	**Gap** The Bill does not provide for the Management of the Fund, whether the same is vested in the Board of the National Social Health Authority.	The Regulations to stipulate the conditions for payment out of the Fund. Proposal to add the following to s.22(1) "…as per approval by the Board".	To make it clear that control and oversight of the Fund's expenditure is by the Board. To stipulate the appropriation of Funds in the event of a claims overrun.
Part IV – The Social Health Insurance Fund	Section 25 – Establishment of the Social Health Insurance Fund 2) There shall be paid into the Fund –	**Gap** Need to include a clause to exempt the Authority's income from being subject to taxes.	Proposal to include clause Section 20)f) "Investment income including but not limited to rental income."	Income received by the Authority from areas such as investments and rental income will be used to pay benefits. Thus, the amount

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	a) contributions under the Act; b) monies appropriated by the National Assembly for indigents and vulnerable persons; c) gifts, grants, innovative figuring mechanism or donations; d) funds from the national government, county government and their respective entities for the administration of the compulsory public service employee's insurance benefits scheme; and e) funds from an employer who is not a national government, a			should not be subject to taxation.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	county government or their respective entities, for the administration of employee benefits. Section 26 – Registrations Section 26(4) Registration shall be conducted continuously at various points in such manner as shall be prescribed by the Cabinet Secretary.	This provision excludes the Board's role in registration.	Amendment to thus section, to read as follows: "Registration shall be conducted continuously at various points in such a manner as shall be prescribed by the Cabinet Secretary in consultation with the Board".	Justification, to take into account the Board's day to day operations on registration.
Part V – The Emergency, Chronic and Critical Illness Fund	Section 28 The object of the Fund is to defray the costs of management of Chronic illness after depletion of the	**Gap:** The provision does not provide the eligibility criteria for access to the Fund.	Amend Section to provide guidance on who is able to access the funds. The criteria to be set by the Cabinet Secretary in	Operationally, this Fund is an excess-of-loss account for members who exceed the cover limits when managing chronic/critical conditions; and for

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	Social Health Insurance Cover.		consultation with the Board. To include a clause on who is eligible to access benefits for treatment of Chronic and Critical Illness. The modalities of access to be addressed in the regulations.	purchase of road ambulance evacuation, and Accident and Emergency services at a hospital. This will aid in preventing misuse of the funds therein.
Implementation of the Emergency, Chronic and Critical Illness Fund	Section 30 provides that '' The Cabinet Secretary may make regulations for the implementation of the Emergency, Chronic and Critical Illness Fund.	**Gap** The Board is not involved.	The Clause to be amended to read ''The Cabinet Secretary in consultation with the Board may make regulations for the implementation of the Chronic and critical Illness and Emergency Fund.''	This shall ease the Authority's operational activities.
Empanelment	Section 33(2) A healthcare provider or healthcare facility seeking to be empanelled under	**Gap** The provisions lack clarity on the procedure and	Proposal to delete Section 33(2) as the section provides for accreditation, which is	Licensing and accreditations are functions carried out by separate bodies and

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	the Act shall make an application to the body responsible for accreditation for Quality of care in the manner prescribed by the Cabinet Secretary.	criteria to be followed in the empanelment and subsequent contracting of healthcare providers.	not a function of the Board. Proposal that the procedure of empanelment and contracting be clearly stated as a function of the Authority. Add a provision for gazettement upon empanelment by the Board. Proposal to delete Subsection 4 in relation to proposed amendment to Subsection 2. Proposed amendment to subsection 5 by replacement of the word "body" with the "Board".	posted on their respective websites/platforms. An application for empanelment can only be made by a provider licensed by the bod(ies). The enrolment into the panel of providers and contracting of the services be the function of the Board. The provision for gazettement upon empanelment under this act gives weight to de-gazettement upon dis-empanelment by the Board and subsequent de-gazettement on matters related to medical fraud etc, as opposed to degazetting

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	Section 33 (3) the tariffs referred to under subsection (1) may be reviewed from time to time.	Clarity	The tariffs referred to under subsection (1) may be reviewed after every two years.	contracts, alluded to in section 34 (6). This is to provide clarity.
Contracting	Section 34(6) Upon termination of a contract under subsection (5) the Authority shall, by notice in the Gazette, revoke the declaration made under subsection (3).		Proposed inclusion, That the termination of contract should also be published on the Authority's website.	This is to inform the public.
Claims Management	Section 35 (1) – There is established within the Authority and office to be known as the Claims Management Office which shall review,	**Overlap:** There is an overlap of roles between the Board and the Claims Management Office.	The entire Clause needs to be revised to read as follows: "There is established within the Authority an office to be known as the Claims Management Office under the	To provide clarity that the Claims Management Office works under the directions of the Authority.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	and process claims made under this Act.	There is no clarity whether the Office will be managed by the Board or staff of the Board. The Powers vested to the Claims Management Office are essentially the powers vested in the Board.	direction of the Board which shall review, and process claims made under this Act.	
	Subsection (3) The Claims Management Office shall delegate the performance of its functions under subsection (1) (a), (b) and (c) to a suitable entity. Subsection (4) a typo, it should be 5)	This section suggests that the Office will be delegating its functions without authority from the Board and without assessing the need.	Proposed amendment to the Section to read as follows: "The Claims Management Office may with the authority of the Board, delegate the performance of its functions under subsection (1) (a), (b) and (c) to a suitable entity. The regulations under this section must BE in place at least 6 months	This a core function of the Authority and where any delegations is required, it should be at the discretion of the Board.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
			after commencement of this Act for ease of transition.	
	Section 36 (2) provides that ''The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.''	**Gap** The Board is not involved.	The Clause should be amended to read: "The Cabinet Secretary, in consultation with the Board, shall make regulations for the better carrying out of the provisions of this section.''	This shall ease the Authority's day to day operations.
Annual estimates	Section 40	Add a clause 40 (g)	The Authority shall create such reserves to meet future or contingent liabilities with the advise of an Actuary.	The Authority has to ensure there are reserves, sustainability of the Funds and review of tariffs.
Dispute Resolutions	Section 44 (2) The Committee may uphold, reverse, revoke or vary the decision of the Board appealed under subsection (1)	Is this a committee or Tribunal considering the subsequent requirements.	Clarification, whether the appropriate title is Committee or Tribunal. if it is an independent body, who will fund its operations and how its decisions will be enforced	To conform with the constitutional requirements of access to justice and fair hearing. **Suggestion: Annex 1**

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
Stakeholder engagement	Section 47 (2) The Cabinet Secretary shall prescribe regulations on the modalities of engaging stakeholders at the national and county level.	The Board is not involved.	The proposed amendment to read as follows: "The Cabinet Secretary shall in consultations with the Board prescribe regulations on the modalities of engaging stakeholders at the national and county level".	This will ease the Board's day to day operations.
Digitization	Section 48 (5) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section	This a matter to be carried out under the Authority's day to day function	Proposed amendment, to delete subsection 5	This an operational matter that does not require regulations.
Offences and Penalties	Section 49 (5) "A health care provider or health facility which knowingly or fraudulently alters or falsifies any information with intent to defraud the Authority or to	Fine for the health facility/healthcare provider is Kshs 500,000 which is on the lower side	Proposal; Include upon conviction, full reimbursement of amount obtained unlawfully and fine of an amount being a % of claims paid monthly.	Deterrence of undertaking fraudulent activities.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	obtain any benefit that it is not entitled to under this Act, commits an offence and is liable on conviction to— (a) a fine not exceeding five hundred thousand shillings;			
First Schedules	Transitional Provisions. Clause 2 subsection 2), The Authority may within 1 year dispose of any assets vested within the Authority.	There is no clarity on the intention of the clause.	Proposed amendment, to delete subsection 2 in its entirety.	The Authority shall be guided by the provisions of the Public Procurement and Assets Disposal Act.
	Clause 6 Notwithstanding the provisions of subparagraph 2, the National Health Insurance Fund Board shall wind up the Fund within one	The timelines may be very short to undertake the whole transition processes.	Proposed amendment, that the period for transition be guided by deliverables defines in the transition plan, and within 2 years.	NHIF has running contracts with healthcare providers and the exit from these contracts need to be properly managed. These shall expire in June 2024.

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	year from the appointed day and the cash balances and all other assets shall be transferred to the Authority.			There is need to prepare contracts for the new benefit packages to be assigned by the healthcare providers. The UHC financing for the essential benefit package needs to be in place for ease of implementation. The issue of NHIF members who have paid up-to two (2) years in advance will need to be addressed. The Authority will require time to prepare policies and HR tools for the day to day running of the organization. There is need to plan for the staff benefits to

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
				manage exits and transfers.
	Subsection 2 Despite subparagraph 1, the Board of the Social Health Authority under Section 4 of this Act shall competitively recruit and appoint its staff under Section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board.	Subsection 4 provides that staff of the Fund not appointed by Authority may retire from public service or be redeployed.	Proposed amendment to read as follow: - Clause 6 Subsection (2) Subject to subparagraph (3), the staff appointed for the administration of the Fund in office on the appointed day shall be transitioned and deemed to be staff appointed by the Authority under section 17 of the Act.	The transition plan /regulations should make it explicit that staff transitioned would be based on acceptable terms on offer, since it is envisioned that the Authority would have all management positions in contract terms.
	(3) Notwithstanding the provisions of subparagraph (1), the staff of the Fund	**Gap:** The clauses do not address the transition of pension benefits for the NHIF staff. **Gap:** The clauses do not address the NHIF Board's transition.	(3) Notwithstanding the provisions of subparagraph (2), within, the phased transition plan and not exceeding twenty-four months, after the appointed day, the Authority shall review the qualifications of all persons deemed to be	

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
	are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised. (4) A staff of the Fund not appointed by the Authority under subparagraph (2) may exercise his or her option to either a) retire public service; or b) be redeployed within the public service		employees of the Authority under subparagraph (2) and may retain those found suitably competent and qualified subject to— (a)such persons opting to remain in the service of the Authority; and (b)such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Authority. (3) Any employee not retained by the Authority under subparagraph (2) may exercise his option to either— (a)retire from the service of the Authority under such terms and conditions that are not detrimental to the staff	

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
			(such as pension benefit, loans , medical cover etc); or (b) undertake early separation with suitable compensation. Proposal to delete subclauses 2, 3 and 4. Proposal to include a clause addressing the transition of pension scheme management. Proposal to include transition for the members of the Board who are eligible under the new Act until the end of term. Proposal to extend the transition period to 24 months. This will ensure patients admitted in hospitals and those with	

Section of the Bill	Specific provision in the Bill	Conflict/Gap/Overlap	Proposed Action/Amendment	Rationale/Justification for amendment.
			chronic illnesses will continue to access uninterrupted medical care and are properly transitioned to the new way of accessing care. Generally, the regulations under this section must BE in place at least 6 months after commencement of this Act for ease of transition.	

6. CONCLUSION

Kenya has already set off the Social Health Insurance as is evident in the Social Health Insurance Bill. The success and sustainability of the Social Health Insurance will depend on the Law, disbursement of the resources, determination of the health packages and the Administration of the Health Insurance Authority.

The National Health Insurance Fund thus fully supports the proposed Social Health Insurance Act Bill, 2023 considering the proposals as this will guide the enactment of the Social Health Authority. This will be for the benefit of Kenyans and will further ensure that the UHC journey continues and that all Kenyans can access health care services they need, of sufficient quality without incurring out of pocket expenditure.

Yours *sincerely,*

Eng. Michael Kamau ---------- Date ----------
Chairman, National Health Insurance Fund

Dr. Samson Kuhora----------Date ----------
Ag. Chief Executive Officer

Annex 1:

The suggestion seeks for recognize the role of the Board in managing complaints and seeks to have the tribunal as a resort.

Complaints

(1) An affected user, health care service provider, health establishment or supplier, may furnish a complaint with the Authority in terms of the procedures determined by the Authority in consultation with the Cabinet Secretary, and the Authority shall deal with such complaints in a timeous manner and in terms of the law.

(2) The Unit established by the Chief Executive Officer, responsible for investigations, shall launch an investigation to establish the facts of the incident reported and must make recommendations to the Chief Executive Officer as to the way in which the matter may be resolved within 90 days of receipt of the complaint.

(3) The complainant shall be informed in writing of the outcome of the investigation launched in terms of subsection (2), and any decision taken by the Authority, within a reasonable period of time.

(4) If the Authority has made a decision in terms of subsection (3), the Authority shall—

(a) provide the health care service provider with a notice of the decision to provide the health care service provider with a reasonable opportunity to make representations in respect of such a decision;

(b) consider the representations made in respect of paragraph (a); and

(c) provide adequate reason for the decision, as the case may be.

Lodging of Appeals

A person, namely a user, health care service provider, health establishment or supplier aggrieved by a decision of the Authority may, within a period of 14 days after receipt of written notification of the decision, appeal against such decision to the Dispute Resolution Tribunal.

Dispute Resolution Tribunal

Describe the set-up of the tribunal.

Powers of the Dispute Resolution Tribunal

(1) The Tribunal has the same power as a High Court to—

(a) summon witnesses;

(b) administer an oath or affirmation;

(c) examine witnesses; and

(d) call for the discovery of documents and objects.

(2) The Appeal Tribunal may after hearing the appeal—

(a) confirm, set aside or vary the relevant decision of the Board; or

(b) order that the decision of the Fund be effected.

Secretariat

The Chief Executive Officer shall designate a staff member of the Authority to act as secretary of the Tribunal, and the Authority shall keep the minutes and all records of a decision of the Tribunal for a period of at least three years (*same as the provider contract cycle*) after the decision has been recorded.

Procedure and remuneration

Define the procedures and remuneration for the Tribunal.

Kenya Medical Association

NATIONAL EXECUTIVE

KMA CENTRE, CHYULU ROAD, P.O. BOX 48502 – 00100 GPO, NAIROBI-KENYA

Mobile: 0722-275695

Email: nec@kma.co.ke Website: www.kma.co.ke

KENYA MEDICAL ASSOCIATION MEMORANDUM ON SOCIAL HEALTH INSURANCE BILL 2023

The Kenya Medical Association (KMA) is the umbrella professional association for doctors in Kenya. Established in 1968, KMA is mandated to champion the welfare of doctors and advocate for quality healthcare in the country. As a representative body for medical professionals, KMA is dedicated to ensuring the highest standards of healthcare delivery and advocating for necessary reforms within the healthcare sector.

KMA submits the following recommendations of the proposed social health insurance bill in response to the call for submission of memorandum published on print media on 5/09/2023.

Clause	Recommendation	Justification
PART I Definition of a beneficiary Definition of household Definition of Primary Healthcare	Definition of beneficiary is not clear: Clarify if the beneficiaries must or must not be biological children of the contributor. Clarify if a household only only defined by biological/nuclear family members of the contributor or those living in the same household Expand the definition to give clarity on extents/limits of primary healthcare	The kenyan household is diverse and have many dependants who may not be biological/nuclear members of a contributor
7 (h) (i)	Justification for Kenya Medical Association (KMA)	Representatives of medical health professionals who posses expertise and insights on patient care and health sector dynamics While there are many health professional cadres, KMA represents the interests and concerns of ALL health care professionals. Healthcare delivery is delivered in teams and the physician is the team leader. Doctors have legal responsibilities and liability

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		associated with patient care, which reinforces their leadership role. Having a reputable medical association like KMA on board helps build trust among health professionals and the public, instilling confidence in the SHI KMA has always and continues to advocate and ensure delivery of quality healthcare for the Kenyan citizens by promoting evidence based practices, patient safety and ethical medical practice that align with international best practices. The SHA will benefit from KMA's involvement as a link to the service delivery. KMA will provide independent monitoring and oversight, help in preventing fraud through member education and timely reporting, prevent waste and abuse while maintaining transparency and accountability. Physicians are often responsible for making decisions about patient care, treatment plans and interventions hence their critical inclusion in the SHI board. KMA will foster collaboration and coordination between healthcare providers and th SHI, leading to smoother operations and an improvement of service delivery
7 (h) (ii) & (iv)	Explicitly state that this nominee will represent the contributors in informal and formal sectors and patients who are the users of this fund	Patient representation is missing from the list of representatives

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14(1)(a)	Chief Executive Officer should hold a minimum of a bachelor's degree in Medicine and Surgery, Dentistry or Pharmacy or related degree with knowledge in health financing, economics and insurance	A background in health care provides expertise in health service delivery which is critical in the successful implementation of the SHI
14 1 (b)	Delete Advocate of the High Court of Kenya	The SHI is a health related program and the CEO ought to have sufficient knowledge in health service delivery and health financing. For stakeholder representation, the Legal team is represented on the board by the Attorney General.
16 (2) (a)	The Corporation Secretary should have a bachelor's degree in business, finance, public administration, law or related fields and have sufficient knowledge in administration	Law degree only limits other professionals with sufficient knowledge in public administration
16 (2) (c)	Support that the corporation secretary is a Certified Public Secretary	
PART III 21	We reaffirm our support for a tax funding for PHC	PHC is the cornerstone of health care.
23	We recommend sufficient funding for this fund based on population health need	Investment in PHC is cheaper in the long run
26(2)	Period exceeding 12 months should apply as in 27(1)(b)	
27 (2) (a)	The rate has not been prescribed: KMA suggests the rate be based on Basic Salary and not Gross Pay KMA suggests a rate of 2-3% of Basic Salary	Basing contribution on gross pay takes money from other benefits such as commuter allowance, house allowance that aid workers deliver their services. These additional benefits should not be subject to health insurance contribution as it takes away from the intended cushioning.

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		Additionally workers in the formal sector are already subject to numerous deductions on their gross pay. These include taxation, pension (in some cases double deduction to NSSF and other pension schemes), NHIF, and housing levy. Further, market forces such as high inflation, expensive dollar rate and high prices of basic commodities take a huge portion of the income. Therefore the SHI bill should protect Kenyans from high contributions and not significantly reduce the income of workers in the formal sector.
27(3)	Allow a more flexible payment: monthly, quarterly, biannual or annually.	What is the rationale for annual payments? Annual payment locks out majority of self-employed and under-employed individuals who often struggle to pay
27(6)	Penalty must not exceed 5%	What rationale was used to arrive at the 10%
PART V 29	KMA supports public funding for this fund Recommend that "sin taxes" be ring fenced for the Emergency, Chronic and Critical Illness Fund "Sin taxes" include taxes from alcohol, tobacco, sugar industry and other products that increase the development of chronic illnesses	The practice of ring fencing "sin taxes" to health delivery is important to increase the funding and help in managing the adverse health sequelae such as cancer arising from the use of these products.
PART VI 31 (1)	It is important for the benefits package be published before this bill is passed	Health professional, beneficiaries and Kenyans ought to know the scope of benefits that shall be provided in the SHI

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		Passing the bill without the benefits will be leave out the main contents of the SHI, which is " What and how will Kenyans benefit from SHI"
32 (1)	The tariff rates should be published for completeness of this bill The tariffs must take into consideration professional fee rates of medical services as prescribed by Legal Notice No 131: THE MEDICAL PRACTITIONERS AND DENTISTS (PROFESSIONAL FEES) RULES, 2016	Just like Kenyans need to know their benefits package, it is paramount for Kenyans and Health Providers Health professionals and providers ought to be compensated fairly as per the prescribed rates
32(3)	Amendment of the clause to spell a specific time frame within which tariffs are reviewed as opposed to leaving it open. We suggest review of tariffs every 2-3 years	2-3 years allows for improvement of benefits.
33(2)	Application procedure and accreditation criteria should be clearly outlined	For transparency and accountability
33(4)	Clarity is required on the constitution of the empanelling body as described in the bill.	
35(3)	Services under claims should not be outsourced but the department should be adequately staffed. This is the core business of the SHA Management of claims should be supported by doctors and health professionals to increase efficiency and reduce fraud	-Entry of private insurers managing the fund is a position of conflict of interest -Outsourcing will increase costs In the current claims process health care workers have faced challenges getting approval for genuine procedures for patients due to lack of understanding from the pre-authorization team Medical professionals may also assist in detecting fraud

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38(1)(a)	Specify that investments must be in the form of low risk, cash and cash equivalents and not fixed assets. Invested funds should be able to be liquidated within a month to meet the needs of the fund when required.	This is a social fund whose sole purpose is to ensure equitable access to healthcare and not to make alternative income.
49 Add	For all fraudulent activity, recovery of funds should be included in addition to the sentencing and fining in the section on tackling offences and penalties	Recovery is key in ensuring justice for the contributor and the beneficiaries alike
49(2)	Misappropriation sentence to be increased from 5 to 10 years	The funds of the SHI have direct impacts on the lives of Kenyans and therefore financial misconduct causes greater harm than just fiscal harm.
50(2)(b)	Amounts payable should be determined by Parliament similar to other taxation/ contributions and not the CS	

DR. DIANA MARION
SECRETARY GENERAL
KENYA MEDICAL ASSOCIATION

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Mobile: 0722-275695

Email: nec@kma.co.ke Website: www.kma.co.ke

KENYA MEDICAL ASSOCIATION MEMORANDUM ON DIGITAL HEALTH BILL 2023

The Kenya Medical Association (KMA) is the umbrella professional association for doctors in Kenya. Established in 1968, KMA is mandated to champion the welfare of doctors and advocate for quality healthcare in the country. As a representative body for medical professionals, KMA is dedicated to ensuring the highest standards of healthcare delivery and advocating for necessary reforms within the healthcare sector.

KMA submits the following recommendations of the proposed digital health bill in response to the call for submission of memorandum published on print media on 5/09/2023.

8(1)	Have KMA representation on the board-subsection (h) of the clause	Healthcare provider representation through the umbrella body for medical practitioners is key. KMA is the best placed representatives as physicians are the team leads in healthcare delivery teams.
13	Define the basic technical qualification/requirements for the CEO role. Include degree in health, health systems, and expertise in ICT	Qualifications of the CEO's office must be clearly stipulated within the bill for guidance and transparency. The qualifications match for the job determines the efficiency of operations. Background in health is a key qualification.
25(1)	Private sector digital health should not be limited by the bill	Digital health represents a new model for doctors to package, utilize and commercialize their knowledge.

DR. DIANA MARION
SECRETARY GENERAL
KENYA MEDICAL ASSOCIATION

President	Vice-President	Secretary-General	Assistant Secretary-General	Treasurer-General
Dr. Simon Kigondu	Dr. Amos Otara	Dr. Diana Marion	Dr. Elizabeth Gitau	Dr. Lyndah Kemunto

MOI UNIVERSITY

OFFICE OF THE VICE CHANCELLOR

Tel: (053) 43620/0790 940508
0771 336911/0736 138770
Email: vcmu@mu.ac.ke
vc@mu.ac.ke,

P.O. Box 3900
Eldoret - 30100
Kenya.

Ref: MU/ADM/1/6

22nd September, 2023

The Clerk,
The National Assembly,
NAIROBI.
Email: cna@parliament.go.ke
clerk@parliament.go.ke

Dear Sir,

RE: MOI UNIVERSITY SUBMISSIONS ON THE SOCIAL HEALTH INSURANCE BILL, 2023

The above-captioned subject matter refers.

Please find attached the submissions of Moi University on the Social Health Insurance Bill, 2023 for consideration by the Departmental Committee on Health of the National Assembly.

The University will appreciate being given an opportunity to make a presentation on the implications of the Bill on its operations at a date and time of your convenience.

Yours sincerely,

Prof. Isaac S. Kosgey. Ph.D., MBS
VICE-CHANCELLOR

KKS/*jkf*

MEMORANDUM

SUBMISSIONS OF MOI UNIVERSITY TO DEPARTMENTAL COMMITTEE OF HEALTH, THE NATIONAL ASSEMBLY, ON THE SOCIAL HEALTH INSURANCE BILL, 2023

1. Moi University is honoured to appear before this esteemed Committee of The National Assembly as a provider of primary health care to its Staff, their Dependents and Students. The University currently has a total Staff complement of 2,400 of whom are provided a Medical Cover for a maximum of five (5) dependents and a Student population of 30,000 spread across its Campuses located in three Counties. Since the year 2019, the University has provided a Medical Cover to its Staff under the NHIF Comprehensive Scheme and any changes to the NHIF structure is of concern to the University.
2. Moi University is making these submissions regarding the Social Health Insurance Bill, 2023 because of the concerns regarding continuation of the comprehensive Medical Scheme in the event that the Bill is passed.
3. The University provides a comprehensive Medical Cover to its Staff as part of its terms and conditions of service. Prior to engagement of NHIF Enhanced Benefits Scheme, the University provided medical cover through its Clinics and referral to external health care providers. This arrangement became unsustainable due to the limited range of services that were available to Staff with contracted hospitals. As a consequence, the University accrued debts that remain unresolved.
4. The University engaged NHIF to provide a comprehensive Medical Cover under its Enhanced Benefits Schemes since 2019/2020 Financial Year. The cover provides comprehensive health care services to the University Staff and their dependents in NHIF accredited facilities across the entire Country. Under this Scheme, Staff and their dependents have continued to benefit from the health care obligation of the University under its terms and conditions of service without interruptions and/or delays.
5. The University engaged NHIF as a Government Institution as private medical insurers were willing to provide comparable service at three times the price quoted by NHIF for annual premiums. This was at a time when the University was facing depressed revenue from A-i-A and declining capitation from Government. This situation persists to date and was exacerbated by the COVID-19 pandemic and the Differentiated Unit Cost Model that was not fully funded.

6. Under the existing arrangement with NHIF, the University pays an annual premium of about Kes.230 Million. Comparable schemes offered by private insurers as quoted are in the range of over Kes.500 Million annually. Sustainability of University operations will be severely affected in the event that NHIF Comprehensive Cover is no longer available.
7. The Bill proposes that NHIF shall not provide enhanced benefits schemes and packages on the appointed day pending lapse of existing contracts. This will create uncertainty for the University as there is no comparable alternative for a public Institution like Moi University to engage with in the prevailing difficult economic environment. There is an existing contract with NHIF and, in the absence of viable transitional arrangements, the University is likely to renege on its obligations as an employer.
8. The University, as a public Institution, relies on Exchequer releases to meet its operations and maintenance expenditures such as Staff Medical Cover. The University, like all other public Institutions, has experienced delays in Exchequer releases and NHIF has understood this challenge and continues to provide a Medical Cover even in the event of delays of payment of premiums. Insurance contracts are time conscious and private health cover providers insist on upfront payment of premiums for the relevant period in exchange of a cover. Any delays in exchequer releases may trigger adverse contractual situations for the University.
9. NHIF has an extensive range of accredited health facilities available to the members of Staff and the facilities are spread across the Country. The nature of work of the University's Staff may require fieldwork and research in any part of the Country. Existence of facilities that can be accessed in cases of emergencies are, therefore, of paramount importance.
10. The University, therefore, requests that the National Assembly retains the enhanced benefits schemes and packages for public institutions.

- END -

Table 1: FKE Comments on the Digital Health Bill, 2023

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
2	"data commissioner" means the person appointed under section 6 of the Data Protection Act, 2019;	Add "as amended from time to time" to read: "data commissioner" means the person appointed under section 6 of the Data Protection Act, 2019 (as amended from time to time)	To not render the reference obsolete if the referenced Act be amended.
	7. (2) Without prejudice to the generality of the foregoing, the Agency shall have power to— (a) manage, control and administer the assets of the Agency in such manner and for such purpose as best promotes the objects for which the Authority is established in accordance with the Public Procurement and Assets Disposal Act, 2022:	Replace "Authority" with "Agency" to read: 7. (2) Without prejudice to the generality of the foregoing, the Agency shall have power to— (a) manage, control and administer the assets of the Agency in such manner and for such purpose as best promotes the objects for which the **Agency** is established in accordance with the Public Procurement and Assets Disposal Act, 2022 (as amended from time to time)	To cure a typo in the name of the agency
	8 (1) There shall be a Board of Directors of the Agency which shall consist of— (g) one person appointed by the Cabinet Secretary representing the private sector;	One person nominated by the most representative Employers Federation in Kenya. 8 (1) There shall be a Board of Directors of the Agency which shall consist of—	To provide clear criteria for nomination of the private sector representative to be appointed

2. SUBMISSIONS ON THE PROPOSED BILLS

The above mandate guides FKE position on the proposed Bills to which it submits as follows;

2.1. THE DIGITAL HEALTH BILL, (N.A BILL NO. 57) 2023

The Federation understands the Bill to be seeking to provide for the establishment of the Digital Health Agency; to provide a framework for provision of digital health services; to establish a comprehensive integrated digital health information system, data governance and protection of personal health information, service delivery through digital health interventions, e-waste disposal, health tourism, and for connected purposes. The summary of the comments are as highlighted in table 1 below.

— Resilient and competitive businesses
— Harmonious industrial relations
— Social Justice
— Feasibility and affordability of the costs associated with implementation of the policy.

1.3. FKE POSITION ON ADVANCEMENT OF UNIVERSAL HEALTH COVERAGE

The right to health is a fundamental human right guaranteed in the Constitution of Kenya. **Article 43 (1)** (a) of the Constitution provides that every person has a right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.

Universal Health Coverage (UHC) has become a matter of national interest and is one of the priority issues in the Bottom-up Economic Transformation Agenda (BETA). UHC advances 3 thematic areas;

1) Expansion of health services
2) Inclusion of all persons
3) Reduction of out-of-pocket payments at the point of accessing health services

The effort to provide UHC in Kenya is noble and the Federation supports the overall objective of granting every person in Kenya their fundamental right to health. The Federation understands that the realization of this objective requires a concerted effort of all parties: Government, employers, workers, health care providers and other stakeholders in the health sector, stakeholders in the insurance sector, and the public.

To actualize the attainment of UHC in the country, the following components of health system ought to be carefully and deeply considered:

1) Health service delivery
2) Human resource for health
3) Health information system
4) **Health financing**
5) Essential medical products and technologies
6) **Leadership and governance in health**

FEDERATION OF KENYA EMPLOYERS
The Voice of Employers

TO: **OFFICE OF THE CLERK, THE NATIONAL ASSEMBLY**

FROM: **THE FEDERATION OF KENYA EMPLOYERS (FKE)**

FKE MEMORANDUM ON THE DIGITAL HEALTH BILL, 2023 (N.A BILL NO. 57) AND THE SOCIAL HEALTH INSURANCE BILL, 2023 (N.A BILL NO. 58)

1. BACKGROUND

1.1. ABOUT FKE

The Federation of Kenya Employers (FKE) is the premier and most representative employers' body in Kenya. The Federation's members employ 67% of formal private sector wage employees in Kenya. The role of the Federation is to build the capacity of employers and to influence the business environment through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, Confederation of IGAD Employers (CIE), BUSINESSAfrica-Employers Confederation, the International Organization of Employers (IOE), and the International Labour Organization (ILO), and other global forums.

1.2. PRINCIPLES THAT GUIDE FKE POLICY POSITIONS

In taking a policy position, FKE is guided by the need to ensure a balanced and sustainable policy environment that promotes:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair Labour practices

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
		(g) one person nominated by the most representative Employers body, Federation of Kenya Employers and appointed by the Cabinet Secretary to represent the private sector;	

2.2. SOCIAL HEALTH INSURANCE BILL (N.A BILL NO. 58) 2023

2.2.1. GENERAL COMMENT: STAKEHOLDERS ENGAGEMENT

Stakeholder engagement envisioned by the constitution and the tripartite arrangements is designed to be meaningful and should help the parties come up with win-win solutions to the issues they face. Such engagements should not be for the sake of ticking the box. Employers would not support this approach due to the critical role they are expected to play in the implementation of the Social Health Insurance initiative and the regulations expected to operationalize it. The employers' concerns should be considered so that win-win solutions are arrived at and for the employers to play the much needed role in the provision of health which is critical to productivity.

2.2.2. SPECIFIC COMMENTS ON THE SOCIAL HEALTH INSURANCE BILL 2023

The Federation understands that the Social Health Insurance Bill 2023 seeks to establish the framework for the management of social health insurance; to provide for the establishment of the Social Health Authority; to give effect to Article 43(1)(a) of the Constitution; and for connected purposes. The provision of health impacts on work and the workplace; employees contribute to this and employers are at the Centre of the administration of it. The role of employers does not end with deductions and remittance of the contributions but includes the management of the relationship. The summary of the employers' comments are highlighted in table 2 below.

Table2: FKE Comments on the Social Health Insurance Bill, 2023

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
5 (j)	The section requires the Authority to advise the Cabinet Secretary on matters of social health insurance including the formulation of policies; Implication: This will make the Authority indirectly a regulator and also a service provider. The Cabinet Secretary should consult all key stakeholders on matters relating to health insurance.	Delete section	Potential conflict of interest and bias is avoided in the advice the Cabinet Secretary receives on matters relating to health insurance in Kenya. The cabinet secretary may consult the Authority but will not be bound by any advice the Authority gives
Section 7 (1) h	(h) four persons, not being public officers, nominated by— (i) the Kenya Medical Association; (ii) the informal sector association; (iii) health care providers; and (iv) the Central Organization of Trade Unions Kenya. (i) the Chief Executive Officer of the Authority, who shall be an ex-officio member of the Board.	Add FKE to the Board h) **five** persons, not being public officers, nominated by— (i) the Kenya Medical Association; (ii) the informal sector association; (iii) health care providers; and (iv) the Central Organization of Trade Unions Kenya.	• The Federation notes a gross omission of the formal sector employers' body from the Board. This is considering that employers are central to the provision and implementation of this Bill. Provision of health care arrangements is an employment matter. • The Authority will largely depend on the contributions of employees in

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
		(v) the Federation of Kenya Employers	formal employment. This means that accurate deduction and timely remittance of these contributions will be done by employers, hence the need for employers' representation on the Board. • Kenya has ratified ILO Conventions including Convention 144 on Tripartite Consultations and hence recognizes the arrangements and tripartism engagement on employment related matters. Hence the labour sector representation is not complete when you have only Government, workers without employers. Further the Bill refers to employers under various sectors.
PART III- PRIMARY HEALTHCARE FUND	21. There shall be paid into the Primary Healthcare Fund— (c) monies allocated for that purpose from fees or levies administered; and	Delete "or levies" and replace with: (c) "monies allocated for those purposes from fees administered;"	The proposal charging of levies will result to unpredictability of the costs. This may lead to double payment and increased costs to businesses.

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
PART IV—THE SOCIAL HEALTH INSURANCE FUND	25 (d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme; and	Delete – "compulsory public service employee's insurance benefit scheme" Proposed New clause: d) funds from the national government, county governments and their respective entities for the administration of employees' benefits; and	Having a separate insurance arrangement for a segment of the contributors will be considered as discriminative and will also lead to an inefficient way of managing the Authority.
	27. (1) The following persons shall be liable to contribute to the Fund under this Act— (a) every Kenyan household;	Add definition of • "social unit" • "person"	• Need for clarity on definition of "household" • **We need** clarity as to the definition of "a person". i.e. does the law envisage a situation where all Kenyans are born with a debt that keeps rising when they do not have income? Unemployment rates are at an all-time high therefore to expect everyone to contribute is unrealistic. The Act needs to provide

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
			for the unemployed and non-income earning class.
	(2) Contributions under this Act shall be paid as follows— (a) in the case of a household whose income is derived from salaried employment, by a monthly statutory deduction from the wages or salary by the employer at a rate prescribed under this Act;	Prescribe the specific applicable rate in the Act	This is to conform with the Act- Rate prescribed in the Act. NSSF Act, NITA Act, Employment Act (Affordable housing Levy) have set precedence. The employees and employers need clarity on the rate.
	(e) in case of a person who is a permanent resident in Kenya, by such person at a rate as may be prescribed under this Act; and	Need to make provision for refugees	Refugees are not permanent residents in the country and yet most of them have stayed in the country for so many years and would easily qualify to be citizens by naturalization. Besides, consideration should be made over the fact that the said refugees use the same medical facilities.
	(6) Any person who fails to pay any contribution in respect of any period on or before the day on which payment is due shall be liable to a penalty equal to ten percent of the	Provide clarity on whether the ten percent is one-off; monthly or annual.	There is need for clarity on the penalty

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
	amount due for contribution for the period which the contribution remains unpaid and the total annual contributions.		
Part Vi— Benefits, Tariffs, Empanelment, Contracting And Claims	31. (1) Every beneficiary shall be entitled to an essential healthcare benefits package prescribed by the Cabinet Secretary in consultation with the Board.	Define what essential healthcare benefits constitute.	Essential Benefits need to be clearly defined and secured in the Act.
	31 (3) The Authority may, subject to such guidelines as it may issue, provide an enhanced benefit package for civil servants and retired civil servants.	Delete	Giving preferential treatment to a category of contributors is discriminatory to other contributors. Contributors should be treated the same.
	34 Contracting	Provide clear linkage between the Authority (Funds) and the primary health care services	How will the authorities work together?
	41. (2) The administrative expenses referred to under subsection (l) shall not exceed five percent of the annual expenditure of the Fund:	Administrative expense is too high and needs to be capped at 2% to read: Shall not exceed 2% of the audited financial statement.	Compare with entities like NSSF.

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
Part IX- Miscellaneous Provisions	48 (4) The digitization of processes and services under this Act shall conform to the provisions of the Data Protection Act, 2019 and all other relevant laws.	Insert: "as amended from time to time" to conform to the provisions of the Data Protection Act, 2019 to read: 48 (4) The digitization of processes and services under this Act shall conform to the provisions of the Data Protection Act, 2019 ("as amended from time to time") and all other relevant laws.	This is to ensure consistency with the existing laws and to preclude conflict with other laws especially the Data Protection Act, 2019 which is an enabler to the proposed law.
	49. (1) Any person who— (5)A health care provider or health facility which knowingly or fraudulently alters or falsifies any information with intent to defraud the Authority or to obtain any benefit that it is not entitled to under this Act, commits an offence and is liable on conviction to— (a) a fine not exceeding five hundred thousand shillings; (b) suspension; or (c) removal from	Increase the fine to not exceeding one million to read: (a) a fine not exceeding one million shillings to be in line with other similar provisions. Subsections (b) and (c) need to be sections on their own addressing service providers as	Standardise the fines Section 49 is not clear with due regard to the liability of the offender. It seems to assume that an offender automatically is the service provider while a member of staff also can also engage in fraud individually.

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
	the register of empanelled and contracted health care providers.	separate legal persons from the staff	
	50. (2) Despite the generality of subsection (1), the Cabinet Secretary may make Regulations prescribing—	Delete "Despite the generality" and replace with "Subject to subsection (1)" to read: (2) Subject to subsection (1), the Cabinet Secretary may make Regulations prescribing—	Consultation with the Board in making the regulations should not be left optional but should be mandatory.
	(4) The principles and standards applicable to the delegated power referred to under this Act are those found in– a) the Statutory Instruments Act; (b) the Interpretation and General Provisions Act; (c) the general rules of international law as specified under Article 2(5) of the Constitution; and (d) any treaty convention ratified by Kenya under Article 2(6) of the Constitution.	Add a new principle (e) meaningful public participation specified under article 10(2)(a) of the constitution	To conform to the constitutional requirement of public participation in the regulations making

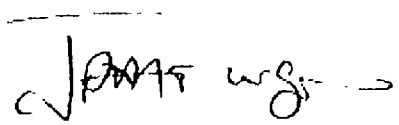
Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
First Schedule Transitional Provisions	6 (2) Despite subparagraph (1), the Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff under section 17 of the Act subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board. (3) Notwithstanding the provisions of subparagraph (1), the staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised. (4) A staff of the Fund not appointed by the Authority under subparagraph (2) may exercise his or her option to either— (a) retire from public service; or (b) be redeployed within the public service.	The Authority to Absorb the staff of NHIF and follow the due process provided for in the applicable labour laws. New clause: 6(2) (a) On the appointed day, the Staff of the Fund shall without further assurance, be assumed to be the staff of the Authority. The Authority shall bear the obligation of honouring their employment contracts until the lapse of the existing contracts. The Authority may terminate the contract of any staff in accordance with the applicable labour laws	Seamless transition and protecting jobs/household livelihoods
	Under the First Schedule 6(2),	We recommend an express "saving" clause that automatically moves all NHIF staff to the new body so that	

Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
		there's no doubt at all. Asking staff members to apply afresh is unfair labour practice.	

3. EMPLOYERS ASK AND PROPOSED WAY FORWARD

The Federation of Kenya Employers humbly requests that employers' views be taken into consideration and the two Bills are relooked against the insight indicated hereinabove. This will create a conducive environment and stakeholder ownership of the UHC reforms.

Signed for and on behalf of the
FEDERATION OF KENYA EMPLOYERS



Jacqueline Mugo (MRS), EBS, MBS, OGW
EXECUTIVE DIRECTOR & CEO

19/09/2023

KCEN
KIAMBU COUNTY EMPOWERMENT NETWORK

MEMORANDUM OF KIAMBU COUNTY EMPOWERMENT NETWORK ON THE SOCIAL HEALTH INSURANCE BILL 2023 AND THE DIGITAL HEALTH BILL 2023.

NATIONAL ASSEMBLY
RECEIVED
22 SEP 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

Submitted by;

Lawrence N. Gatenjwa	0716697097	
Rosemary Kinuthia	0722819003	

On behalf of the Network.

Dated this 22nd Day of September 2023

kiambucsonetwork@gmail.com | P.O.Box 320-00605 | 0732697097/0740086820

Introduction

KCEN is a dynamic network comprising more than 30 vibrant youth organizations rooted in the heart of Kiambu County, Kenya. Each of these groups represents a unique facet of our diverse community, actively contributing to various areas including good governance, accountability, civic education, public participation, youth empowerment, arts, agriculture, and budget processes.

Together, we envision a thriving Kiambu County where empowered youth organizations play a pivotal role in shaping its future, fostering accountable leadership, and driving sustainable development.

Our mission is to unite, empower, and amplify the collective voice of youth organizations in Kiambu County. Through collaborative efforts, we strive to promote transparency, social inclusion, and active engagement in all spheres of community life, fostering positive change and sustainable progress for our county, country and its residents."

Shirikisha Mtandaoni

"Shirikisha Mtandaoni," which translates to "Engage Online" in Swahili, is an innovative program spearheaded by the Kiambu County Empowerment Network (KCEN). This program has a primary mission to bridge the gap between the government and the public by offering a comprehensive civic education platform that enables citizens to actively participate in the decision-making process.

The program aims to;

Channeling Public Input: The program acts as a conduit between the public and relevant government bodies. It collects, organizes, and forwards public views and feedback to the authorities responsible for decision-making, ensuring that citizen input is effectively communicated and considered.

Empowering the Public: "Shirikisha Mtandaoni" seeks to empower the public with the knowledge and tools necessary to engage effectively in civic matters. This includes providing clear and accessible information about government calls for public participation, upcoming bills, and publications open for public review.

Facilitating Informed Discussions: The program aims to facilitate informed discussions among citizens regarding these government initiatives. It encourages critical analysis, debate, and the exchange of ideas on matters of public interest.

Providing an Online Platform: "Shirikisha Mtandaoni" recognizes the importance of inclusivity and accessibility in public participation. Therefore, it provides an easily accessible online platform for those who may not be able to attend physical meetings. This ensures that a wider spectrum of voices is heard and considered in decision-making processes.

Social Health Insurance Bill 2023 and the Digital Health Bill 2023

On 21/09.23, 7:00PM, KCEN hosted a webinar where the bills were broken down and discussed with assistance from Lawrence N Gatenjwa & Isaiah Onyango. The following are views as espoused by members of the public in attendance for consideration;

Social Health Insurance Bill 2023

Primary Healthcare Fund

Section 20 provides for the establishment of the primary healthcare fund meant to purchase primary healthcare services. On implementation, section 24 states that The Cabinet Secretary may make regulations for the implementation of the Primary Healthcare Fund.

We propose the substitution of the word "may" with "shall" to confer a duty to the cabinet secretary. This eliminates the possibility of the Cabinet Secretary choosing not to create regulations, thereby potentially delaying or hindering the effective execution of the fund.

The change would ensure that regulations are put in place promptly, providing a clear and structured framework for the implementation of the Primary Healthcare Fund. Finally, the proposed change is intended to benefit citizens by ensuring that the Primary Healthcare Fund operates with clear guidelines and regulations, which can enhance transparency, accountability, and the overall effectiveness of the fund in providing essential healthcare services.

The Emergency, chronic and critical illness Fund

Section 28 establishes the fund meant to cater for the costs of management of chronic illnesses after depletion of the social health insurance cover and to cover the costs of emergency treatment. On implementation, section 30 states that The Cabinet Secretary may make regulations for the implementation of the Emergency, chronic and critical illness Fund.

We propose the substitution of the word "may" with "shall" for the same reasons as those stated above on the Primary Healthcare Fund.

Appointments

Section 4 of the bill on appointment to the board provides that the Cabinet Secretary shall ensure that the appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups and ensure regional
Balance.

In this instance, youth have been grouped together with other marginalized groups which limits their distinct recognition and consideration. This grouping may diminish the specific attention and targeted measures needed to address the unique challenges and opportunities that youth face in society. While the intention behind grouping these categories may be to promote inclusivity and equal opportunity for all marginalized groups, it's essential to recognize that youth, as a demographic, have their own set of circumstances, aspirations, and needs that may differ from other groups mentioned in the bill.

To ensure effective representation and support for youth, it may be beneficial to consider separate provisions or mechanisms within the bill that specifically address youth concerns, aspirations, and their unique role in society. This would allow for a more focused approach to addressing the challenges and promoting the opportunities that are specific to the youth demographic while still upholding the principles of equal opportunity and inclusivity for all marginalized groups.

Section 8 on appointment as a Chairperson or member of the Board provides for knowledge and experience of not less than ten years in data science, information technology as a qualification.
This provision limiting appointment to the Board can significantly restrict youth participation in the following ways:

1. *Limited Opportunity for Young Professionals:* Many young professionals and recent graduates in the field of data science and information technology may not have had the opportunity to accumulate ten years of experience. This requirement effectively excludes these talented and capable individuals from contributing their expertise and fresh perspectives to the Board.
2. *Underrepresentation of Innovation:* The youth demographic often brings innovative and cutting-edge ideas to the table especially in rapidly evolving fields like data science and information technology. By imposing a strict experience requirement, the provision may inadvertently stifle the introduction of innovative ideas and solutions.
3. *Failure to Harness Youth Talent:* Restrictive experience requirements can discourage young individuals from pursuing careers in these fields, knowing that they will face significant challenges in meeting the qualification criteria. This could result in the underutilization of the talent pool among the youth.
4. *Reduced Diversity of Perspectives:* Diversity in terms of age, experience, and background can lead to more comprehensive decision-making processes. By limiting appointments to those with a specific level of experience, the provision risks narrowing the range of perspectives brought to the Board, potentially leading to less well-rounded decisions.

To promote youth participation and harness the potential of young professionals in these fields, the provision should be reviewed to include mechanisms for recognizing and accommodating individuals with valuable skills and potential, even if they do not meet the strict ten-year experience requirement. This could include provisions for mentorship, internships, or alternative pathways for young talent to contribute to the Board's work.

Investment of the Fund

Section 38 states that all monies in the Authority which are not immediately required to be applied shall be invested in such investment in a reputable bank on the advice of the Central Bank of Kenya, being an investment in which trust funds, or part thereof, are authorized by law to be invested; and in government securities as may be approved by the National Treasury.
That notwithstanding, we feel there is a risk of corruption, mismanagement and lack of oversight to mention a few. We therefore propose;

1. ***Establish an Investment Committee:*** Create an independent investment committee responsible for overseeing and approving all investment decisions. This committee should consist of individuals with financial expertise, and its members should be subject to strict ethical and conflict-of-interest guidelines.

2. *Transparency and Reporting:* Implement transparency measures that require regular reporting on investment decisions, performance, and returns. This information should be made available to the public to ensure accountability.
3. *Public Oversight:* Consider involving external auditors or an oversight body to periodically review the Authority's investment practices, ensuring compliance with established guidelines and laws.
4. *Ethical Standards:* Establish a code of conduct and ethics for individuals involved in investment decisions within the Authority. This code should emphasize integrity, transparency, and accountability.
5. *Regular Audits:* Conduct regular internal and external audits of the Authority's investment activities to identify and address any irregularities or discrepancies.
6. *Public Engagement:* Encourage public engagement and participation in decisions related to the investment of public funds. Seek input from stakeholders to ensure that investments align with the best interests of the community.
7. *Legal Safeguards:* Review and strengthen legal safeguards and penalties for any instances of corruption or mismanagement related to the investment of Authority funds.

By incorporating these measures into the proposed changes to Section 38, you can enhance transparency, accountability, and oversight in the investment of the Authority's funds, reducing the risk of corruption and mismanagement.

Civic Education

Incorporating civic education will empower citizens with knowledge about Social Health Insurance, ultimately fostering a more informed and engaged population. By investing in civic education, we can ensure that all segments of society can access the benefits and advantages of this vital healthcare initiative.

In order to foster civic education on the Social Health Insurance, we propose the following measures:

1. *Development of Educational Materials*: We recommend the creation of comprehensive educational materials that explain the fundamental principles and mechanisms of the Social Health Insurance scheme. These materials should be easily accessible to the public, healthcare providers, and stakeholders, and they should clarify important aspects such as contributions, entitlements, and coverage.
2. *Public Awareness Campaigns:* To reach a wider audience, we suggest conducting public awareness campaigns. These campaigns can include informational sessions, town hall meetings, and community outreach programs to educate individuals and communities about their rights and responsibilities under the Social Health Insurance scheme.
3. *Integration into Education:* Collaboration with educational institutions, both at the school and university levels, is essential. We propose the integration of Social Health Insurance education into curricula and training programs to ensure that future generations are well-informed about this critical aspect of our healthcare system.
4. *Online Information Portal:* Establishing a dedicated section on the official website and digital platforms of the Social Health Authority is crucial. This section should provide easily accessible information, resources, and frequently asked questions related to Social Health

Insurance. A user-friendly online portal will help individuals navigate the complexities of the scheme.

Registration

Section 26 provides for compulsory registration of every registrable Kenyan as a member of the Social Health Insurance Fund. Additionally, In order to access public services from the national government, county government or a national or county government entities, every registerable individual must provide evidence of membership to the Social Health Insurance Fund.

To facilitate the mandatory registration of every Kenyan with the Social Health Insurance Fund and streamline access to public services from national and county governments, we propose the following steps;

Firstly, we recommend establishing accessible registration centers, both physical and digital, across the country. Simultaneously, launch comprehensive awareness campaigns to educate citizens about the benefits of registration. Secondly, integrate Social Health Insurance Fund membership verification seamlessly into government systems. This integration will simplify the process of providing evidence of membership when accessing public services, enhancing efficiency and reducing delays.

These measures, coupled with transparency, targeted support for vulnerable populations, and close collaboration between the Social Health Authority and government entities, will ensure that all Kenyans can access government services effortlessly while complying with mandatory registration.

Audit

Section 42 and 43 provides for auditing and financial reports. In order to foster greater citizen participation in the audit process, enhance transparency, and build trust among the public regarding its financial operations and overall performance, The following measures will empower citizens to play an active role in ensuring the accountability and responsible management of public funds within the Authority if adopted;

1. *Public Access to Financial Reports:* The Authority should make the submitted financial accounts, including the statement of income and expenditure and the statement of assets and liabilities, accessible to the public through its official website or other appropriate channels. This will enable citizens to review and scrutinize the financial performance of the Authority, promoting transparency.
2. *Public Consultation and Feedback:* The Authority should establish mechanisms for public consultation and feedback regarding the financial reports and annual operations report. This can include soliciting comments, suggestions, and questions from citizens and stakeholders. The feedback received should be considered and addressed in subsequent reports.
3. *Citizen Awareness Campaigns:* Conduct public awareness campaigns to inform citizens about their right to access and review financial reports. These campaigns should emphasize the importance of citizen engagement in the audit process and encourage active participation.

Digital Health Bill 2023

Appointment

Section 8 of the bill provides for membership to the board of authority/ However, we note that the public is not adequately represented in the board. We therefore propose the inclusion of a member of the public, selected through a transparent and participatory process, to serve as a non-executive member of the Board of Directors.

This member of the public should represent the interests and perspectives of the broader community, ensuring that the Board's decisions and actions are informed by the experiences and expectations of the citizens who will be directly affected by the Agency's operations. This addition will further enhance transparency, accountability, and citizen engagement in the governance of the Agency.

According to the bill in section 8, when appointing persons as members of the Board under the Cabinet Secretary shall ensure that the appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups and ensure regional balance.

We propose allocating a dedicated and substantial space for youth representation on the Board, reflecting the importance of involving young individuals in decision-making processes related to digital health. This allocation should ensure that the voices, perspectives, and contributions of youth are actively considered and integrated into the governance of the Agency, fostering intergenerational collaboration and innovation."

Audit

According to bill section 18 & 19, The Board shall keep all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Agency. The accounts of the Agency shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015. At the end of each financial year, the Chief Executive Officer shall prepare an annual report on the activities of the Agency which shall be submitted for tabling in the National Assembly not later than one month after the submission of the Auditor-General's report.

To promote public participation in the process of financial oversight and reporting, we propose the following actions:

1. *Public Access to Financial Information*: The Agency should proactively make its financial information, including audit books, records of accounts, and financial statements, easily accessible to the public. This information should be available on the Agency's official website and at physical locations for those who may not have internet access. Ensuring that the public can readily access financial data is essential for transparency.
2. *Plain Language Summaries:* Alongside the detailed financial statements, the Agency should provide plain language summaries that explain the key financial figures and trends. These summaries should be designed to be easily understandable by the general public, without requiring specialized financial knowledge.

3. *Public Consultation on Annual Reports:* Before finalizing the annual report, the Agency should seek public input on its content and format. This can be done through public consultations, surveys, or town hall meetings where citizens can provide feedback on what they consider relevant information to be included in the report.
4. *Engagement with Stakeholders*: Collaborate with civil society organizations, community groups, and local media to ensure that the annual report reaches a wider audience. These organizations can help disseminate information and facilitate discussions around the report's findings.
5. *Feedback Mechanism:* Establish a feedback mechanism for citizens to ask questions or seek clarification on the annual report. This can include a dedicated email address or hotline where inquiries are addressed promptly.
6. *Multi-Language Accessibility:* Ensure that financial information and summaries are available in multiple languages commonly spoken in Kenya to maximize accessibility to a diverse population.

By implementing these proposals, the Agency can not only meet its legal obligations but also actively engage the public in the financial oversight process. This fosters a sense of ownership among citizens, enhances transparency, and strengthens accountability in the management of public resources. Public participation in financial matters is a crucial step towards building trust and promoting good governance within the Agency.

Conclusion

In conclusion, the Kiambu County Empowerment Network (KCEN) and its innovative program "Shirikisha Mtandaoni" have shown a deep commitment to civic engagement, transparency, and the active participation of the public in matters of significant importance, such as the Social Health Insurance Bill 2023 and the Digital Health Bill 2023.

The thoughtful and comprehensive proposals outlined in this memorandum reflect the collective wisdom and concerns of members of the public, particularly the youth. As KCEN, we envision a future where citizens are not only informed but also actively involved in shaping policies that affect their lives.

These proposals underscore the importance of accountability, inclusivity, and transparency in the governance of critical sectors like healthcare and digital technology.

We hope that these proposals will be seriously considered by policymakers and integrated into the final versions of the bills. By doing so, we can collectively work towards building a stronger, more inclusive, and responsive government that truly serves the needs and aspirations of all citizens in Kiambu County and beyond.

REPUBLIC OF KENYA

Telephone: 0727666444/0111052222
0720 771478/0738 504112
Fax: + 254 020 2724938
Email Address: info@kmpdc.go.ke
Email Address: ceo@kenyamedicalboard.org
Website: www.medicalboard.co.ke
When replying please quote:

MEDICAL PRACTITIONERS
AND DENTISTS COUNCIL
MP & DB HOUSE,
WOODLANDS RD, OFF LENANA RD
P.O BOX 44839 - 00100
NAIROBI

Ref. No.: KMPDC/NA/DCH/Vol.1/09/02 **Date:** 21st September, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41848-00100
NAIROBI
E-Mail: cna@parliament.go.ke

ATTN: **Mr. Peter K Chemweno**

Mr. Hassan A. Arale
Committee Clerk
hassan.arale@parliament.go.ke

RE: CONSIDERATION OF THE DIGITAL HEALTH BILL (N.A. BILL NO. 57) 2023 AND THE SOCIAL HEALTH INSURANCE BILL (N.A. BILL NO. 58) 2023

Reference is made to your letter dated 15th September, 2023, under reference no.: **NA/DDC/DC-H/2023/ (088)**

The Kenya Medical Practitioners and Dentists Council ("the Council" or "KMPDC") is a statutory body corporate established under Section 3 of the Medical Practitioners and Dentists Act (CAP 253 – Laws of Kenya) with the mandate to regulate the training and practice of medicine, dentistry, and community oral health within the Republic of Kenya. The Council is also tasked with the mandate of regulating all health institutions in the country.

Forwarded herewith written memoranda detailing KMPDC's submission on the following bills:

(i) Digital Health Bill;
(ii) Social Health Insurance Bill;

Thank you for your continued support and guidance.

DR. DAVID G. KARIUKI
CHIEF EXECUTIVE OFFICER
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

Copy to: **Nakhumicha S. Wafula**

Cabinet Secretary
MINISTRY OF HEALTH
E-Mail: cs@health.go.ke

Ms. Mary Muthoni Muriuki, HSC
Principal Secretary
State Department for Public Health and Professional Standards
MINISTRY OF HEALTH
E-Mail: pshealthke@gmail.com

Prof. Stanley O. Khainga
Chair
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL
E-Mail: chair@kmpdc.go.ke

KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

WRITTEN MEMORANDA

ON THE FOLLOWING BILLS:

SOCIAL HEALTH INSURANCE BILL
DIGITAL HEALTH BILL
FACILITY IMPROVEMENT FINANCING BILL
PRIMARY HEALTHCARE SERVICES BILL

Kenya Medical Practitioners and Dentists Council
KMPDC House
Woodlands Rd, Off Lenana Rd
P.O. Box 44839 - 00100
Nairobi, Kenya
Tel: 0727666444/0111052222
E-Mail: info@kmpdc.go.ke
Website: www.kmpdc.go.ke

WRITTEN MEMORANDA ON THE HEALTH SECTOR RELATED BILLS

The Kenya Medical Practitioners and Dentists Council ("the Council" or "KMPDC") is a statutory body corporate established under Section 3 of the Medical Practitioners and Dentists Act (CAP 253 – Laws of Kenya) with the mandate to regulate the training and practice of medicine, dentistry, and community oral health within the Republic of Kenya. The Council is also tasked with the mandate of regulating all health institutions in the country.

The Council is in receipt of a letter dated 15th September, 2023 under reference no.: NA/DDC/DC-H/2023/(088) from the Clerk of the National Assembly requesting KMPDC to submit written memorando on the following bills: for the following bills:

a) Social Health Insurance Bill
b) Digital Health Bill

The Council would like to submit the following comments on the above mentioned bills:

- PTO -

A. SOCIAL HEALTH INSURANCE BILL

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
				Delete the words "relevant body" and replace with the words "Kenya Medical Practitioners and Dentists Council" to read as follows:	
PART II— ESTABLISHMENT OF THE SOCIAL HEALTH AUTHORITY	Functions of the Authority.	5 (d)	(d) contract healthcare providers and healthcare facilities upon successful certification by the relevant body;	(d) contract healthcare providers and healthcare facilities upon successful certification by the Kenya Medical Practitioners and Dentists Council;	**NB:** This section is relevant to the Council as we are a certification body. Pursuant to Section 15 of CAP 253, KMPDC is the regulator of all health facilities in the country.
	The Board of the Authority.	7(1) (h)	Board Composition indicates four persons, not being public officers, nominated by: (i) The Kenya Medical Association (ii) The informal sector association (iii) Health care providers (iv) The Central Organization of Trade Unions - Kenya	N/A	Clarity needed on composition on how the associations not represented can participate in the organization. There are multiple health professional associations that exist in the country.
	Chief Executive Officer	14 (1)(b)	A person shall be qualified for appointment as the Chief Executive Officer of the Authority if the person – (b) is an Advocate of the High Court of Kenya;	Delete the paragraph (b) to remove the qualification of being an Advocate of the High Court of Kenya as a required qualification to be the CEO of the	The is an exclusionary requirement that with no merited justification.

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
				proposed Authority	
PART VI— BENEFITS, TARRIFS, EMPANEL-MENT, CONTRACT ING AND CLAIMS	Contracting	34 (5)	(5) The Authority shall terminate the contract with any health care provider and healthcare facility where such health care provider or healthcare facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).	N/A	**NB:** This section is relevant to the Council due to the fact that we regulate health facilities
	Claims Management	35 (3)	(3) The Claims Management Office shall delegate the performance of its functions under subsection (1)(a), (b) and (c) to a suitable entity.	(3) The Claims Management Office shall delegate the performance of its functions under **subsection (2)(a), (b) and (c)** to a suitable entity.	Subsection 35 (1)(a), (b) and (c) does not exist
PART IX- MISCELLANE OUS PROVISIONS	Conflict of Laws	51	**51.** This Act shall prevail in the case of any inconsistency between this Act and any other legislation on matters related to provision of social health insurance.	N/A	**NB:** This will amend any other Act or legal provision that directly links KMPDC and NHIF.
	Repeal No. 9 of 1998	54	**54.** The National Health Insurance Fund Act, 1998 is repealed.	N/A	**NB:** NHIF will cease to exist

B. DIGITAL HEALTH BILL

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
			6 (b) establish registries, in consultation with other statutory authorities, at appropriate level to create single source of truth in respect of clients, health facilities, healthcare providers, health products and technologies;		
PART II—ESTABLISHMENT OF THE DIGITAL HEALTH AGENCY	Functions of the Agency.	6 (b)		N/A	NB: Relevant as the Council is one of the statutory authorities
	Board of Directors	8(1)	N/A	Add the Director General of Health/Representative of a health regulatory body as Board Member of the Agency	As per Section 17 of the Health Act the Director General of Health is the technical advisor to the Government on all matters relating to health within the health sector. Digital health is health related, only that the health provision is being done on various digital platforms.
		8 (g)	8 (g) one person appointed by the Cabinet Secretary representing the private sector;	Insert "in health" after the words private sector to read as follows: 8 (g) one person appointed by the Cabinet Secretary representing the private sector in health;	To be specific that the representative of the private sector be someone from the health sector too.
		47. (1) (d)	(d) for foreign facilities, be licensed by an equivalent regulatory authority recognized in Kenya;	Expunge (d)	No clear mechanism to regulate e-health care providers outside the borders of Kenya

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
PART VII—E-HEALTH SERVICE DELIVERY	E-Health services	49	49. (1) In the provision of e-health services to a client, a healthcare provider shall—	Insert (j) to include issues of scope of practice to read as follows: 49. (1) In the provision of e-health services to a client, a healthcare provider shall— (j) ensure that the provide services within their scope of practice	This is to ensure that practitioners offering e-health services do so within their scope of practice.

These memoranda are signed on this 21st day of September, 2023 as hereunder:

DR. DAVID G. KARIUKI
CHIEF EXECUTIVE OFFICER/REGISTRAR
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

HAKI YETU ORGANISATION

Star of The Sea Primary, Off. Nyerere Avenue - Mombasa P.O. Box 92253-80102, Mombasa, Kenya

0800723544, 0740 335 236, info@hakiyetu.ke, @HakiYetuOrg

www.hakiyetu.ke

NATIONAL ASSEMBLY
RECEIVED
22 SEP 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

To:

The Clerk of the National Assembly
P. O. Box 41842-00100
Parliament Buildings
NAIROBI

RE: HAKI YETU ORGANIZATION'S MEMORANDUM ON THE DIGITAL HEALTH AND THE SOCIAL HEALTH INSURANCE BILLS OF 2023

Haki Yetu is a Human Rights Organization registered as a Charitable Trust. The organization was established in 2008 in an informal settlement in Mombasa County with the specific aim of advocating for the rights of marginalized communities living in informal settlements in Mombasa. We have since expanded our reach to all coastal counties and our mandate today covers the areas of Lands and Housing, Governance and Accountability, Cohesion and Transformation and Gender and the Law.

We wish to draw your attention to the proposed Bills captioned above and before parliament. Following an extensive review of the bills and in consultations with members of the public, the organization wishes to address you as hereunder:

- Any meaningful conversation on health-related factors, and more so on the citizens' health care should factor in these realities.
- We acknowledge the inefficiency and gaps within the health sector and in particular the problems surrounding the National Health Insurance Fund which necessitates some radical changes and approach with the aim of attaining the goals of Universal Health Coverage.
- We understand that it is a joint responsibility for the Government and wananchi to have a functionable and efficient social health Cover by pulling resources together and spreading the risk.
- We are not convinced by roadside declarations made by senior government officers on the contribution rates, as well as the minimum and maximum capping. `1We demand that the same should be legislated for Kenyans to be guaranteed.
- Our genuine concerns on the 2 Bills are as follows:

THE SOCIAL HEALTH INSURANCE BILL OF 2023

Issue	Recommendation
	• promotes inclusivity • However, we do insist on the need to have a maximum contribution affordable <u>Without such capping the high salaried Kenyans would end up paying for as much as thrice as they would have paid for private covers hence the whole idea becomes exorbitant.</u>
may	• with the word shall regulations ought to for mandatory for fund to be effective
Definition of chronic and critical illness	• Such definition ought to include all ailments under this category in order to avoid ambiguity
	• anyone the opportunity to engage

	with private insurance covers for complimentary cover. This will ensure equal treatment for all Kenyans.
Emergency health care	• Since this is a constitutional right there is a for a provision in the Bill prescribing for penalties for denial of emergency health care to Kenyans.

DIGITAL HEALTH BILL, 2023

Issue	Recommendation
Offences and penalties for breach.	• The Bill relies more on the general offences and penalties provided under the Data Protection Act. It would be more prudent to consider the principles of sentencing while formulating the penalties with the aim of deterring date holders from misusing confidential information.

- We call upon our able parliamentarians to exercise prudence and care while tackling these Bills to ensure that they give Kenyans efficient and more practicable health care solutions; and at the same time protecting citizens from exploitation.

"A Healthy Nation is a Wealthy Nation."

Thank you.

Signed on this **22nd Day** of **September** 2023

Kioko Marius
FOR: HAKI YETU ORGANISATION
Phone: +254704594459
Email: mmthiani@gmail.com

Our Ref: KAM/10/27/rl/mb/jw/AM/2023 **22nd September 2023**
Your Ref: NA/DDC/DC-H/2023/ (089)

The Clerk
National Assembly
Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

Dear Sir,

RE: REQUEST FOR EXTENSION OF TIME FOR KAM SUBMISSIONS ON THE DIGITAL HEALTH BILL 2023 AND THE SOCIAL HEALTH INSURANCE BILL 2023

Kenya Association of Manufacturers (KAM) presents her compliments on behalf of its members and appreciates your continued support.

We are in receipt of your letter dated 15th September 2023 and of Reference Number NA/DDC/DC-H/2023/ (089). This letter was an invitation to submit views on the Digital Health Bill 2023 and the Social Health Insurance Bill 2023 by 22nd September 2023.

KAM wishes to request for an extension of time by one week to the 29th of September 2023, to submit our views on the two Bills.

The purpose of this letter is to therefore request for an extension of time by one week to 29th September 2023 for formal submissions by the Kenya Association of Manufacturers on the Digital Health Bill 2023 and the Social Health Insurance Bill 2023.

We look forward to your favorable response and consideration, advance feedback can be sent through ceo@kam.co.ke or call 0722 370446.

Yours Sincerely,

Anthony Mwangi
CHIEF EXECUTIVE.

P.O. Box 30225 - 00100 Nairobi, Kenya
Website: www.kam.co.ke
Email: info@kam.co.ke
Location: 15 Mwanzi Road, Opp. Westgate Shopping Mall, Westlands, Nairobi
Tel: +254 20 2324817/8; 020 8155531/2, 020 2166657
Mobile: +254 722 201368, +254 706 61238
KAM_Kenya
Kenya Association of Manufacturers



Memorandum on the Social Health Insurance Bill, 2023

Presented to:
Email: cna@parliament.go.ke

Date: 22/09/2023

CIVIL SOCIETY INPUTS AND COMMENTS

This memorandum is submitted following a Public Notice from the Ministry of Health through a Technical Working Group comprised of Officers drawn from the Ministry of Health, Office of the Attorney General & Department of Justice and Kenya Law Reform Commission call for comments and public participation on the draft Social Health Insurance Bill 2023.

Following a consultation by Civil Society Organizations (CSOs) in the health sector held on 5th September 2023, **Health NGOs' Network (HENNET)** on behalf of 112 member health CSOs wishes to submit the following recommendations on the proposed draft **Social Health Insurance Bill 2023.**

HENNET underlines the point raised by many CSOs that **the consultation period is far too short for a productive public engagement**, and that this limited time for inputs and feedback by non-governmental representatives **undermines both the substance of the proposed SHI bill as well as the buy-in from the public**. HENNET therefore recommends that the public and the health CSOs be involved in a more intensive redrafting of the proposed bill.

Regulation/ Clause	**Issue of Concern**	**Justification**	**Recommendation**
Introduction	Preliminary	What other policy documents is the bill seeking to implement? This is the initial step in ensuring developed policies/frameworks/strategies are included in key documents to ensure their implementation.	Recommend addition of key policies that the bill is operationalizing such that the statement reads; 'AN ACT of Parliament to establish the framework for the management of social health insurance; to provide for the establishment of the Social Health Authority; to give effect to Article 43(1)(a) of the Constitution; ***The Health Policy 2012-2030; The UHC Policy 2020-2030*** and for connected purposes.
Part 1 (2)	Interpretation	beneficiary" means a person who— Vulnerable person is defined under part 1 but not included as a beneficiary in the interpretation.	Include (f)vulnerable person as defined in part 1 (2)
Section 7		The absence of CSOs in the board authority or leadership structure is a notable gap in the proposed social health insurance bill. CSOs play a	We ask for 2 seats (male and female) for CSOs and 1 seat for youth

		vital role in ensuring transparency, accountability, and representation in policy formulation and implementation, especially in matters related to healthcare. Health CSOs are not only employers, but represent the voices, needs and desires of the community on matters health. Without such representation communities remain voiceless in contravention of the constitution of Kenya.	Add a clause (j) two representatives from health Civil Society Organizations (CSOs) and (k) Youth-led & serving health Civil Society Organizations (CSOs)
Section 14	Qualification for appointment as a Chief Executive Officer.	A bare minimum of a degree for a CEO is not a qualifiable standard for a holder of this position.	Replace 'bachelors degree to 'master's' degree' which is a most suitable requirement for a CEO position
Section 16	Corporation Secretary.	A bare minimum of a degree for a CEO is not a qualifiable standard for a holder of this position.	Replace 'bachelors degree to 'master's' degree in law' which is a most suitable requirement for this position
Section 20	Establishment of the Afya Bora Fund.	The outlined purpose of this fund *'purchase primary health care services from health facilities'* is a duplicity of the objects of the 'Primary Health Care Fund under 23(2a) that reads *be a strategic purchaser of primary health care services at the primary health care levels within the primary healthcare networks*. This is not efficient utilization of resources in this current phase where Kenya is facing out from donor funding for health towards domestic financial allocation to health. In Kenya health services at community level are implemented by both the Ministry of Health and CSOs including community based and community led organizations. These organizations play a key role in Primary Health care. Kenya is in the transition process from donor funding which poses a challenge to	Review the purpose of this fund to clearly articulate what its purpose is. An addition of a section on the objects and purpose is of the fund recommended.

		sustainability of services provided by CSOs. In view of this, part iii-primary healthcare fund under *article 20. There is established a Fund to be known as the Primary Healthcare Fund whose object shall be to purchase primary health care services from health facilities,* should also include CSOs. It is important to also purchase primary health care services from CSOs who have capabilities to reach to underserved populations and complement the Ministry of Health.	Review this clause and include CSOs as an entity providing primary health care services that the government can purchase services from.
Part II	Social Health Insurance Fund	A section on Objects and Purposes of the Fund is missing hence no clarity in what the fund is intended for. The functions of the Chronic illnesses fund have clearly been outlines in two bullets. However, that of the Social Health Insurance Fund is missing.	An addition of a section on the objects and purpose is of the fund recommended. Without this inclusion, the bill leaves room for misuse of the fund.
Section 27 (4 & 6)	Contributions	Consider the financial circumstances of individuals, especially those facing temporary setbacks, when dealing with late payments. Penalties for delayed payments should take into account cases where individuals who have consistently met their obligations experience a temporary default. By doing so, we can ensure a fair and balanced approach that doesn't disproportionately penalize those who may have a brief lapse in their payment history, promoting a more equitable and supportive system for all.	Further consultation with civil societies and the wider public is recommended to determine a threshold for contribution, Therefore, passing this bill should not be rushed.
Section 29	Sources of funds.	The issue with the generalization of monies appropriated by the National Assembly lies in its lack of specificity. When funds are allocated without clear earmarks or itemization, it becomes challenging to ensure that the allocated resources are efficiently utilized for their intended purposes.	Specify a designated percentage of the funds appropriated by the National Assembly for allocation to different healthcare components, ensuring greater transparency and accountability in resource allocation.

General Comments and Recommendations

1. **Robust Control Mechanisms:** The bill should incorporate clear control mechanisms to oversee the funding and operation of critical components such as the means testing instrument. Establish an oversight committee to conduct regular audits to ensure transparency, accountability, and efficient resource allocation and utilization.

2. **Collaboration with Civil Society Organizations (CSOs):** Incorporate CSOs into the governance structure to ensure accountability, representation, and diverse perspectives in healthcare policy formulation and implementation.

3. **Restore Confidence in Operationalization**: Outline a mechanism in the bill to actively engage with and inform Kenyan citizens about the operationalization of the social insurance bill, particularly regarding the increasing contributions.

4. **Ensure Ample Public Participation**: Allocate sufficient time for public participation at the county level by sharing a well-defined schedule of time and dates for public consultations. This step is crucial to involve communities in shaping the bill, gather diverse perspectives, and ensure that the bills align with the specific needs and concerns of different regions within Kenya. We express our discontentment particularly in how public participation for this bill was rushed.

5. **Generation of a report after receiving memorandum;** We ask of your office to prepare a report and share it back to the contributing partners to inform of which recommendations were considered, which ones were not considered and why. This is a surety that public participation is given the seriousness it deserves in policy development.

Conclusion

We hope that you will review, address and include our concerns raised in this memo.

Yours faithfully,

mklubaale

Dr. Margaret Lubaale

Executive Director, ED

Health NGO's Network (HENNET)

AMREF KCO, along Wilson Airport, Off Langata Road

Address: P.O Box 30125-00100, Nairobi, Kenya

Email: director@hennet.or.ke | admin@hennet.or.ke | programs@hennet.or.ke

Phone:+254113770665|+254796785973

www.hennet.or.ke | Twitter@HennetKenya| Facebook:@Hennet17.Kenya

This memo is submitted on behalf of Registered HENNET Member Organizations listed below;

1	Health NGOs Network Secretariat
2	ADEO
3	Ace Africa
4	ACHESEREM
5	Action Aid International
6	AFIDEP
7	Afri Afya
8	Africa institute for health and development-AIHD
9	Aga Khan Foundation
10	Ageing Concern Foundation (ACF)
11	AIDS Healthcare Foundation Kenya (AHF)
12	AMREF Health
13	APDK- Association for the Physically Disabled of Kenya
14	APHRC- Africa population and health research centre
15	Basic Needs UK in Kenya
16	Beacon of HOPE
17	CARE International
18	Center for Public Health and Development (CPHD)
19	Centre For the Study of Adolescence (CSA)
20	Christian Aid
21	Christoffel Blinden Mission (CBM)
22	COEC
23	COECSA
24	Community capacity Building Initiative
25	Consortium for National Health and Research (CNHR)
26	CPDA- Christian Partners Development
27	Deaf Aid
28	Don Amolo, Memorial Kids Ark (DAMKA),
29	DSW
30	Elizabeth Glaser Pediatric Aids Foundation (EGPAF)
31	Emayian organization
32	Engender Health
33	Family Support Initiative
34	FHI - Family Health International
35	Food for the Hungry
36	Fred Hollows Foundation Kenya
37	Global Communities(formerly CHF)
38	HAIA Health Action International Africa
39	Health Rights Advocacy Forum(HERAF)
40	Healthrights International Kenya
41	Hellen Keller International
42	Helpage Kenya
43	HOPE *worldwide* Kenya
44	ICL- I Choose Life
45	IMA WORLD HEALTH
46	International Centre for Reproductive Health (ICRHK)
47	International Committee For Development of people (CISP)
48	International Plan Parenthood Africa
49	Internews in Kenya
50	Intrahealth International
51	JHPIEGO
52	Johnstone Kenya
53	KANCO- Kenya AIDS NGOs Consortium
54	KCDF
55	KENAAM- Kenya NGOs Alliance against Malaria
56	KENCANSA
57	Kenya Association for the Welfare of people with Epilepsy- KAWE
58	Kenya Association of Muslim Medical Professionals
59	Kenya Association of Professional Counsellors
60	Kenya Consortium to Fight AIDS TB and Malaria
61	Kenya Episcopal Conference
62	Kenya Medical Education Trust (KMET)
63	Kenya Society for the blind
64	Kenya Women Living with AIDS- KENWA
65	Kibera Integrated Community Self-Help Programme KICOSHEP
66	KRCS- Kenya Red Cross Society
67	Life Care and Support Centre - LICASU
68	Living Goods
69	LVCT Health
70	M Health Kenya
71	Malteser
72	Marie Stopes International Kenya (MSK
73	Medecins Sans Frontieres- MSF
74	META Kenya
75	Micronutrient Initiative
76	Mildmay International LTD
77	Morris Moses Foundation
78	Mothers2Mothers

79	Movement of Men against AIDS in Kenya (MMAAK)
80	NEPHAK- National Empowerment Network of People Living with HIV/AIDS in Kenya.
81	Next-Gen Lawyers
82	NOPE - National Organisation of peer Educators
83	Nyamira post HIV Test CBO (NYAPOHTE)
84	Nyanza Reproductive Health Society
85	Operation Eyesight
86	Options Consultancy Services Kenya Limited
87	Organization of African Youth (OAY)
88	PATH
89	Pathfinder International
90	Peoples Health Movement
91	Provide International
92	PS Kenya
93	Ripples International
94	Rural AIDS Prevention and development Organisation (RAPADO)
95	Samaritans Purse International Relief
96	Save The Children
97	Sight Savers International
98	Smile Train
99	SOS Children's Villages
100	SOWED Kenya
101	St. Hemmingsway CBO
102	SWAP- Safe Water and AIDS project
103	The Youth Cafe
104	VSO K
105	Waci Health
106	WEMIHS- Wem Intergrated Health Services
107	White Ribbon Alliance Kenya
108	Women fighting Aids in Kenya
109	World Friends
110	World Neighbours
111	World Relief
112	World Vision

RURAL PRIVATE HOSPITALS
ASSOCIATION OF KENYA

14th SEPTEMBER 2023

FEEDBACK FROM THE RURAL PRIVATE HOSPITALS ASSOCIATION OF KENYA (RUPHA) ON THE PROPOSED SOCIAL HEALTH INSURANCE BILL, 2023

Part/Clause	Issues of Concern	Recommendation
Part I – PRELIMINARY. **Clause 2 "Interpretation"**	The term *"empanelment"* is defined as *"means enrolment of a health care provider into the list of health care service facilities approved by the Board."* We find the inclusion of the words *"approved by the Board"* problematic, the words give the SHA Board power to usurp the functions of another government agency, namely *"the accrediting body"* referred to in clause 33(2).	• We recommend that the interpretation of the term *"empanelment"* be amended to read. *"means enrolment of a health care facility into the list of health care service facilities approved by the accrediting body.*
	The terms *"health care provider"* and *"health care facility"* are used extensively and interchangeably. An interpretation for *"health care provider"* is provided as having *"the same meaning as assigned to it under the Health Act, 2017"*. Which is, *""**health care provider**" means a person who provides health care services and includes a health care professional.* The Health Act, 2017 defines a ***"health facility"*** *as the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designed to provide in-patient or out-patient*	• For avoidance of ambiguity and for consistency with the Health Act, 2017, provide a definition for *"Health care facility"* that provides a distinction with a *"health care provider"* in line with the Health Act, 2017.

	treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service. The *"Social Health Authority"* and the *"National Social Health Authority"* are used interchangeably without reference as to the whether the terms mean the same thing. Clarity is needed to establish the *de jure name* by which the authority shall be referred to henceforth. *"Primary health care"* is defined as *"essential health care"* without providing a definition of *"essential healthcare"*.	• Apply a single consistent name for the *"Authority"*. • Define *"essential health care"*. A definition of essential health care will properly demarcate the scope of primary health care. This is critical to give effect to the *"objects of the Act"* as outlined particularly by Part I Clause 3(b) and (d)
PART II- ESTABLISHMENT OF THE SOCIAL HEALTH AUTHORITY. **Clause 5(f)**	Clause 5(f) lists a function of the Board as *"develop guidelines for the operations and implementation of the Funds established under this Act;"*. In general, *"guidelines"* are advisory and non-binding in nature. They are *at best* suggestions without the legal authority of regulations. There are *no legal consequences* for not following the recommendations of guidelines. On other hand, *regulations* have the *force of law* and are enforceable. They are specific and prescriptive in nature.	• We recommend that the clause be re-written to read *"In consultation with the Cabinet Secretary, develop regulations and guidelines for the operations and implementation of the Funds established under this Act;"*



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	We find the term *"member"* misleading as to the intent of this clause.	
PART IV – THE SOCIAL HEALTH INSURANCE FUND **Clause 26(3)** – *Registration of children born after commencement of the Act*	This clause reads *"A child born after commencement of this Act shall be registered at birth as a member of the Social Health Insurance Fund".* In line with our earlier submissions, we find that the use of the term *"member"* does not achieve the intended effect of this bill.	• We recommend that clause 26(3) reads *"A child born after commencement of this Act shall be registered at birth as a beneficiary under the Act".* • We have excluded mention of the Fund to which the child shall be attached because it is our view that this fact shall be determined by regulations.
PART IV – THE SOCIAL HEALTH INSURANCE FUND **Clause 26(5)** – *Proof of registration to access public services*	This clause reads *"Any person who is registerable as a member under this Act* shall *produce proof of registration with the Social Health Insurance Fund as a precondition of dealing with or accessing public services from the national government, county government or a national or county government entities."* In line with our other submissions on this subject, we find that the use of the term *"member"* does not achieve the intended effect of this bill. For instance, *as is written, a child born after commencement of the Act is registrable as a member. Will such a child, in infancy, then need to produce proof of registration to access public services?*	• We recommend that clause 26(5) reads *""Any person who is registerable as a* ***contributor*** *under this Act* shall *produce proof of registration with the Social Health Insurance Fund as a precondition of dealing with or accessing public services from the national government, county government or a national or county government entities."*
PART V – THE EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND **Clause 28(a)** *purpose of the fund*	This clause reads. *"28. There is established a Fund be known as the Emergency, Chronic and Critical Illness Fund to –* *(a) defray the costs of management of chronic illnesses* ***after depletion of the social health insurance cover****;"*	• We recommend that the phrase ***after depletion of the social health insurance cover*** *be deleted from clause 28(a).* The clause should be amended to read.

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	section. The payment of *claims and benefits is with respect to contributors everywhere else in the bill.* It is worth noting that no reference is made to benefits accruing to *"members"*. To borrow from established practice, *"every eligible Kenyan is required to register with the Kenya Revenue Authority as a* **Taxpayer,** *not as a member.* This is notwithstanding their ability to pay tax. Regarding this bill *the intention appears to register all eligible Kenyans as contributors and beneficiaries* and then to use various other instruments to sift out those who *cannot contribute directly e.g., indigent, vulnerable, under 18, under -25 indentured.* As a matter of fact, the first function of the Social Health Authority is *"register beneficiaries in accordance with the Act [clause 5(a)]"*. A beneficiary being defined first as *"a contributor [clause 2(a)]"*. b) An interpretation of the term *"member"* is not provided to demarcate how Kenyans will interact with the 3 funds established by this bill.	
PART IV – THE SOCIAL HEALTH INSURANCE FUND **Clause 26(2)** - *Registration of foreign residents*	This clause reads *"A person who, being a non-Kenyan, and is ordinarily resident in Kenya, shall be eligible for registration as a member of the Social Health Insurance Fund".*	• We recommend that clause 26(2) reads *""A person who, being a non-Kenyan, and is ordinarily resident in Kenya, shall* ***be eligible for registration as a contributor to*** *the Social Health Insurance Fund".*

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PART IX- MISCELLANEOUS PROVISIONS **Clause 49(6) and Clause 49(7) –** *Offences*	**Clause 49(6)** refers to notification in a Gazette *of the suspension of a healthcare provider or healthcare facility.* **Clause 49(7)** refers to the *notification in the Gazette, at least two newspapers of national circulation and at the official website of the Authority* of the removal of a healthcare provider or a healthcare facility from the register of empanelled and contracted facilities. We have the following concerns. a) This *irreversible* public shaming of the healthcare provider or healthcare facility appears to be executed without deference to the existence of a *Dispute Resolution Committee whose powers include "reversing decisions of the Board".* b) Removal from the register of empanelled facilities should be domiciled with the accrediting body. c) Clauses 49(6) and 49(7) seem to apply the terms *"Authority"* and *"Board"* interchangeably to the same effect whereas they clearly do not mean the same thing.	• We recommend that **Clause 49(6)** and **49(7)** be re-written considering that the actions/decisions of the Board with respect to healthcare facilities and healthcare providers *shall now be subject to the right of appeal with the Dispute Resolution Committee.* • Therefore, it is important *all decisions of the Board that may be considered* ***"irreversible"*** *such as notification in a Gazette or in at least two newspapers of national circulation* ***be taken only after all appeals to the Dispute Resolution Committee have been exhausted or determined.***



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PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 36 (1)** – *Settlement of claims*	This clause reads as follows. *"The Authority shall make payments to a contracted healthcare provider or healthcare facility upon submission of a claim by the Claims Management Office.* We have the following concerns with this clause. a) The *Claim Management Office* is an entity within the Authority, and we find this clause has the effect of making the Authority *submit claims to itself for payment.* b) *Unless the bill means to contract both,* the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017.	• To cure the anomaly of the *Claims Management Office, an organ of the Authority appearing to submit claims to itself, we recommend that* the error in the clause be addressed as follows. *a)* The *Claims Management Office* be renamed the *Claims Management and Settlement Office.* *b)* The clause 36(1) be re-written to read, *"The Claims Management and Settlement Office shall on behalf of the Authority make payments to a contracted healthcare facility upon receipt of a claim from the suitable entities under clause 35(3).*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 36 (2)** – *Settlement of claims*	This clause reads as follows. *" The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section".* Our concern with this clause is that it *weakens the Board of the SHA and limits its independence.*	• We recommend that the clause be re-written as follows. *"The Board, shall in consultation with the Cabinet Secretary make regulations for the better carrying out of the provisions of this section".*
PART VIII-DISPUTE RESOLUTION COMMITTEE **Clauses 44 and 45**	The order of precedence of the clauses appears incorrect.	• We recommend that clause 45 establishing the Dispute Resolution Committee appear first.
PART IX- MISCELLANEOUS PROVISIONS **Clause 48(2)(d)** - *Digitization*	This clause lists *"empanelment of facilities"* as one of the functions under the Act to be digitized. Empanelment in our view is a NOT a function of the Social Health Authority and is therefore outside the bounds of this Act	• We recommend that **Clause 48(2)(d) be deleted,** and this requirement be stipulated in the relevant regulations of the accrediting body tasked with empanelment.

	find that clause 36(1) assigns the *"payment function"* to the *"Authority"* whose only other organs are the *"Board"* and the *"Dispute Resolution Committee"*. We find this arrangement wanting as it does not prescribe how *"payment of claims shall be executed"*.	*Office which shall review, process, **and settle** the claims made under this Act.*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 35 (2) –** *Claims management*	This clause lists the functions of the Claims Management Office established in clause 35. We have the following concern. a) It is apparent that *the settlement of claims is not a function of the suitable entities to whom the Claims Management Office shall delegate its functions in clause 35(3)* INSTEAD is assigned to the Authority in clause 36(1). However, this assignment does not specify how settlement shall be executed. For such a critical function of the Authority we find this vacuum extremely wanting.	• *Subject to the regulations that will be published by the Cabinet Secretary*, we support the delegation of *Claims Management* to third-party claims administrators under clauses 35(2)(a)(b)(c). • We recommend that *"the settlement of valid claims on behalf of the Authority be included as a function of the renamed Claims Management and Settlement Office in clause 35(2).* • We recommend that the claims settlement function *on behalf of the Authority* be listed as a *non-delegated function* of the *Claims Management and Settlement Office.* • In line with this therefore, the Act should provide for the staffing compliment of the *claims settlement function* carried out on behalf of the Authority by this office.
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 35 (3) –** *Claims management*	Concerns on numbering of the clauses	• Clause 35(3) appears twice. Please rectify. • Clause 35(3) *The Claims Management Office shall delegate the performance of its functions under **subsection (1)(a), (b) and (c)** to a suitable entity.* This should refer to ***subsection (2)(a), (b) and (c)*** instead.

	inconsistent with the definition of the two terms as found in Health Act, 2017.	
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(6)** - *Contracting*	This clause reads as follows. *"Upon termination of a contract under subsection (5) the Authority shall, by notice in the Gazette, revoke the declaration made under subsection (3)."* We have the following concern with this clause. a) The word *"declaration"* is used without a prior assigned meaning.	• We recommend that if the term *"declaration" must be retained* an interpretation of its meaning be provided in the preliminaries. • Otherwise, we recommend that the clause be re-written as follows. *"Upon termination of a contract under subsection (5) the Authority shall, by notice in the Gazette, revoke the contract issued under subsection (3)."*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(7)** - *Contracting*	This clause reads as follows. *"Any health care provider who, or health facility which displays the identification referred to in subsection (4) without permission of the Authority commits an offence.* We have the following concerns with the clause. a) *Unless the bill means to contract both,* the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017.	• We recommend that the clause be re-written to read as follows. *"Any health care facility which displays the identification referred to in subsection (4) without permission of the Authority commits an offence.*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 35 (1) –** *Claims management*	This clause reads as follows. *"There is established within the Authority an office to be known as the Claims Management Office which shall review and process the claims made under this Act.* We have the following concerns with the clause. a) It is apparent that *"payment of claims"* is not one of the functions of the *"suitable entities"* established in clause 35(3). However, we	• We recommend the following amendments. The Claims Management Office within the Authority be renamed the *"Claims Management and Settlement Office".* • We recommend that the clause be re-written to read as follows. *""There is established within the Authority an office to be known as the Claims Management and Settlement*

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PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS	The inclusion of the term *"Empanelment"* in this part is problematic since empanelment is not envisaged as a function of the Social Health Authority but rather it is a function of a separate *accrediting body alluded to* in clause 33(2). We have also raised this concern in the preliminaries.	• We recommend that PART VI is amended to read *"BENEFITS, TARIFFS, CONTRACTING AND CLAIMS"*. The word *"empanelment"* should be excluded.
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 31(1)** - *Benefits*	This clause reads *"31. (1) Every beneficiary shall be entitled to an essential healthcare benefits package prescribed by the Cabinet Secretary in consultation with the Board.* We find this clause subject to ambiguity because the bill provides no interpretation of the term *"essential healthcare"*. The term *"essential healthcare"* is applied in the definition of the terms *"primary healthcare"* and *"Universal Health Coverage"*. Our reading of this clause 31(1) suggests that it is intended is to assert that *"every beneficiary shall be entitled to primary healthcare and Universal Health Coverage.* Furthermore clause 20 which establishes the Primary Healthcare Fund states that the purpose of the fund is to *"purchase primary health care services from health facilities."* What then, is the purpose of the Social Health Insurance Fund? Will it supplement the Primary Healthcare Fund? Will SHIF be used to purchase other healthcare services beyond the scope of primary healthcare?	• We recommend that this clause be amended to read. *"31. (1) Every beneficiary shall be entitled to a healthcare benefits package prescribed by the Board in consultation with the Cabinet Secretary.* Delete the word *"essential"*. In our considered assessment the use of the word *essential* is limited to *primary healthcare* and *Universal Health Coverage,* yet the benefits to be enjoyed by beneficiaries go well beyond the scope of *primary healthcare.* • In addition, in line with our previous recommendations we recommended revising the *order of functions* in this clause. We recommend that *the Board in consultation with the Cabinet Secretary prescribes the Benefits Package.* In our view this ensures that the Board delivers its mandate.

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	The addition of the statement *"after depletion of the social health insurance cover"* clause appears to *"presciently"* craft a regulation for this Fund. This is contrary to Clause 30 which empowers the Cabinet Secretary to make such regulations. In addition, it introduces the idea of *"depletion of the social health insurance cover"* which we find contrary to the aspirations of Chapter 43 of Kenyan constitution that guarantees every Kenyan a right to the highest attainable standards of health which is the stated intent of this bill.	*"28. There is established a Fund to be known as the Emergency, Chronic and Critical Illness Fund whose purpose is to –* *(a)defray the costs of management of chronic illnesses.* *(b) to cover the costs of emergency treatment".*
PART V – THE EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND **Clause 29** *Sources of funds*	The absence of a specific appropriation for emergency, chronic and critical illnesses affecting *indigent and vulnerable persons within this Fund is a cause for concern.*	• *In addition* to the stated sources of funds include, *"monies appropriated by the National Assembly to defray the costs of management of chronic diseases and emergency treatment for indigent and vulnerable persons".*
PART V – THE EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND **Clause 30** *Implementation of Emergency, Chronic and Critical Illness Fund.*	The provision that the Cabinet Secretary may make regulations for the implementation of the Emergency, Chronic and Critical Illness Fund *weakens the Board and defeats the purpose for which the Board is established. UNLESS this provision is limited to the transitional stage before a Board is put in place.* In that case the Cabinet Secretary may direct the drafting and publication of such regulations, however subsequently this will best be carried out by the Board.	• We recommend that the clause reads. *"In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Emergency, Chronic and Critical Illness Fund".*

	b) With reference to *quality standards*, the clause erroneously refers to clause 31(2) instead of clause 33(2) c) *Unless the bill means to contract both*, the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017.	
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(4)** - *Contracting*	This clause reads as follows. *"Every contracted health care provider and healthcare facility shall be issued with such identification as may be prescribed by the Authority and such identification shall be displayed in a conspicuous position".* We have the following concerns with the clause. a) *Unless the bill means to contract both*, the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017.	• We recommend that the clause be re-written to read as follows. *"Every contracted health care facility shall be issued with such identification as may be prescribed by the Authority and such identification shall be displayed in a conspicuous position".*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(5)** - *Contracting*	This clause reads as follows. *" The Authority shall terminate the contract with any health care provider and healthcare facility where such health care provider or healthcare facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).* We have the following concerns with the clause. a) *Unless the bill means to contract both*, the interchangeable use of the terms *"health care providers* and *health care facilities* is	• We recommend that the clause be re-written to read as follows. *" The Authority shall terminate the contract with any health care facility where such health care facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).*

	facilities, negates the need for further negotiations with health facilities seeking to be contracted.	
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(2)** - *Contracting*	This clause reads as follows. *"The Authority shall publish on its website and in such other manner as the Authority may deem appropriate, the health service providers and healthcare facilities referred to in subsection (1) to be contracted health service providers for purposes of this Act.* We have the following concerns with the clause. a) Subsection (1) referred to in this clause **is deleted** in our proposal and is replaced by the amended 33(3) – *see above.* b) *Unless the bill means to contract both*, the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017.	• We recommend that this clause be re-written as follows. *"The Authority shall publish on its website and in such other manner as the Authority may deem appropriate, the contracted health care facilities for purposes of this Act.*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(3)** - *Contracting*	This clause reads as follows. *"A declaration under this section shall be subject to fulfilment by the healthcare service provider and healthcare facility of such criteria, including meeting quality standards set by the Cabinet Secretary in accordance with section 31(2).* We have the following concerns with the clause. a) The term *"declaration"* is introduced in this clause without providing an interpretation of the term in the preliminaries.	• We recommend that if the term *"declaration" must be retained* an interpretation of its meaning be provided in the preliminaries. • Otherwise, we recommend that the clause be re-written as follows. *"Contracting under this section shall be subject to fulfilment by the healthcare facility of such criteria, including meeting quality standards set by the Cabinet Secretary in accordance with section 33(2).*

PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 33(5) –** *Empanelment*	This clause reads as follows, *"A healthcare provider or healthcare facility aggrieved by the decision of the body under subsection (2) may appeal to the Dispute Resolution Committee within 30 days of the decision of the Board.* We have the following concerns. a) *Unless the bill means to contract both,* the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017. b) The clause allows the SHA Board to interloop and usurp the functions of the accrediting body by creating a Dispute Resolution Committee *within the SHA to determine empanelment disputes.*	• We recommend a clear separation of the *contracting function* of the SHA from the *empanelment function* of the accrediting body. This clause should be transferred to the *contracting section* and re-written as follows. *"A healthcare facility aggrieved by the decision of the Authority to not contract it may appeal to the Dispute Resolution Committee within 30 days of the decision of the Board.* It is our view that appeals by aggrieved health facilities on matters concerning empanelment should be addressed to the accrediting body and not the Social Health Authority.
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clause 34(1)** - *Contracting*	This clause reads as follows. *The Authority may from time to time negotiate and enter into contracts with healthcare service providers and healthcare facilities who qualify under section 31(3) for the provision of health services to the beneficiaries.* In our view this clause is superseded by the amended clause 33(3) above. In addition, our proposal in clause 32(2) that *tariffs applicable to payable benefits be prescribed following conventions and agreements negotiated with representatives of health care providers and health care*	• We recommend this clause be **deleted** in view of the amendments we have suggested to clause 33(3) which in *its proposed amended form* would read. *"Upon application by an empanelled health facility, the Authority may contract the healthcare facility for the provision of health services to the beneficiaries within thirty days of the date of the application by the health facility".*

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PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 33(3) –** *Empanelment*	This clause reads as follows, *"Upon the publication of the list of empanelled health care providers and healthcare facilities on the website, the Authority may contract the healthcare providers or healthcare facilities within thirty days of the date of the publication of the list.* We have the following concerns. a) *Unless the bill means to contract both,* the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017. b) The language of the clause suggests a process of *"batch contracting"* and *"batch empanelment"* we find this impracticable as investments in health care infrastructure proceed at different rents and batching applications will result in undue delay. c) The inclusion of the clause under an *"empanelment section"* should be revised.	• We recommend that the clause be transferred to the *"contracting section"* and be re-written as follows. *"Upon application by an empanelled health facility, the Authority may contract the healthcare facility for the provision of health services to the beneficiaries within thirty days of the date of the application by the health facility".*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 33(4) –** *Empanelment*	This clause reads as follows, *"The body under subsection (2) may, at any time, revoke any accreditation under this section".* We have the following concerns. a) This clause as it is written does not serve to delineate the functions of the SHA and its proposed relationship more clearly with the accrediting body. In fact, this clause would be better off in the Act that governs the accrediting body.	• We recommend that the clause be transferred to the *"contracting section"* and be re-written as follows. *"The Authority shall revoke any contract with a health facility whose empanelment is revoked by the accrediting body.*

	empanelled and contracted in accordance with the provisions of this Act." a) *Unless the bill means to contract both,* the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017. b) The purpose of the *Social Health Insurance Fund* established by clause 25 is *not defined.* We thus find it problematic that the payments to be made out of that fund are not linked to any stated functions. c) The inclusion of the term *"empanelled"* should be revised.	*"The Authority shall make payments out of the Funds to health care facilities that are contracted in accordance with the provisions of this Act."*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 33(2) –** *Empanelment*	This clause reads as follows, *"A health care provider or healthcare facility seeking to be empanelled under the Act shall make an application to the body responsible for accreditation for quality of care in the manner prescribed by the Cabinet Secretary".* We have the following concerns. a) *Unless the bill means to contract both,* the interchangeable use of the terms *"health care providers* and *health care facilities* is inconsistent with the definition of the two terms as found in Health Act, 2017. b) The inclusion of the clause under an *"empanelment section"* should be revised	• We recommend that the clause be transferred to the *"contracting section"* and be re-written as follows. *"A healthcare facility seeking to be contracted under the Act shall first make an application for empanelment to the body responsible for accreditation of quality of care in the manner prescribed by the Cabinet Secretary".* It is our view that this amendment corrects errors in interpretation of the terms *(health care provider vs health care facility).* It also ensures the proper separation of functions between the SHA *(contracting)* and the accrediting body *(empanelment and quality of care).*

PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 32(1), 32(2) and 32(3) –** *Tariffs*	These clauses read. *32(1) "The benefits payable under this Act shall be based on a tariff".* *32(2) "The Cabinet Secretary shall, in consultation with the Board, prescribe the tariffs applicable to the benefits package under this Act.* *32(3) The tariffs referred to under subsection (1), may be reviewed from time to time.* *A tariff* is often used in the context of *"a list of fixed prices charged by a company for services".* It appears that the intention of the bill drafters for the use of the term *"tariff"* is that *"prices will be* ***predetermined*** *and* ***fixed.***	• Since the intent of the drafters in using the word *tariff* is to *predetermine and fix prices* associated with payable benefits, we recommend that the clauses be amended to read as follows in order to create sector wide acceptance of any prescribed tariffs. *32(1) "The benefits payable under this Act shall be based on a tariff".* *32(2) "The Cabinet Secretary shall, in consultation with the Board, following conventions and agreements negotiated with representatives of health care providers and health care facilities, prescribe the tariffs applicable to the benefits package under this Act.* *32(3) The tariffs referred to under subsection (1), shall be reviewed every three years.*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 33 –** *Empanelment*	The inclusion of a section on *"empanelment"* usurps the power of another body and gives the SHA supervisory powers on a function that it is ill equipped to meet.	• We recommend that the section on *"empanelment" be excluded,* and the individual clauses be deleted or where possible be re-worded to *"contracting functions"* which is within the mandate of the SHA Board. • In our amended clause 32(2) we have used both terms *"healthcare providers* and *healthcare facilities deliberately in order to ensure adequate representation in tariff negotiations by representatives of providers and facilities as defined in Health Act, 2021*
PART VI – BENEFITS, TARRIFS, ~~EMPANELMENT~~, CONTRACTING AND CLAIMS **Clauses 33(1) –** *Empanelment*	This clause reads. *"The Authority shall make payments out of the Funds to health care providers or health care facilities that are*	• We recommend that the clause be transferred to the *"contracting section"* and be re-written as follows.

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Dr. Brian Lishenga *(Chairman)* • **Rev. Joseph Kariuki** *(Vice Chairman)* • **Mrs. Salome Mwaura** *(Secretary General)* • **Mr. David Shungu** *(Deputy Secretary General)* • **Mrs. Daisy Adalla** *(Treasurer)* • **Mrs. Pacifica Omambia** *(Deputy Treasurer)* • **Mr. Mohamud Amin** *(Ex Officio Member)* • **Ms. Cynthia Mukami** *(Administrator)*

	In our view, this clause as is constrains the future mandates of the board and *weakens the board.*	
PART II- ESTABLISHMENT OF THE SOCIAL HEALTH AUTHORITY. **Clause 7(1)(h)(i) and 7(1)(h)(iii)**	**Clause 7(1)(h)(i)** lists a representative nominated by the *Kenya Medical Association* to the Board of the Authority whereas **Clause 7(1)(h)(iii)** lists a representative of *"healthcare providers"*. The Kenya Medical Association is a national association of doctors and dentists (https://kma.co.ke/contact-us/who-we-are) as such it is representative of *"Healthcare providers"* as per the meaning assigned to the term in the Health Act, 2017. We therefore find that Clause 7(1)(h)(i) and 7(1)(h)(iii) provide too much room for misinterpretation of their intended meaning.	• We recommend that Clause 7(1)(h)(i) be retained, *however*, **Clause 7(1)(h)(iii)** be re-written to read *"private healthcare facilities"*. This change will also align with the definition assigned by the Health Act, 2017.
PART III ESTABLISHMENT OF THE PRIMARY HEALTHCARE FUND **Clause 20** – *Establishment of the Primary Healthcare Fund*	The stated aim of the Primary Healthcare Fund is *"to purchase primary healthcare services from health facilities"*. It is problematic to breath life into this objective without initially providing. (a) a definition of *essential health services* which are the backbone of primary healthcare. (b) A distinct definition of *health facilities vis a viz healthcare provider*	• As recommended earlier, *define essential health services in the context of primary healthcare* and provide *a clear distinction between healthcare provider and healthcare facility.*
PART III ESTABLISHMENT OF THE PRIMARY HEALTHCARE FUND **Clause 21** – *Sources of funds*	The absence of an appropriation specifically for Primary Healthcare for *indigent and vulnerable persons is worrying.*	• *In addition* to the stated sources of funds include, *"monies appropriated by the National Assembly for provision of Primary Health Services to indigent and vulnerable persons*



RURAL PRIVATE HOSPITALS
ASSOCIATION OF KENYA

PART III ESTABLISHMENT OF THE PRIMARY HEALTHCARE FUND **Clause 24 –** *Implementation of the Primary Healthcare Fund*	The provision that the Cabinet Secretary may make regulations for the implementation of the Primary Healthcare Fund *weakens the Board and defeats the purpose for which the Board is established. UNLESS this provision is limited to the transitional stage, before a Board is in place.* In that case the Cabinet Secretary may direct the drafting and publication of such regulations, however subsequently this will best be carried out by the Board.	• We recommend that the clause reads. *"In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Primary Healthcare Fund".*
PART IV – THE SOCIAL HEALTH INSURANCE FUND **Clause 25(1)**	There is established a Fund known as the Social Health Insurance Fund – Unlike the other two funds, *the purpose for which this fund is established is NOT provided.*	• For clarity and limit any misappropriation of monies that will be paid into SHI Fund *we recommend that the purpose(s) for which the SHIF is established be stated explicitly.*
PART IV – THE SOCIAL HEALTH INSURANCE FUND **Clause 25(1)(d) –** *Sources of Funds*	This clause states - *funds from the national government, county governments and their respective entities for the administration of the* ***compulsory public service employee's insurance benefit scheme.*** It is unclear whether such a public service employees ***insurance benefit scheme*** exists in law anywhere or it is merely a contribution like other contributions into the fund	• The reference to a *"public service employees insurance benefit scheme"* appears erroneous. Either create such a scheme explicitly with its attendant administrative and operational processes or refer to this simply as *"the contribution of public service employees to the Social Health Insurance Fund".*
PART IV – THE SOCIAL HEALTH INSURANCE FUND **Clause 26(1) –** *Registration of Kenyan citizens*	This clause reads that *"Every Kenyan shall register as be a member of the Social Health Insurance Fund".* We find the term *"member"* misleading as to the intent of this clause for the following reasons. a) The intention of the clause appears to be *"the registration of every Kenyan as a* ***contributor*** based upon the interpretation assigned to the term *contributor* in the preliminaries	• We recommend that Clause 26(1) be amended to read *"Every Kenyan shall register as a* ***contributor*** *to the Social Health Insurance Fund".* • We recommend that an interpretation of the term *"member"* be provided and that clauses then introduced to describe how Kenyans shall be *"assigned membership to the various established Funds".*

Our Ref: KAM/10/27/rl/mb/jw/AM/2023
Your Ref: NA/DDC/DC-H/2023/ (089)

22nd September 2023

NATIONAL ASSEMBLY
RECEIVED
22 SEP 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

The Clerk
National Assembly
Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

Dear Sir,

RE: REQUEST FOR EXTENSION OF TIME FOR KAM SUBMISSIONS ON THE DIGITAL HEALTH BILL 2023 AND THE SOCIAL HEALTH INSURANCE BILL 2023

Kenya Association of Manufacturers (KAM) presents her compliments on behalf of its members and appreciates your continued support.

We are in receipt of your letter dated 15th September 2023 and of Reference Number NA/DDC/DC-H/2023/ (089). This letter was an invitation to submit views on the Digital Health Bill 2023 and the Social Health Insurance Bill 2023 by 22nd September 2023.

KAM wishes to request for an extension of time by one week to the 29th of September 2023, to submit our views on the two Bills.

The purpose of this letter is to therefore request for an extension of time by one week to 29th September 2023 for formal submissions by the Kenya Association of Manufacturers on the Digital Health Bill 2023 and the Social Health Insurance Bill 2023.

We look forward to your favorable response and consideration, advance feedback can be sent through ceo@kam.co.ke or call 0722 370446.

Yours Sincerely,

Anthony Mwangi
CHIEF EXECUTIVE.

KENYA ASSOCIATION OF PRIVATE HOSPITALS

Quality Healthcare per Excellence

22nd September, 2023

The Clerk,
Departmental Committee of Health,
National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
Nairobi, Kenya.

RE: KAPH MEMORANDUM ON THE PROPOSED SOCIAL HEALTH INSURANCE BILL 2023.

The Kenya Association of Private Hospital (KAPH) is a membership organization that consists of small, medium and large privately owned health facilities in urban, peri-urban and rural settings.

Our Main Objective is;

1. To promote the delivery of quality, affordable healthcare services in Kenya.
2. To promote and uphold high standards of medical ethics and conduct.
3. To actively engage and advise the Government, statutory medical bodies, healthcare professional organizations and the general public on matters related to health and its provision.
4. To promote the welfare of our member organizations.

Kenya has a vibrant private health sector, with 51 percent of health care facilities operated by the private sector. KAPH recognizes that Social Health Insurance Bill is paramount for the achievement of UHC.

Below are the comments and recommendations of the private facilities in response to the proposal.

Sincerely,

Dr. Timothy Olweny,
Secretary General,
Kenya Association of Private Hospitals (KAPH).

Kenya Association of Private Hospitals (KAPH), Hurlingham Medicare Plaza, Argwings Kodhek Road, 5th Floor Suite 517.
P.O Box 74124 – 00200 City Square, **Nairobi**. Kenya; **Mobile**: 0768347270. **Email:** info@kaph.co.ke **Website:** www.kaph.co.ke

KENYA ASSOCIATION OF PRIVATE HOSPITALS

Quality Healthcare per Excellence

THE SOCIAL HEALTH BILL

	CLAUSE	THE ISSUE	SUGGESTIONS	JUSTIFICATION
1.	Clause 2	*"Claims office" means the claims management office established under section 35.*	Consider deleting clause 35 (2).	Consider a more elaborate definition to avoid ambiguity. The duties are outsourced so in essence the functions listed in clause 35 (2) are to be carried out by the delegated body that is not well defined
2.	Clause 2	*"Health care provider"* *"Health care services"*	Retain the definition under the Health Act, 2017 Are these phrases Interchangeable?	Creates uniformity within the law. Create a definition that is appropriate and nit ambiguous
3.	Clause 2	*"Spouse"*	Retain the meaning in the Health Act	It creates uniformity
4.	Clause 2	*"Tariff"*	Should be included in the bill.	To ensure clarity. And to ensure the public participation and stakeholder engagement.
5.	Clause 5(d)	*"Contract health care providers and healthcare facilities upon successful certification by the relevant bodies"*	*Add a section on* 1. ***the requirements for certification*** 2. ***the services to be provide by the certified providers.***	It's important that this be provided within the Bill/6Act.

Kenya Association of Private Hospitals (KAPH), Hurlingham Medicare Plaza, Argwings Kodhek Road, 5th Floor Suite 517.
P.O Box 74124 – 00200 City Square, **Nairobi**. Kenya; **Mobile**: 0768347270. **Email:** info@kaph.co.ke **Website:** www.kaph.co.ke

6.	Clause 6(2)(e)	*"Invest the funds of the Funds not immediately required for its purpose in the manner provided in the Act under section 39."*	Delete the clause	Funds of the Authority should not be invested to avoid delays in settlement of claims.
7.	Clause 7(h)(iii)	*"Health care providers"*	Replace with **consortium of heath care provider associations**	To avoid ambiguity.
8.	Clause 8(2)(d)	*Is a director, officer, employee or shareholder of an insurer, broker, insurance agent or any other member of the insurance industry, private health facility or*	Delete ***private health facility***	They are eligible under the provision of clause 7(h)(iii)
9.	Clause 14(1)(b)	*"Is an Advocate of the High Court of Kenya"*	delete	This requirement is not necessary. The CEO should have a health-related background.
10.	Clause 20	*"The is establishes a fund to be known as the primary health care fund whose objects shall be to purchase primary health care services from health facilities"*	Add a clause on **how the services shall be purchased**	It's not clear how this fund shall purchase the primary health care services.
11.	Clause 20	*As above*	Add a clause the on the **deadline for settlement of claims by the fund**.	There should be timelines within which claims are settled to allow facilities meet their obligations.
12.	Clause 24	*"The Cabinet Secretary may make regulations for the implementation of the Primary Healthcare Fund"*	Add **in consultation with stakeholders and subject to public participation**	All parties should be involved in the process.
13.	clause 25	*"There Shall Be Established A Und To Be*	Add **functions of this fund**	The functions of SHIF and those of Primary

		Known As The Social Health Insurance Fund"		Health Care Fund clause 24 are not clearly defined
14.	Clause 28	*"There shall be established a fund to be known as the Emergency, Chronical and Critical Illness Fund"*	Add **functions of this fund**	There is no clear distinction between the 3 funds and the crossover from one to the other
15.	Clause 30.	*"The Cabinet Secretary may make regulations for the implementation of the Emergency, Chronical and Critical Illness Fund"*	Add **in consultation with stakeholders and subject to public participation**	All parties should be involved in the process.
16.	Part IV clause 31 and 32	*Tariffs and packages*	Add **in consultation with stakeholders and subject to public participation**	All parties should be involved in the process. Including at time of review.
17.	Clause 33	*Empanelment*	Consider moving the provisions to regulations. Alternatively add **Qualifications of a health provider** 1. **must be accredited by the relevant accreditation body or** 2. **Must be empaneled under the provisions of this Act.** 3. **Must be contracted by the Social Health Insurance Authority**	There is over legislation and in non-orderly manner.
18.	Clause 34 (5)	*The authority shall terminate the contract with any health care*	Add the requirements into the Act/Bill	To ensure the parties are aware of their legal

		provider where such health care provider or health care facility fails to meet the criteria prescribed by the cabinet secretary under subsection (3)		obligations under the Act.
19.	Clause 34 (2)	.....	Add a provision **creating a quality of care body/board/authority**	This will create clarity on who is responsible for the Quality of Care from the outset.
20.	Clause 35 (4)	*"The Cabinet Secretary may make regulations for the implementation of the better carrying out of the provisions of this section"*	Add **in consultation with stakeholders and subject to public participation**	All parties should be involved in the process.
21.	Clause 38	*Investment of funds*	Delete	Funds of the Authority should not be invested to avoid delays in settlement of claims.
22.	First schedule 6 (1)	*One-year transition period*	----------	Proposal to form a multi-disciplinary committee including all stakeholder to oversee the transitional period to ensure historical issues are addressed.

SOCIAL PROTECTION
ACTORS FORUM

SPAF: TRV PARKWEST 11TH FLR
P.O.BOX 47114-00100
NAIROBI

14th September 2023

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P.O. Box 47842-00100.
NAIROBI.

Dear Sir,

RE: MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL 2023.

This follows your advertisement for call for memorandum from stakeholders in the local dailies on September 2023, calling for submissions on the Social Health Insurance Bill 2023. We are writing to express our concerns and provide recommendations regarding the proposed Social Health Insurance Bill currently under consideration. As concerned citizens and stakeholders in the healthcare system, we believe that this bill has the potential to significantly impact the well-being of Kenyan citizens and the effectiveness of our healthcare system.

We hereby submit our memorandum on this Bill. We are open to further discussions with Parliament on this Bill.

Thank you very much.

Judy Nyaga

National Coordinator,
Social Protection Actors Forum.
Email: mugurenyaga@gmail.com

MEMORANDUM BY SOCIAL PROTECTION ACTORS FORUM ON THE SOCIAL HEALTH INSURANCE BILL 2023.

14th September 2023.

The Social Health Insurance Bill stems from the implementation of the Universal Health Coverage in the Bottom up Economic Strategic Plan from President Ruto's Administration. It is imperative to underscore that the adoption of this proposed Bill would lead to the scrapping of the current National Hospital Insurance Fund (NHIF) Act that is currently in force. The Bill proposes the formulation of three different funds for the effective of operationalization of the Kenyan Health Care System that is the Social Health Insurance fund, the Emergency Chronic & Critical Illness Fund and the Primary Healthcare Fund.

1. Funding Mechanisms – Sections on the different funds

Lack of Specifics on funding mechanisms: The bill outlines various sources of funding for the Kenyan people including: Primary Healthcare Fund, Social Health Insurance Fund, and Emergency, Chronic and Critical Illness Fund, the bill provides that the payment tariff is to be set by the Cabinet Secretary in consultation with the board however it lacks specific details on how an individual's contribution is to be divided to cover all the three funds for their health care coverage. With the status quo of the contributions, there is possibility of the creation of ambiguity and potential challenges in implementing the funding structure effectively.

2. Means Testing Instrument Complexity – Section 27(2) (b) and (c)

The bill mentions a means testing instrument for determining contributions based on household income. However, it does not provide clear guidelines on how this instrument will be developed, applied, or updated. This lack of clarity may result in confusion and inconsistencies in determining contributions. Overall, there is need to ensure that there are elements that point out to what issues may lead to the classification of a given household to be unable to make contributions to the health insurance fund for their hospital needs.

3. Vague Penalties for Non-Payment - Section 27(6)

The bill mentions penalties for non-payment of contributions but does not specify the procedures and mechanisms for enforcing these penalties. This could lead to issues in collecting contributions and penalties effectively.

4. Ambiguity in Complaint Resolution – Section 44

As much as the bill establishes the Dispute Resolution Committee it does not specify the procedures and mechanisms for handling these complaints. Clarity in the complaint resolution process under the act is necessary to ensure transparency and fairness. The provision also needs to make sure that an appeals procedure is provided for as well to cover instances where one is not satisfied with the decision rendered by the dispute resolution committee.

Recommendations:

The Social Health Insurance Bill exhibits a progressive orientation in certain aspects of its provisions. However, it also presents notable gaps, as it delegates considerable decision-making authority on issues that can be incorporated into the bill to the Cabinet Secretary. The identified areas offer an opportunity to establish a more comprehensive and clearly defined framework, which is essential for curbing the budgetary irregularities that persist within the current funding structure.

It is imperative to underscore the importance of achieving transparency and accountability within the implementation of the bill. To this end, it is crucial that the provisions pertaining to tariffs are designed to be equitable and reasonable, taking into account the distinct economic circumstances of individuals. This will ensure that the financial burden of healthcare is distributed fairly and in accordance with the prevailing economic conditions of each citizen.

Conclusion:

We urge you to consider these recommendations seriously as you deliberate on the Social Health Insurance Bill. It is our sincere hope that with these amendments, the bill will contribute significantly to improving healthcare access and quality in Kenya.

Thank you for your attention to these important matters. We are willing to provide further information or participate in discussions regarding these concerns.

Dated: Nairobi, Thursday, 14th September 2023

KENYA UNION OF COMMERCIAL
AFFILIATED TO: CENTRAL ORGANIZATION OF TRADE UNIONS (COTU- K)
UNION NETWORK INTERNATIONAL (UNI - GENEVA)

FOOD AND ALLIED WORKERS
INTERNATIONAL UNION OF FOOD WORKERS ASSOCIATION (IUF - GENEVA)
PUBLIC SERVICE INTERNATIONAL (PSI- FRANCE)

ALL CORRESPONDENCE TO BE ADDRESSED
TO THE GENERAL SECRETARY
BONFACE M. KAVUVI

HEAD OFFICE
COMFOOD BUILDING,
KILOME ROAD.
P.O. BOX, 46818 - 00100, NAIROBI KENYA
TEL: 020-2174406, 0700-050219
E-mail: kucfaw16@gmail.com,
info@kucfaw.co.ke

NATIONAL CHAIRMAN
ABDULLAHI KIPTONUI
TREASURER GENERAL
REBECCA NYATHOGORA, HSC

Our Ref. No.:_____

N/21/2023/09

20th September, 2023

The Office of the Clerk
National Assembly
First Floor, Main Parliament Buildings
P.O Box 41842-00100,
NAIROBI

Dear Sir,

RE: MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL (N.A BILL NO.58 OF 2023)

Following your letter dated **15th September, 2023** and arising from **Article 118 (1) b** of the **Constitution of Kenya 2010** and **Standing Order No.127 (3)** of the National Assembly, you invited comments from relevant Stakeholders to submit Memoranda on the above Bill. Our Memorandum for your study and consideration for adoption to review some provisions in the Bill are set as hereunder.

(I) BACKGROUND

1. Kenya Union of Commercial, Food & Allied Workers is a Trade Union registered as such under the laws of Kenya to represent employees in statutory Boards, amongst others.

2. This Union and the National Health Insurance Fund have a Recognition Agreement pursuant to which several Collective Bargaining Agreements regulating terms and conditions of service for the said Unionisable employees have been concluded, the last such Collective Bargaining Agreement having come into effect on **1st July, 2021** and is now under review.

3. The formal relationship between this Union and NHIF places us as a major Stakeholder on issues to do with the National Health Insurance and more particularly, issues which concern the present Bill under consideration by the Departmental Committee on Health, which in our view, need to be revisited and reviewed to ensure the success and sustainability of the Social Health Insurance.

4. This Union will seek critical review of some clauses in the Bill with a view to making amendments and/or revisions so as to create a harmonized Act that will drive the implementation of the Social Health Insurance without any hitches.

1ST DEPUTY GENERAL SECRETARY
ANDREW K. M'MUKHIRI
2ND DEPUTY GENERAL SECRETARY
NATIONAL ORGANIZING SECRETARY
MIKE O. ORANGA
ASSISTANT GENERAL SECRETARY
PETER NGUGI
HELINA MACHARIA
DICKENS ATELA
JACKSON KYUNUVE
ASSISTANT NATIONAL ORGANIZING SECRETARY
BENSON D. LUVAVI

(II) **PROPOSED AMMENDMENTS**

(a) **Section 7** of **Part II** of the proposed Bill cover the composition of the Board of the Social Health Authority. It provides as follows:-

(1) *The Authority shall be managed by a Board which shall consist of: -*

a) a non-executive Chairperson, who shall be appointed by the President;

b) The Principal Secretary in the Ministry for the time being responsible for matters relating to health or a designated representative;

c) The Principal Secretary in the Ministry for the time being responsible for matters relating to finance or a designated representative

d) The Director-General for Health

e) The Attorney-General or a designated representative;

f) One person, not being a Governor, nominated by the Council of Governors with knowledge in field of finance, accounting, health economics, law or business and management.

g) One person, not being a public officer with proven experience in matters of health insurance, health financing, financial management, health economics, healthcare administration.

h) Four persons, not being public officers, nominated by: -

i. The Kenya Medical Association
ii. The informal sector association;
iii. Health care providers; and
iv. The Central Organization of Trade Unions Kenya

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

Proposed Amendment

(i) Whereas workers shall be represented by a nominee of the Central organization of Trade Unions representing the interest of workers who are contributors to the Authority, we propose that a nominee of the **Federation of Kenya Employers be included in the Board** as they play a critical role of ensuring that the deduction from employees are remitted to the Insurance. The Bill as drafted leaves them out.

(b) **Section 8 of the proposed Bill is drafted as follows: -**

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

(a) Is a citizen of Kenya;
(b) Holds a minimum of a bachelor's degree from a university recognized in Kenya
(c) has knowledge and experience of not less than ten years in data sciences, information technology, health governance, health administration, health policy, finance or economies, five of which shall be at managerial level; and

(d) Meets the requirements of Chapter six of the Constitution

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

a) Has at any time been convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
b) is declared to be of unsound mind'
c) is an undischarged bankrupt
d) Is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry, private health facility; or
e) Has been found in accordance with any law to have misused or abused a state office or public office or in a way to have contravened the provisions of Chapter six of the Constitution.

8 *(b) is declared to be of unsound mind*
(c) is an undischarged bankrupt.

Proposed Amendment

(i) The Union proposes an amendment to **Section 8 (b)** by deleted the requirement for a **degree** for a person to be the Chairperson or member of the Board.

(ii) Clause 8 (1) (c) be amended to include areas of specialization to include **Labour Relations** and **Human Resource Practice.**

On transitional provisions – First Schedule

(c) **Section 2 (1)** of the Transitional Provision of the 1st Schedule is drafted as follows: -

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

Proposed amendment

(i) The Union proposes an addition to clause 2(1) to include liabilities as well. The Authority cannot take over funds, assets and other property and leave out liabilities of fund.

(d) **Section 2(2)** of the Transitional Provisions under the First Schedule is drafted as follow:-

(ii) 2(2) Despite subparagraph (1) the Authority may within one year from the appointed day dispose any of the assets vested in the Authority under subparagraph (1)

Proposed amendment

(i) This Union proposes to have **Section 2 (2)** of the Transitional Provisions under the first Schedule **deleted.** This will allow the Authority to retain such assets and other property for the use and benefit of the Authority and the contributors and not to have them sold.

(e) Section 6 (2) of the Transitional Provision of the First Schedule is drafted as follows: -

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

Proposed Amendment

(i) This Union proposes that **upon operationalization of the Authority, all Staff of the Fund on the appointed date shall be deemed to have automatically transited and deemed to be employees of the Authority.**

(f) Section 6(3) of the Transitional provisions of the first schedule is drafted as follows: -

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

(i) This Union proposes that this **Section be amended to provide that employees of the Fund having transited to the Authority shall NOT be required to be subjected to a fresh recruitment exercise.**

(g) Section 6 (4) of the Transitional Provisions of the first Schedule is drafted as follows:-

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

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

(i) This Union proposes that **clause 4 (b)** be **deleted** to ensure that all employees of the Fund are absorbed by the Authority and should not be forced into retirement or redeployment within the Public Service where they have no experience and expertise.

(h) Add **clause 8** to the Transitional Provisions of the First Schedule as follows: -

*8. **Agreements, Deeds e.tc.***

Every agreement, deed, bond or other instrument including a Recognition and a Collective Bargaining agreement which a former institution was a party or which affected the former institution and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned shall have effect as if the Authority or the successor body were a party thereto or affected thereby instead of the former institution and as if for every reference (whether express or implied) therein to the former institution there were substituted in respect of anything done on or after the appointed day

(i) Add: Clause 9: to the transitional provisions under the first schedule as follows:-

(i) The Recognition and Collective Bargaining Agreements covering employees of the Fund and their terms and conditions of service including Pension and Medical Schemes shall be taken over by the Authority and revised from time to time as appropriate.

(ii) This will guarantee workers the enjoyment of their negotiated terms and conditions of service.

(III) ARGUMENTS SUPPORTING THE PROPOSED AMENDMENTS

5. The proposed Bill should not subject the employees of NHIF to: -

   (i) Unemployment as it proposes no guarantee for their continued employment.

   (ii) Hardship as the Bill proposes that their terms and conditions of service shall be determined afresh by the Authority regardless of what they have negotiated over the years.

   (iii) Uncertainty as the Bill does not propose any guarantee on their Pension Scheme, Medical Benefits and other terms.

   (iv) Like any other property, employees hold their jobs dearly and same should **NOT** be taken away from them by the creation of this Authority.

6. The proposed Bill appear to set a platform to terminate the services of existing employees of the Fund and to create employment for others as a replacement. The Constitution of Kenya 2010 and indeed the Employment Act, 2007 outlaw discrimination of any nature. This Bill attempts to subject the Funds' employees to discrimination on matters to do with their continued employment.

7. The right to of fair Labour practices and the right to fair administrative action are guaranteed under **Article 41 & 47** of the **Constitution of Kenya 2010**. The Bill as is, subjects employees to unfair administrative action.

8. The drafters of the Bill did not consider the effect of their action on the present employees of the Fund who have various Financial Commitments with different Institutions which are likely to be greatly disturbed should their services be terminated.

9. Finally, the success of the Social Health Insurance shall largely depend on qualified and experienced employees. It is the view of this Union that the current employees should be part and parcel of the improvements and not otherwise.

REASONS WHEREFORE, The Union seeks that the proposed amendments herein above be accepted and adopted by the Committee to cause amendments to the Bill.

Thanking you

Yours Faithfully,



Boniface M. Kavuvi
GENERAL SECRETARY
Cc.

- The Office of the Clerk,
  The Senate
  Email: clerk.senate@parliament.go.ke

- Cabinet Secretary
  Ministry Of Health
  P. O. Box 30016-00100
  NAIROBI

- Cabinet Sectary
  Ministry of Labour & Social Protection
  P. O. Box 40326
  NAIROBI

- The Secretary-General
  COTU (K)
  P.O Box 13000-00100,
  NAIROBI

- The Executive Director,
  Federation of Kenya Employers
  P.O Box 48311-00100,
  NAIROBI

- Ag. Chief Executive Officer
  National Health Insurance Fund
  P.O Box 30195-00100,
  NAIROBI

- Chief shopsteward
  National Health Insurance Fund
  P.O Box 30195-00100,
  NAIROBI

22nd September 2023

Memoranda on Social Health Insurance Bill 2023

To: **Mr. Samuel Njoroge,**
Clerk of the National Assembly,
Parliament Buildings,
P. O. Box 41842 - 00100, Nairobi.

cc: **Hon. (Dr.) Pukose Robert, MP,**
Chairperson, Departmental Committee on Health, National Assembly

About the Kenyan Section of the International Commission of Jurists (ICJ Kenya)

ICJ Kenya is a non-governmental, non-profit, member-based organization registered as a society. ICJ Kenya's vision is a just, inclusive, and equitable society where everyone lives in dignity. We aim to promote human rights, democratic governance, justice, and the rule of law in Africa.

This memorandum is submitted following a public notice by the National Assembly Departmental Committee on Health inviting members of the public to submit memorandum on the Social Health Insurance Bill 2023. In the exercise of the right to participate in legislative process, ICJ Kenya makes the following submissions to the Social Health Insurance Bill 2023.

Clause	Issue of Concern	Justification	Recommendation
Clause 2	The definition of vulnerable person should align with the Constitution of Kenya Article 21 (3) which provides that, *"All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities."*	The lack of a comprehensive social health insurance scheme in Kenya has led to the exclusion of members of marginalized, vulnerable, and disadvantaged groups such as women, youth and other key populations from accessing quality healthcare services and remains a significant threat to the goal of Universal Health Coverage by 2030. Social Health Insurance law should protect, respect, promote and fulfil the rights of all vulnerable groups as defined in Article 21 of the	Include, "vulnerable groups as defined in Article 21 of the Constitution of Kenya," in the definition of the vulnerable persons,

		Constitution of Kenya in all matters regarding health.[1]	
Clause 21	The Bill excludes, as one of the Primary Healthcare Fund sources, "monies from County Governments as may be appropriated by County Assemblies."	County Governments have a duty under the Fourth Schedule Part 2 of the Constitution to promote primary health care.	Include, "any monies from County Governments as may be appropriated by County Assemblies," as one of the Primary Healthcare Fund sources.
Clause 25 (1)	The Bill excludes, as one of the Social Health Insurance Funds sources, "monies from County Governments as may be appropriated by County Assemblies."	Health is a devolved function and the Fourth Schedule Part 2 of the Constitution assigns County Governments functions and powers over county health services including county health facilities, pharmacies and ambulances.	Include, "any monies from County Governments as may be appropriated by County Assemblies," as one of the Social Health Insurance Fund sources.
	The Bill excludes, as one of the Social Health Insurance Funds sources, "any interest or return on investment made by the Fund."	A social insurance provider does not have a profitmaking objective; therefore, all the revenue it raises, even from investments, should benefit its members.[2]	Include as one of the Social Health Insurance Funds sources, "any interest or return on investment made by the Social Health Insurance Fund."
Clause 42	The Bill excludes the requirement for the publishing of the Social Health Authority's audited accounts.	The Constitution Article 232 (1) provides for transparency and provision to the public of timely, accurate information among the values and principles of public service. The Social Health Authority's functions include managing Funds established under the Act and receiving all contributions and other payments required by the Act. Therefore, the Social Health Authority should be	Introduce sub clause 42 (4) stating that, "Within three months following the completion of the audit process by the Auditor General, the Board of the Authority shall cause the audited accounts of the Funds to be published in at least two daily newspapers widely circulated throughout Kenya and also on the Social Health Authority's website."

[1] ICJ Kenya, "A Review of the Legal and Policy Frameworks on the Right to Health in Kenya," https://icj-kenya.org/wp-content/uploads/2023/04/Health-Rights-Review-Report.pdf

[2] International Budget Partnership Kenya, Opportunities and Gaps for Kenya's NHIF,https://internationalbudget.org/wp-content/uploads/Opportunities-and-Gaps-for-Kenyas-NHIF.pdf

		transparent and accountable for the resources collected from different sources and how much of that money is paid to benefits and to whom. Transparency and accountability of the Funds the Social Health Authority handle, with such an important role in health sector financing are fundamental to its effectiveness and efficiency.[3]	
Clause 43	The Bill excludes the requirement for the Board to provide important financial and non-financial information on the Funds to the public such as annual reports and financial statements despite the fact that the Social Health Authority will be collecting funds from the public.	The Board must publish and publicize the Social Health Authority annual reports and financial statements on its website to enhance accountability and build the public's confidence that healthcare-related financing is going to be handled by a trustworthy agency. Social Health Insurance will be the locus for financing health care in Kenya, which requires the institution to be transparent and accountable.[4]	Introduce subclause 43 (3), providing that, "The Board will publish and publicize the the Social Health Authority annual report transmitted to Parliament under subclause 43 (2).
Clause 47	The Bill does not prescribe standards and structures for public participation and stakeholder engagement. It merely states that the Cabinet Secretary shall prescribe regulations on the modalities of engaging stakeholders at the national and county level.	The best practice is for an Act of Parliament to establish structures to facilitate public participation and stakeholder engagement in social health insurance decision-making, for example, a Public Participation and Stakeholder Engagement Committee. The Cabinet Secretary should then prescribe regulations to operationalize the structure	Introduce a sub-clause establishing a structure for public participation and stakeholder engagement as follows: "The Cabinet Secretary, by notice in the Gazette, will appoint a Public Participation and Stakeholder Engagement Committee comprising of representatives from both national and county governments, statutory legal

[3] International Budget Partnership Kenya, Opportunities and Gaps for Kenya's NHIF,https://internationalbudget.org/wp-content/uploads/Opportunities-and-Gaps-for-Kenyas-NHIF.pdf

[4] International Budget Partnership Kenya, Opportunities and Gaps for Kenya's NHIF, https://internationalbudget.org/wp-content/uploads/Opportunities-and-Gaps-for-Kenyas-NHIF.pdf

		for public participation established by the Act of Parliament. If Clause 47 is left as it is without establishing a structure for public participation and stakeholder engagement it may undermine meaningful public participation and deny stakeholders opportunity to influence decision making by the Authority.	and health professions councils, labour unions, civil society organizations, associations of health professionals. The Cabinet Secretary, in making the appointments under this section, shall ensure equal opportunities for persons with disabilities and other marginalized groups and that no more than two-thirds of the members are of the same gender.
	The Bill does not provide for access to information which is crucial for meaningful stakeholder engagement.	The Bill should include strong provisions on access to financial and non-financial information on social health insurance funding, processes and programmes. It should also provide simple procedures for obtaining such information from the Social Health Authority. The primary role of a social insurance fund is to collect and pool resources that can purchase health care for the widest section of the population. Therefore, the Bill should include an obligation for the Social Health Authority to provide details that can help the public and oversight institutions consistently understand its performance across revenue, membership, and spending on benefits.[5] Additionally, the information provided must be timely and accurate,	Introduce subclause 47 (3) to provide as follows: "The Authority shall keep proper records on social health insurance funding, processes and programmes. A person may have access to the records kept by the Authority under this Act. A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records."

[5] International Budget Partnership Kenya, Opportunities and Gaps for Kenya's NHIF, https //internationalbudget org/wp-content/uploads/Opportunities-and-Gaps-for-Kenyas-NHIF.pdf

		including details of money received and how it is spent to the public for scrutiny to enhance citizen oversight and meaningful public participation in decision-making on social health insurance issues.	

General Comments and Recommendations

1. **Public participation and access to information**: Although the Bill provides for public participation and stakeholder engagement by the Social Health Authority in carrying out its functions, its does not establish structures to facilitate public participation. Further, it does not provide for access to information which is crucial for meaningful public participation.

2. **Rights of beneficiaries of the Social Health Insurance Fund:** The Bill does not include the rights of beneficiaries of the Social Health Insurance Fund. We recommend the inclusion of a clause providing for the rights of beneficiaries of the Social Health Insurance Fund, including, among others, the right to receive quality healthcare services free of charge from certified and accredited healthcare service providers and health establishments.

3. **Intergovernmental relations:** The Bill does not provide an adequate framework for improving intergovernmental relations between the national and county levels of government on social health insurance fund issues. Health is a devolved function and by design, the Social Health Insurance Fund should be established as an intergovernmental agency to ensure meaningful consultation and cooperation between the two levels of government. This is because implementing universal health coverage is more complex in a decentralized system like Kenya, where more processes and actors are involved.[6]

For further information please contact us via
Email: info@icj-kenya.org
Phone: +254-20-2084836/8 | +254 720 491549

[6] International Budget Partnership Kenya, Opportunities and Gaps for Kenya's NHIF, https://internationalbudget.org/wp-content/uploads/Opportunities-and-Gaps-for-Kenyas-NHIF.pdf

Cofpak
Confraternity of Patients (K)

CONFRATERNITY OF PATIENTS KENYA (COFPAK)

P. O. Box 2395 - 00200
LOIPI Building, 3rd Floor Lungalunga Road
Nairobi, Kenya

Email: info@cofpak.org
Tel: +254 712369537
Web: www.cofpak.org

Ref: |NA|DDC|DC-H|2023 (088)

Clerk of the National Assembly,
P. O. Box 41842– 00100,
Main Parliament Buildings,
Nairobi, Kenya.

14th|09|2023.

Dear Sir,

RE: MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL, 2023

The Confraternity of Patients Kenya (COFPAK) is a non-governmental, nonprofit, organization that represents, safeguards, and promotes the interests of healthcare services seekers at all levels. COFPAK provides the platform to ensure that the patients have an active role to play in all the stages of healthcare including planning, provision, monitoring, research, and evaluation of health services.

COFPAK has reviewed and interrogated the Social Health Insurance Bill, 2023. It submits this memorandum in line with its mandate. Further, it responds to the Public Notice, call for comments, and invitation for public participation. In this memorandum, COFPAK highlights select views of the proposals included in the Bill.

Section of the Bill	View/Proposal	Justification
1. Definition: "Chronic illness" means a condition that lasts one year or more and require ongoing medical attention or limit activities of daily living or both;	"Chronic illness" means a condition that lasts *Six months* or more and requires ongoing medical attention or limit activities of daily living or both;	For example, Tuberculosis is a chronic disease caused by Bacillus Mycobacterium, this condition may take between 6 months to 12 months of treatment. In the proposed Bills going by the durational classification of Chronic illness, the eligible population may be disadvantaged. A need to include 6 months and above of treatment and follow-up.
3. The objects of this Act shall be to—	To promote strategic purchasing of healthcare Services *and commodities*	Considering to add the word commodities sends a strong sense of inclusion

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Confraternity of Patients (K)

CONFRATERNITY OF PATIENTS KENYA (COFPAK)

P. O. Box 2395 - 00200
LOIPI Building, 3rd Floor Lungalunga Road
Nairobi, Kenya

Email: info@cofpak.org
Tel: +254 712369537
Web: www.cofpak.org

d) Promote strategic purchasing of healthcare services.		beyond the services offered by HCPs.
7. (1) The Authority shall be managed by a Board which shall consist of— (h) four persons, not being public officers, nominated by—	Include an organization that champions patient safety and well-being at all levels of healthcare. In this case The Confraternity of Patients Kenya (COFPAK)	As in the proposed Bill, the constitution of the Board lacks representation of patient organizations. COFPAK has a strong link with the public healthcare needs to promote bottom-up, people-centered healthcare in Kenya towards attaining Universal Health Coverage and enhancing public faith.
45. **Dispute Resolution Committee** (b) four other persons who shall be appointed by the Cabinet Secretary and shall possess knowledge and experience in health, health economics, business administration, insurance and who are not in the employment of the Government or the Board and are not health service providers.	Inclusion of Patients Organization (COFPAK) to represent the patient's views in the Dispute Resolution Committee,	In consideration of this, the views and perspectives of the healthcare service seekers are represented in the DRC. Nothing about patients without their representatives.

The Confraternity of Patients Kenya (COFPAK) is delighted to contribute to delivering a people-centered Social Health Insurance, taking cognizant of the needs of the majority at the bottom of the pyramid.

Sincerely

Peter O. Omollo,
pomollo@cofpak.org
0720390444
For and on behalf of
The Confraternity of Patients Kenya (COFPAK).

NGEC
National Gender and Equality Commission

National Gender and Equality Commission
1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi
P.O Box 27512-00506 Nairobi, Kenya
Landline: +254(020) 3213100
Mobile: +254(020) 375100
Toll Free :0800 720187
www.ngeckenya.org
Email:info@ngeckenya.org

When replying please quote

Ref: No: NGEC/CS/NAS/005/VOL.III (120)

21st September 2023

NATIONAL GENDER AND EQUALITY COMMISSION

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

cna@parliament.go.ke

Dear *Mr. Njoroge,*

SUBMISSION OF MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL 2023 (NATIONAL ASSEMBLY BILL NO 58 OF 2023)

Reference is made to your call for the submission of memoranda on the Social Health Insurance Bill 2023.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, '*monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions*';

In line with its mandate, the Commission submits the attached memorandum analyzing the proposed Bill and making proposals where necessary.

Yours *sincerely,*

Betty Sungura, **MBS**
COMMISSION SECRETARY/ CEO

Encl.

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P O Box 41842, NAIROBI

"Gender Equality and Non-Discrimination"



MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL 2023

S/NO	PROVISION	PROPOSAL FOR AMENDMENTS	RATIONALE/JUSTIFICATION
1.	**Long Title** AN ACT of Parliament to establish the framework for the management of social health insurance; to provide for the establishment of the Social Health Authority; to give effect to Article 43(1)(a) of the Constitution; and for connected purposes	Propose to amend the long title as follows- Amend by inserting after the word "Authority" the following "To establish the Primary Healthcare Fund; to establish the Social Health Insurance Fund; to establish the Emergency, Chronic and Critical Illness Fund;"	To be explicit.
2.	**Interpretations** New interpretations	Drafter to interpret the meaning of the following terms-; a. Purchase primary healthcare services from health facilities" means "....." b. To amend by interpreting the term 'Health Facility" as follows-; "health facility" means the whole or part of a public or private institution, building or	The term is applied in clause 20 but it is not clear to a lay mind. The term is applied 6 times in the proposed bill but is not interpreted.

	(e) the Attorney-General or a designated representative; (f) one person, not being a Governor, nominated by the Council of Governors with knowledge in the field of finance, accounting, health economics, law or business and management; (g) one person, not being a public officer with proven experience in matters of health insurance, health financing, financial management, health economics, healthcare administration. (h) four persons, not being public officers, nominated by— (i) the Kenya Medical Association; (ii) the informal sector association; (iii) health care providers; and (iv) the Central Organization of Trade Unions- Kenya. (i) the Chief Executive Officer of the Authority, who shall be an ex-officio member of the Board. (2) ..... (3)	iii. Deleting (e) without replacement iv. Deleting (g) without replacement	We propose for the Attorney General to be a co-opted member. The qualifications of the nominee are similar to the ones of the Chairperson as enumerated in clause 8(1). To align with Articles 27(8) and 54(2) of the constitution.

7.	**Clause 24- implementation of the Primary Health care fund** The Cabinet Secretary may make regulations for the implementation of the Primary Healthcare Fund	Amend by substituting the term "may" with "shall"	The term "may" is optional, however "shall" is mandatory and places an obligation on the duty bearer.
8.	**Clause 26- Registration** 26(5) Any person who is registerable as a member under this Act shall produce proof of registration with the Social Health Insurance Fund as a precondition of dealing with or accessing public services from the national government, county government or a national or county government entities.	Amend by deleting subclause 26(5) without any replacement	The provisions therein offend the provisions of Article 12 (1) (a) of the Constitution on entitlement of citizens as follows-; 12 (1) Every citizen is entitled to— (a) the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution
9.	**Clause 30-** Implementation of Emergency, Chronic and Critical Illness Fund The Cabinet Secretary may make regulations for the implementation of the Emergency, Chronic and Critical illness fund	Amend by substituting the term "May" with "shall"	'shall" imposes an obligation on the duty bearer.
10.	**New proposed clause -clause 30A**	Appointment of Fund Managers There shall be Fund Managers of the Funds who shall be competitively recruited and appointed by the Board.	Clause 6(e)- e) investment of the funds of the funds is not immediately required for its purposes in the manner provided in this Act under section 39.
11.	**Clause 46- Vacancy in the Dispute Resolution Committee**	Amend by deleting 46(c) without replacement	The provision is discriminatory and prejudicial to persons with various categories of disabilities.

Health NGOs Network

Memorandum on the Social Health Insurance Bill, 2023

Presented to:
Email: cna@parliament.go.ke

Date: 22/09/2023

		vital role in ensuring transparency, accountability, and representation in policy formulation and implementation, especially in matters related to healthcare. Health CSOs are not only employers, but represent the voices, needs and desires of the community on matters health. Without such representation communities remain voiceless in contravention of the constitution of Kenya.	Add a clause (j) two representatives from health Civil Society Organizations (CSOs) and (k) Youth-led & serving health Civil Society Organizations (CSOs)
Section 14	Qualification for appointment as a Chief Executive Officer.	A bare minimum of a degree for a CEO is not a qualifiable standard for a holder of this position.	Replace 'bachelors degree to 'master's' degree' which is a most suitable requirement for a CEO position
Section 16	Corporation Secretary.	A bare minimum of a degree for a CEO is not a qualifiable standard for a holder of this position.	Replace 'bachelors degree to 'master's' degree in law' which is a most suitable requirement for this position
Section 20	Establishment of the Afya Bora Fund.	The outlined purpose of this fund *'purchase primary health care services from health facilities'* is a duplicity of the objects of the 'Primary Health Care Fund under 23(2a) that reads *be a strategic purchaser of primary health care services at the primary health care levels within the primary healthcare networks.* This is not efficient utilization of resources in this current phase where Kenya is facing out from donor funding for health towards domestic financial allocation to health. In Kenya health services at community level are implemented by both the Ministry of Health and CSOs including community based and community led organizations. These organizations play a key role in Primary Health care. Kenya is in the transition process from donor funding which poses a challenge to	Review the purpose of this fund to clearly articulate what its purpose is. An addition of a section on the objects and purpose is of the fund recommended.

General Comments and Recommendations

1. **Robust Control Mechanisms:** The bill should incorporate clear control mechanisms to oversee the funding and operation of critical components such as the means testing instrument. Establish an oversight committee to conduct regular audits to ensure transparency, accountability, and efficient resource allocation and utilization.

2. **Collaboration with Civil Society Organizations (CSOs):** Incorporate CSOs into the governance structure to ensure accountability, representation, and diverse perspectives in healthcare policy formulation and implementation.

3. **Restore Confidence in Operationalization**: Outline a mechanism in the bill to actively engage with and inform Kenyan citizens about the operationalization of the social insurance bill, particularly regarding the increasing contributions.

4. **Ensure Ample Public Participation**: Allocate sufficient time for public participation at the county level by sharing a well-defined schedule of time and dates for public consultations. This step is crucial to involve communities in shaping the bill, gather diverse perspectives, and ensure that the bills align with the specific needs and concerns of different regions within Kenya. We express our discontentment particularly in how public participation for this bill was rushed.

5. **Generation of a report after receiving memorandum;** We ask of your office to prepare a report and share it back to the contributing partners to inform of which recommendations were considered, which ones were not considered and why. This is a surety that public participation is given the seriousness it deserves in policy development.

Conclusion

We hope that you will review, address and include our concerns raised in this memo.

Yours faithfully,

mkubaale

Dr. Margaret Lubaale

Executive Director, ED
Health NGO's Network (HENNET)
AMREF KCO, along Wilson Airport, Off Langata Road
Address: P.O Box 30125-00100, Nairobi, Kenya
Email: director@hennet.or.ke | admin@hennet.or.ke | programs@hennet.or.ke
Phone:+254113770665|+254796785973
www.hennet.or.ke | Twitter@HennetKenya| Facebook:@Hennet17.Kenya

This memo is submitted on behalf of Registered HENNET Member Organizations listed below;

79	Movement of Men against AIDS in Kenya (MMAAK)
80	NEPHAK- National Empowerment Network of People Living with HIV/AIDS in Kenya.
81	Next-Gen Lawyers
82	NOPE - National Organisation of peer Educators
83	Nyamira post HIV Test CBO (NYAPOHTE)
84	Nyanza Reproductive Health Society
85	Operation Eyesight
86	Options Consultancy Services Kenya Limited
87	Organization of African Youth (OAY)
88	PATH
89	Pathfinder International
90	Peoples Health Movement
91	Provide International
92	PS Kenya
93	Ripples International
94	Rural AIDS Prevention and development Organisation (RAPADO)
95	Samaritans Purse International Relief
96	Save The Children
97	Sight Savers International
98	Smile Train
99	SOS Children's Villages
100	SOWED Kenya
101	St. Hemmingsway CBO
102	SWAP- Safe Water and AIDS project
103	The Youth Cafe
104	VSO K
105	Waci Health
106	WEMIHS- Wem Intergrated Health Services
107	White Ribbon Alliance Kenya
108	Women fighting Aids in Kenya
109	World Friends
110	World Neighbours
111	World Relief
112	World Vision

Social

Memorandum on the Social Health Insurance Fund Bill 2023

Presented to The Clerk of The National Assembly,

P.O. Box 41842-00100, Nairobi Email: cna@parliament.go.ke

20 September 2023

We the undersigned Civil Society Organisations working on health, governance and human rights have analysed the above proposed law and make our recommendation pursuant to the notice issued by the Clerk of the National Assembly, on the 15th of September 2023.

We submit as follows and ask for reconsideration of the following clauses.

Clause	Issues of concern	Justification	Recommendation
Clause 2 interpretations	The word *contributor* read alone could include the government.	The government for legal purposes is also a person, in this case it should not be construed as a beneficiary as it is also listed a liable contributor in Clause 27	add "Individual" to read individual contributor
Clause 2	The definition of "Vulnerable person" should not only be subject to identification by the "*the relevant government body*"	Left as it is, there is a risk of discriminating upon individuals not registered under other programs for vulnerable persons e.g. Inua Jamii	Delete *"and who has been identified as such by the relevant government body* "to avoid discrimination of those who may be missed from registration
Clause 2	The definition of "emergency treatment" should include emergency medical services such as transport of the ill or injured	Emergency medical services include transport of the ill or injured by ambulance or air medical service.	Include the words, "transport of the ill or injured" in the definition of emergency medical treatment.
Clause 7 Board of the Authority	There is no representation of Civil Society Organisations (CSOs)	CSOs have in-depth knowledge of community needs including the marginalized communities.	Provide a nominee of the CSOs by national health NGOs Network or

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		Their inclusion will add value in the different intersectional perspectives to be considered during implementation	Have at least one representative from Civil Society Organisations.
Clause 11 Delegation by the Board	The clause indicates that the Board can delegate any of powers or functions under the Act but the same have not been expressly provided for	The delegation clause does not make sense without express stipulation of the powers and functions of the Board.	Include two clauses that define 1. the powers of the Board and 2. Functions of the Board.
Clause 17 Staff	The appointment of staff by the Board	The appointments will leave room for bias and possible discrimination.	All staff need to be competitively and openly recruited.
Clause 20 Establishment of Afya Bora Fund	This Fund has similar purposes to the Primary Health care Fund established under Primary Health Care Bill 2023	There is clear duplicity in the funds.	We recommend abolition of the Primary Health Care Fund to avoid duplicity.
Clause 21 Sources of funds	The clause indicates that one source of funds will be monies appropriated by the National Assembly, yet the facilities offering these services are under the mandate of County governments.	There is an interference in health service provision as a devolved function.	There is need for revision of the clause to include county governments in the sourcing of the funds.
Clause 26 (5)	The precondition of registration under this law in order to access national, county or other government services	This has the potential to limit other fundamental rights as provided in the constitution including access to other socio-economic rights	Delete the precondition.

Clause 27 (2) contributions	salaried households contribute monthly and non-salaried to contribute annually.	Having salaried households contribute monthly and non-salaried households, annually entrenches inequality. Most small-scale traders may not be able to afford the annual contributions at once.	Revise to have contributions to be remitted monthly for all households.
Clause 27 (3)	The clause is a repetition of the frequency of contributions	unnecessary clause	Delete clause 27 (3)
Clause 27 (7)	The resumption of healthcare services provided in the Act subject to the full payment of contributions.	The clause defeats the purpose of emergency services, which is to first, save life.	Exempt emergency services from this precondition
Clause 33 (4)	The body under subsection (2) may, at any time, revoke any accreditation under this section.	Revocation of accreditation at any time without any written notice/justification opens a window for abuse of power by the office holder.	Add a clause or revise the clause to include a written justification of why the revocation will be done.
Clause 35 Claims Management	Clause 2 typed as sub clause 3. The regulations to be made by the Cabinet Secretary for health	The regulations ought to be made in consultation with the Authority.	Revise clause 4 to read the Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section in consultation with the Authority.
Clause 41 Expenses of administering the funds	Expenditure to be incurred by the Board from the Authority funds in performance of the Boards powers and functions	. The powers and functions are not expressly provided for in the Act. There is ambiguity.	Expressly provide for the functions and powers of the Board.

General comments and recommendations on the Bill

1. The Bill needs to specify the functions and powers of the Board expressly to avoid ambiguity.
2. Afya Bora Fund and Primary Health Care Fund (in the Primary Health Care Bill 2023). We recommend deleting the Primary Health Care Fund to avoid duplicity.
3. We recommend that all regulations prescribed under this Bill be made in consultation with the Social Health Insurance Authority and subjected to public participation.

Submitted by the following organisations:

1. Amnesty International Kenya
2. Transparency International Kenya
3. Organization of African Youth-Kenya
4. ICJ Kenya
5. Kenya Human Rights Commission
6. Remusi Housing Cooperative Society Ltd
7. People's Health Movement
8. Young Professionals for Development
9. Kenya AIDS NGOs Consortium (KANCO)
10. Institute of Public Finance (IPF)
11. Scaling Up Nutrition Civil Society Alliance

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/40 Vol.87(113)

NATIONAL ASSEMBLY
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21 SEP 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

20th September 2023

Mr. Samuel Njoroge
The Clerk of the National Assembly
Parliament Buildings
Nairobi

Dear Mr. Njoroge

CONSIDERATION OF THE DIGITAL HEALTH BILL (N.A BILL NO. 57 OF 2023) AND THE SOCIAL HEALTH INSURANCE BILL (N.A BILL NO. 58 OF 2023)

The above matter refers.

Reference is made to the above matter and your letter dated **15th September 2023** under **Ref NA/DDC/DC-H/2023(088)** requesting for memoranda on the Digital Health Bill, 2023 and the Social Health Insurance Bill, 2023.

1. **Social Insurance Bill, 2023**
   The Council of Governors has reviewed the **Social Health Insurance Bill**, 2024. Our review of the Bill has identified several strengths and areas of concern for consideration before the Bill is passed into law.

2. **Digital Health Bill, 2023**
   Regarding the **Digital Health Bill**, we wish to express our support for the same recognizing its potential to revolutionize healthcare delivery and improve patient outcomes through the integration of digital technologies. The Ministry of Health has sufficiently provided the rationale in having the central authority as a body corporate.
   However, we note the need to rationalise the institutional arrangements proposed in the Bill namely;

i. **Clause 5 (1)**- Changing the name of the central authority namely Digital Health Agency to read Digital Health Service. The term agency pre-supposes a principal- agent relationship yet the institution as conceptualized is independent.

ii. **Clause 8**- Increasing the membership of the Council of County Governors from one representation to three.

iii. **Transition provisions** – this is missing in the Bill and is critical. Its inclusion will ensure that the current information systems and gains made are not lost. Further, the current human resource in the Department, if any, dealing with digital health/ informatics are preserved and transitioned.

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COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL, 2023

FROM

THE COUNCIL OF GOVERNORS

TO

THE NATIONAL ASSEMBLY

A. GENERAL COMMENTS

1) The development of the Bill was initiated without the benefit of a specific Policy to guide it. This is critical when there is a paradigm shift in the way public good is delivered. Although the Kenya UHC Policy 2020- 2030 exists, it does not provide for a raft shift envisaged in the Bill.
2) The Bill should legislate on the principles that underscore it. These principles ought to include -acceptability, affordability, and accessibility; equity; Transparency and accountability; effectiveness and efficiency; sustainability etc. These are key in setting the foundation for the law and institutional framework.
3) The Bill seeks to ensure all persons access the health care. To achieve this, the law should cover all categories of people. Hence the need to re-think the following definitions- Contributor, Household, Indigent, Vulnerable persons to allow for certain populations like children is childcare facilities, old people in homes etc. This is in a bid to ensure that no one is left behind.
4) The Bill establishes the following three Funds—
    I. Primary Health Care Fund whose object shall be for the purchase of primary healthcare services from healthcare facilities;
    II. The Social Health Insurance Fund; and
    III. The Chronic and Critical Illness Emergency Fund.

The significant flaw in the Bill as-is, is in its failure to state how the three funds shall interface and provide for the separation of collection of premiums/ funds and reimbursement/ payment. There is under legislation on these key components.

9) The Bill establishes the Claims Management office which shall review and process the claims made. The law allows the office to delegate the following function namely;

i. reviewing, processing and validating medical claims from healthcare providers and healthcare facilities;
ii. appraising medical claims based on the benefit package;
iii. issuing pre-authorizations for access to healthcare services based on the benefit package

The law further provides that the 'entity' to whom the roles are delegated shall be a medical insurance provider or a broker licensed by the Insurance Regulatory Authority under the Insurance Act. While on the face of it this move is a good (separation of roles to ensure efficacy), it poses governance challenges namely;

a. The Claims Management office is an office in the Authority supervised on a day- to- day basis by the CEO who is an officer of the Board. It is not proper for an office in an Authority to have powers of this nature. This power should rest with the Board and not an office in the Authority.
b. Delegating may lead to bureaucracy unless clear guidelines are put in place to ensure efficacy and accountability.
c. The law does not state who shall bear the ultimate legal responsibility in the discharge of the mandate once delegation is done
d. The Office seems to have wide mandate that should be undertaken by more than one office.

14) Section 51 of the bill which provides the legislation to prevail over any other legislation on social insurance is unnecessary as it will be unconstitutional in cases where there is a conflict between this Act and county laws establishing their own social health insurance systems such as the Kisumu Marua. Such county social insurance systems complement the national system. This is because Article 191 of the constitution clearly recognizes that national government laws only prevail over county government laws only if certain identified circumstances exist and have been proved.

15) The biggest challenge in the Bill is that it provides for development of Regulations without providing a timeframe. Should the Bill be passed, implementation will be a challenge. Further, it is not clear if the current regulations have been preserved.

16) The law is not clear whether the Dispute Resolution Committee is executive or non-executive. It is further not clear if it is established as a quasi-judicial structure.

17) There is need for further scrutiny on the transition provisions to ensure all issues are addressed, the staff at the current NHIF are protected as well as their pension.

18) Clarity should be provided on whether the current Fund, its assets will transition to all the three Funds or one of them.

19) There is need for diagnosis of the policy, institutional gaps so that the right solution is provided. Do we need to repeal and reenact the law? Can the legislative review be contained in the present NHIF Act and some provided in Regulations? The recent proposed legislative and regulations were/ are geared towards UHC. Will the proposals be dropped?

		(2) The Authority shall be a successor in title to the National Health Insurance Fund, 1998	
Functions of the Authority Sec 5	5. The functions of the Authority shall be to— (a) register the beneficiaries in accordance with this Act; (b) manage the Funds established under this Act; (c) receive all contributions and other payments required by this Act to be made to the Funds; (d) contract health care providers and healthcare facilities upon successful certification by the relevant body; (e) consider and make payments to contracted health care providers and healthcare facilities	There is need to amend the provisions to separate some of these roles and vest them in different management and accountability structures, for purposes of increasing checks and balances to ensure effective accountability.	This is necessary because a major problem in the management of the current National Health Insurance Fund has been that the NHIF Board combines the functions of (i) accreditation and empanelment of health facilities as providers of services; (ii) determination of the benefits package; (iii) setting the premium rates and tariffs for contributors; (iv) collection of revenue from the contributors and management of the funds; (v) setting of the reimbursement rates to be paid to service providers; and (vi)

	(k) implement all government policies on social health insurance and related functions; and (l) perform any other function conferred on it by this Act or any other written law.		
The Board of the Authority Sec 7	7(1) The Authority shall be managed by a Board which shall consist of— (a) a non-executive Chairperson, who shall be appointed by the President; (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health or a designated representative; (c) the Principal Secretary in the ministry for the time	The provision should be amended to give more representation to county governments and the COG. The amendments should reconfigure the representation and allocate slots to the following identified constituencies—(i) the national government; (ii) county governments; (iii) non-state actors comprising development partners, faith-based health service providers, and private for-profit service providers; and (iv) consumers of the health services who are the contributors who cannot be limited to salaried and	One representative in a board of twelve members is cross under representation of the county governments and the COG. Currently the COG and county governments have two representatives in the NHIF Board. There is no justification for reducing that number, which should instead, be increased. Beyond county governments and COG, there are many other interests that ought to be represented in the structures that

	management, health economics, healthcare administration; (h) four persons, not being public officers, nominated by— i. the Kenya Medical Association; ii. the informal sector association; iii. health care providers; and iv. the Central Organization of Trade Unions-Kenya. (i) the Chief Executive Officer of the Authority, who shall be an *ex-officio* member of the Board.		

			as a corporation secretary, the qualification has no other equivalence
Establishment of the Primary Healthcare Fund Sec 20	20. There is established a Fund to be known as the Primary Healthcare Fund whose object shall be to purchase primary health care services from health facilities.	The provision should be amended to ensure that the objects of the fund include purchase of primary health care services such as preventive and promotive primary health care services that may not be provided through health facilities.	The proposed amendment is necessary because the object of the fund as rendered by the provision in its current form is very restrictive as it is limited to purchasing primary health care Services from **health facilities.** This is a very narrow understanding which is limited to services provided by health facilities. This will continue the focus on curative services and continue to leave out most of the preventive and promotive primary health care services that are not provided by health facilities. Who will pay for these services, most of

			level 2 and 3 health facilities directly and put their money in the fund? If so, what will be the mechanisms of sharing the funds in the fund among the county governments and the health facilities? The provisions also identify another source of funds as being "monies allocated for those purposes from fees or levies administered". What does this mean? Does it imply that own source revenue raised by county governments in respect of primary health services will also go into this fund? If so, what then is the purpose of FIF? The constitution emphasizes equitable sharing of resources through an objective formula provided by the CRA as

	(3) Any revision of the approved budget estimates shall be referred to the Board for approval.		this will just end up being another fund that is skewed in favour of private health facilities.
Implementation of the Primary Health Care Fund Sec 24	24. The Cabinet Secretary may make regulations for the implementation of the Primary Health Care Fund.	This provision should be amended to introduce more provisions that can make it clear what the pathways of accessing the fund by the county governments will be.	The proposed amendments are necessary since the provisions on the Primary Health Care Fund are crossly inadequate and do not cover all the issues that need to be addressed. The issues not covered are so critical that they cannot be left to mere regulations made by the Cabinet Secretary alone. Currently, level 2 and 3 health facilities which deal with primary health care services are heavily funded by development partners.
Contributions **Sec 27**	(1) The following persons shall be liable to contribute to the Fund under this Act-	***Amend by deleting sub-clause (d)***	*These sections contemplate a scenario where counties send their appropriated monies to SHI. How practical is it for counties to*

	the contribution remains unpaid and the total annual contributions.		Alternatively, if it must be retained, then the drafting language used under sec 49(1)(a) should be adopted i.e "...fails **without lawful excuse** to pay..."
Implementation of Chronic and Critical Illness and Emergency Fund. Sec 30	30 The Cabinet Secretary may make regulations for the implementation of the Chronic and Critical Illness and Emergency Fund.	The provision should be amended by deleting and substituting it with more substantive provisions on how the fund will be accessed and on other gaps in the bill regarding the fund.	The provisions on Chronic and Critical Illness and Emergency Fund are inadequate and leave a lot of gaps. The do not provide for how the fund will be accessible by health facilities and persons suffering from chronic and critical illnesses. These matters are too important to be left to regulations made by the Cabinet Secretary especially when the devolved context of two levels of government is considered. In any

	(3) The tariffs referred to under subsection (1), may be reviewed from time to time.		
Empanelment Sec 33	33(1) The Authority shall make payments out of the Funds to health care providers or health care facilities that are empaneled and contracted in accordance with the provisions of this Act. (2) A health care provider or healthcare facility seeking to be empanelled under the Act shall make an application to the body responsible for accreditation for quality of care in the manner prescribed by the Cabinet Secretary. (3) Upon the publication of the list of empanelled health care providers and healthcare facilities	These provisions should be amended to clearly identify the body responsible for accreditation and empanelment of health care service providers.	The proposed amendment is necessary to make it clear who is responsible for accreditation and empanelment of health care service providers.

	process the claims made under this Act. (2) The Office shall be responsible for— a) reviewing, processing and validating medical claims from healthcare providers and healthcare facilities; b) appraising medical claims based on the benefit package; c) issuing pre-authorizations for access to healthcare services based on the benefit package; d) developing an e-claims management system;	and vesting them in different structures.	accountability. Who establishes the claims management office? In its current form, the provision implies that it is the Authority to do so. In which event, the office is an arm of the Authority and not a separate independent body. Indeed, an examination of the functions of the Claims Management Office set out by sub-section (2) indicates that the office is mere agent discharging some of the functions of the Authority under section 5 of the Bill. See section 5(e).

	j) performing any other functions as may be necessary for the better carrying out of its functions under this Act.		
Claims management Sec 35	35(3) (3) The Claims Management Office shall delegate the performance of its functions under subsection (1)(a), (b) and (c) to a suitable entity. (4)The entity referred to under subsection (2) shall be a medical insurance provider or a broker licensed by the Insurance Regulatory Authority under the Insurance Act: Provided that not more than five entities shall be contracted to manage the claims from the zones	The bill should be amended by deleting the provisions.	If the Bill is amended as proposed elsewhere to separate roles and establish an independent body to deal with receiving, assessing and paying claims, there would be no need to delegate these functions to private insurance companies. There is absolutely no justification for delegating such functions.

			their own social health insurance systems such as the Kisumu Marua. Such county social insurance systems complement the national system. This is because Article 191 of the constitution clearly recognizes that national government laws only prevail over county government laws only if certain identified circumstances exist and have been proved.
Regulations Sec 56	50. (1) The Cabinet Secretary shall, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.	**Amend to read** (1) The Cabinet Secretary shall, in consultation with the Board and **the Council of Governors** make regulations for the better carrying out of the provisions of this Act.	Health is primarily a developed function hence need to consult the County Governments in the development of the Regulations Timelines for the development of the regulations is key otherwise

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Memorandum on the Social Health Insurance Fund Bill 2023

Presented to The Principal Secretary, State Department of Medical Services, Ministry of Health

P.O.Box 30016-00100, Nairobi Email: shibill@health.go.ke

18 September 2023

We the undersigned Civil Society Organisations working on health, governance and human rights have analysed the above proposed law and make our recommendation pursuant to the notice issued on the 5th of September 2023.

We submit as follows and ask for reconsideration of the following clauses.

Clause	Issues of concern	Justification	Recommendation
Clause 2 interpretations	The word *contributor* read alone could include the government.	The government for legal purposes is also a person, in this case it should not be construed as a beneficiary as it is also listed a liable contributor in Clause 27	add "Individual" to read individual contributor
Clause 2	The definition of "Vulnerable person" should not only be subject to identification by the "*the relevant government body*"	Left as it is, there is a risk of discriminating upon individuals not registered under other programs for vulnerable persons e.g Inua Jamii	**Delete *"and who has been identified as such by the relevant government body"*to avoid discrimination of those who may be missed from registration**
Clause 2	The definition of "emergency treatment" should include emergency medical services such as transport of the ill or injured	Emergency medical services include transport of the ill or injured by ambulance or air medical service.	**Include the words, "transport of the ill or injured" in the definition of emergency medical treatment.**
Clause 7 Board of the Authority	There is no representation of Civil Society Organisations (CSOs)	CSOs have in-depth knowledge of community needs including the marginalized communities. Their inclusion will add value in the different intersectional perspectives to be considered during implementation	Provide a nominee of the CSOs by national health NGOs Network or Have at least one representative from Civil Society Organisations.

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Clause 11 Delegation by the Board	The clause indicates that the Board can delegate any of powers or functions under the Act but the same have not been expressly provided for	The delegation clause does not make sense without express stipulation of the powers and functions of the Board.	Include two clauses that define 1. the powers of the Board and 2. Functions of the Board.
Clause 17 Staff	The appointment of staff by the Board	The appointments will leave room for bias and possible discrimination.	All staff need to be competitively and openly recruited.
Clause 20 Establishment of Afya Bora Fund	This Fund has similar purposes to the Primary Health care Fund established under Primary Health Care Bill 2023	There is clear duplicity in the funds.	We recommend abolition of the Primary Health Care Fund to avoid duplicity.
Clause 21 Sources of funds	The clause indicates that one source of funds will be monies appropriated by the National Assembly, yet the facilities offering these services are under the mandate of County governments.	There is an interference in health service provision as a devolved function.	There is need for revision of the clause to include county governments in the sourcing of the funds.
Clause 26 (5)	The precondition of registration under this law in order to access national,county or other government services	This has the potential to limit other fundamental rights as provided in the constitution including access to other socio economic rights	Delete the precondition .
Clause 27 (2) contributions	salaried households contribute monthly and non salaried to contribute annually.	Having salaried households contribute monthly and non-salaried households, annually entrenches inequality. Most small scale traders may not be able to afford the annual contributions at once.	Revise to have contributions to be remitted monthly for all households.
Clause 27 (3)	.The clause is a repetition of the frequency of contributions	unnecessary clause	.Delete clause 27 (3)
Clause 27 (7)	The resumption of healthcare services provided in the Act	The clause defeats the purpose of emergency services, which is to first, save life.	Exempt emergency services from this precondition

	subject to the full payment of contributions.		
Clause 33 (4)	**The body under subsection (2) may, at any time, revoke any accreditation under this section.**	Revocation of accreditation at any time without any written notice/justification opens a window for abuse of power by the office holder.	Add a clause or revise the clause to include a written justification of why the revocation will be done.
Clause 35 Claims Management	Clause 2 typed as sub clause 3. The regulations to be made by the Cabinet Secretary for health	The regulations ought to be made in consultation with the Authority.	Revise clause 4 to read the Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section in consultation with the Authority.
Clause 41 Expenses of administering the funds	Expenditure to be incurred by the Board from the Authority funds in performance of the Boards powers and functions	. The powers and functions are not expressly provided for in the Act. There is ambiguity.	Expressly provide for the functions and powers of the Board.

General comments and recommendations on the Bill

1. The Bill needs to specify the functions and powers of the Board expressly to avoid ambiguity
2. Afya Bora Fund and Primary Health Care Fund (in the Primary Health Care Bill 2023). We recommend deleting the Primary Health Care Fund to avoid duplicity.
3. We recommend that all regulations prescribed under this Bill be made in consultation with the Social Health Insurance Authority and subjected to public participation.

Submitted by the following organisations:

1. Amnesty International Kenya
2. Transparency International Kenya
3. Organization of African Youth-Kenya
4. ICJ Kenya
5. Kenya Human Rights Commission
6. Remusi Housing Cooperative Society Ltd
7. People's Health Movement
8. Young Professionals for Development
9. Kenya AIDS NGOs Consortium (KANCO)
10. Institute of Public Finance (IPF)
11. Scaling Up Nutrition Civil Society Alliance

UDPK
United Disabled Persons of Kenya

CDRA
Caucus on Disability Rights Advocacy

JOINT MEMORANDUM
ON
SOCIAL HEALTH INSURANCE BILL, 2023

National Assembly Bill No.58 of 2023

SUBMITTED TO THE NATIONAL ASSEMBLY STANDING COMMITTEE

FOR HEALTH

Through

THE CLERK OF THE NATIONAL ASSEMBLY.

21st September, 2023
Nairobi,
Kenya

1. INTRODUCTION

Collaborating Parties

This memorandum is prepared by the Caucus on Disability Rights Advocacy (CDRA) and the United Disabled Persons of Kenya (UDPK).

2. UDPK is an umbrella organization of national and grassroots associations of persons with disabilities in Kenya, presently comprising more than 100 organizations with active presence in all the 47 counties.

3. CDRA is a coalition of organizations of and for persons with disabilities which seeks to promote the interests of persons with disabilities in terms of the Constitution of Kenya, 2010.

4. The memorandum is submitted in response to the National Assembly invitation for public participation in the legislative process on the Social Health Insurance Bill, 2023.

2. BACKGROUND AND CONTEXT

1. The bill seeks to provide for establishment of a framework for management of social health insurance (SHI). SHI is form of health finance mechanism to increase efficiency and coverage of Healthcare Systems facilitating realization of Universal Health Care (UHC). According to ILO, every year nearly 100 million people globally are forced into poverty by health care costs, 15% of them are persons with disabilities (15 million) and the largest percentage of persons with disabilities live in developing and middle-Income Countries including Kenya. While data from developed countries suggest that well applied Social Health Care schemes like SHI can improve access to health care by vulnerable groups including by persons with disabilities, the schemes can also negatively impact on equitable access and quality of care. The nexus between disability and poverty could result into households of persons with disabilities unable to pay the health care mandatory contributions, leading to their low enrollment and exclusion from the healthcare scheme.

2. Several studies indicate that enrolment of persons with disabilities and utilization of services in SHI is mostly low compared to the larger population. Persons with disabilities mostly need more health care services because they require disability-related services and assistive devices on top of general health services. However, their access to care is hindered by informational, financial, physical and attitudinal

barriers. Persons with disabilities have higher health costs but lower capacity to pay because they use more health services and are likely to be poor. The **World report on disability**[1] revealed that half of the persons with disabilities in 51 surveyed countries could not afford needed health care and that, overall, people with disabilities were more likely to incur catastrophic health expenditures and they are also at risk of exclusion from universal health coverage (UHC) for lack of sufficient financial protection.

1: https://www.who.int/disabilities/world_report/2011/report.pdf

3. GENERAL COMMENTS

On the backdrop of barriers alluded to previously in accessing SHI Schemes by persons with disabilities, **Government through the 2023 Budget Policy Statement (BPS) had commitment to ensure 100% enrollment rate of persons with disabilities in the HealthCare Schemes.** This bill should serve to accelerate realization of this critical commitment.

And as Schemes are developed as result of this SHI Bill 2023, care should be taken to ensure that their design and delivery is inclusive of persons with disabilities. Including

- Addressing barriers to enrollment to the schemes by persons with disabilities
- Ensuring that Healthcare services and products meet the needs of persons with disabilities including assistive devices and other disability related services
- Ensure persons with disabilities seeking healthcare receive sufficient financial support

Guiding Principles

We noted in the preliminary the bill does not have guiding principles. Guiding principles anchors the execution of the bill provisions and espouse its spirit, therefore guiding principles to the bill should be introduced, among the guiding principle you should include

- **Equitable** – Social Health Insurance should seek to maximise opportunities of equal access among populations and different groups including by persons with disabilities
- **Non-discrimination** - Social Health Insurance schemes and programmes shall not discriminate against anyone an any discriminate against anyone on any basis including on basis of disability
- **Access** - Social Health Insurance shall be accessible to a wide range of population including by vulnerable populations

3. PROPOSALS AND RATIONALE

Proposed Amendment No. 1: Part 1 – Preliminary, Section 2: Interpretation.

2. Beneficiary

The Bill in section 2(d) states that a beneficiary "**is a person with disability and is wholly dependent on and living with a contributor.... "**

Proposed improvement:

Consider deleting "**and is wholly dependent on and living with a contributor...."** And replace with **"who is not a contributor..."** so that section 2(d) reads **"is a person with disability who is not a contributor.... "**

Rationale:

The commitment of the Government is that they will ensure 100% health coverage of persons with disabilities. The provision as currently constituted will lock out persons with disabilities who might not be able to pay for the Healthcare Fund. To realize the commitment made, it is critical that definition of who qualifies to be a beneficiary be redefined to ensure 100% coverage of persons with disabilities.

2.1 Universal Health Coverage (UHC)

The Bill in section 2(d) states that Universal Health Coverage means that" **all individuals and communities receive the health care services they need** ....."

Proposed improvement:

We propose to add "**have access"** and "**full range**" to the interpretation, so that the interpretation becomes **"all individuals and communities have access and receive full range of the health care services they need** ...."

We also propose to add a statement connected to interpretation of UHC. The added statement will read "**UHC also entails healthcare services for persons with disabilities which includes rehabilitative, habilitation, assistive devices, speech therapy, physiotherapy, occupational therapy and audiology"**

Rationale:

Access to services is key indicator on how effective and adequate the health care systems are. So it is paramount to have access form part of definition of UHC.**Full range** connotes all services and products needed by the person which could include assistive devices. This definition is also in line with WHO and SDGs definition of UHC

Extending the interpretation of UHC will ensure that the full range of healthcare services for persons with disabilities is provided

2.2 Disability

Proposed improvement:

We propose to add "**Disability**" to the interpretation section on the preliminary. Disability to assigned same meaning as assigned in Article 1 on Purpose in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Rationale:

Inclusion of "**Disability**" in the interpretation part of the bill will provide clarity as to who exactly is a person with a disability, because this has an effect on who qualifies to be a referred to as a beneficiary in the disability category. Lack of interpreting disability exposes the provision to various interpretations which could lead to exclusion or abuse.

Proposed Amendment No. 2: Part II – Establishment of Social Health Authority.

7 The Board of the Authority

The Bill in Part II section 7(1) establishes board of the Authority and the membership.

Proposed improvement:

There is need to explicitly reserve one spot for persons with disabilities or their representative organization. We propose to add 7(j) which should read "**One person with a disability nominated by organizations of persons with disabilities"**

Rationale:

There is a close nexus between disability and health. Persons with disabilities are likely to experience health problems and health problems can lead to disability. This close interplay between the two, places persons with disability at the center of digital healthcare, therefore becoming indispensible in decision making process, hence the need to be represented in the board of directors. Also to facilitate realization of 5% job quota on appointments of persons with disabilities envisioned by the constitution ART 54

8. Qualification for Appointment

The Bill in Part II section 8 (2) states that "**A person shall not be eligible for appointment as a member of the board under section 7 if that person** –"and 8(2) (b) states that "**is declared to be of unsound mind**"

Proposed improvement:

It is not clear what constitutes **unsound mind** and the **process to declare someone of unsound mind is not well established within the Act**. This could be applied arbitrary. We propose deletion of the whole 8(2) (b)

Rationale:

Principal of non-discrimination and inclusion is clearly outlines in our constitution. Employment Act 2007 provides that no persons will be discriminated against in work on the account of their disability. This provision 8(2) (b) seems to perpetuate stigma and discrimination. Disqualification from been appointed to the

Authority board on account of **unsound mind** seems to target conditions associated with mental health conditions. The Act ought to consider promoting application of the principle of reasonable accommodation as espoused in the UNCRPD to ensure the said board is supported is discharging his or her mandate effectively.

Proposed Amendment No. 3: Part IV – The Social Health Insurance Fund, Section 26

26. Registration

The Bill in Part Iv section 26 (1) provides that "**Every Kenyan shall register as be a member the Social Health Insurance Fund"**

Proposed improvement:

We propose deletion of the word "**be**" so that the provision reads "**Every Kenyan shall register as a member the Social Health Insurance Fund**

Rationale:

For grammatical correctness

26(4) Registration: General Notes

- As cabinet secretary prescribes the manner of registration, care should be taken to ensure that the registration process is inclusive and accessible. Action to be taken to eliminate barriers that would limit marginalized groups from participating in the exercise

Proposed improvement:

- Registration process should be Inclusive , accessible and equitable for all persons with necessary support for participation and efforts should be made to reach out to under- represented groups for enrolment

26(5) Registration: General Notes

- This provision that for a person to receive healthcare services has to provide proof of registration to the health care facility is likely to refranchised vulnerable groups including persons with disabilities. Persons with disabilities face myriad of barriers in participating in processes on an equal basis with others .The bill has no explicitly provisions on how it will facilitate enrollment of persons with

disabilities and other vulnerable groups. This will likely result to under enrollment of these vulnerable groups. And given that enrollment is primary eligibility criteria to access health care it will exclude these groups from health care systems.

Proposed Amendment No. 4: Part IX – Miscellaneous Provisions

47. Stakeholder Engagements

The Bill in Part IX section 47(1) provides THAT "**The Authority shall facilitate public participation and stakeholder engagements .....**"

Proposed improvement:

We propose to add the word "Inclusive" after the word facilitate, so that it reads **"The Authority shall facilitate Inclusive and accessible public participation and stakeholder engagements .....**"

Rationale:

Most vulnerable groups including persons with disabilities face barriers in participating in public participation processes. This limits them from exercising their rights as envisioned by our policy and legal frameworks. The barriers could be attitudinal, institutional, informational and physical. Therefore it is imperative for the Authority to ensure the public participation processes are inclusive

End.

FOR AND ON BEHALF OF THE UNITED DISABLED PERSONS OF KENYA [UDPK] AND THE CAUCUS ON DISABILITY RIGHTS ADVOCACY [CDRA]

Sally N Nduta
Chief Executive Officer, United Disabled Persons of Kenya,
And Secretary, Caucus on Disability Rights Advocacy)



Dated at NAIROBI, Kenya
September 21, 2023

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26/09/23

PHARMACEUTICAL SOCIETY OF KENYA
PCEA Foundation, Block C, Jabavu Rd.
P.O. Box 44290 - 00100 Nairobi - KENYA
T. +254 722 817 264
E. info@psk.or.ke
W. www.psk.or.ke

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5th September 2023

DIRECTOR RECEIVED 26 SEP 2023 Departmental Committees

05 SEP 2023

Harry Kimtai, CBS
Ministry of Health,
Afya House,
Cathedral Road,
P.O Box 30016-00100.

Nairobi, Kenya.

Chief State Counsel
5/9/2023

Dear Mr. Kimtai,

I trust this letter finds you well. I would like to express our sincere gratitude for extending an invitation to the upcoming Stakeholders Forum to discuss the Universal Health Coverage Bills. We acknowledge receipt of your letter and commend the Ministry of Health for its tireless efforts in promoting and enhancing the healthcare landscape in Kenya.

Please note that we received your invitation on Monday, September 4th, 2023, through social media channels and not through our official email, ceo@psk.or.ke. Our contact number for further correspondence is +254 722 412823.

To ensure that we can comprehensively outline the role of primary care pharmacists' providers and enhanced impactful outcomes as part of the multidisciplinary team within the primary healthcare network and also to demonstrate ability to meaningfully serve this process and our nation, we kindly request some additional time. If it is feasible, we would like to submit our contributions in both physical and online formats. Therefore, we propose a submission deadline of Tuesday, September 19th, 2023.

The pursuit of Universal Health Coverage is pivotal to the future of healthcare in our nation, and we, as pharmacists, are enthusiastic about the opportunity to contribute meaningfully to this noble cause. We are fully committed to aligning ourselves with the guidelines set forth by the World Health Organization and global standards pertaining to community health networks. This commitment underscores our dedication to the well-being of the public health in Kenya.

NATIONAL ASSEMBLY RECEIVED 26 SEP 2023 DEPUTY CLERK S. KIOKO P. O. Box 41842 - 00100, NAIROBI

NATIONAL EXECUTIVES: DR. LOUIS S. **MACHOGU** (PRESIDENT) | DR. ANGELINE **ACHOKA** (NATIONAL TREASURER)
DR. DANIELLA **MUNENE** (V.P. GOVERNANCE) | DR. JOSEPH **KATHARE** (V.P. PRACTICE) | DR. TABITHA **KIMANI** (V.P. LOBBYING)

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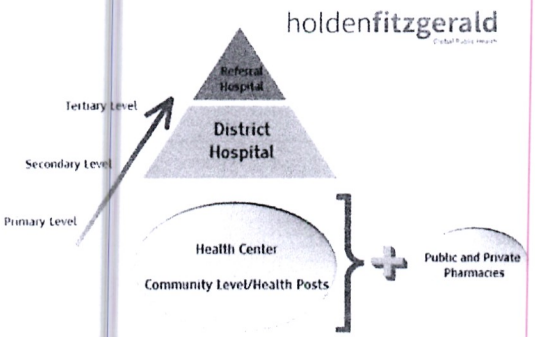

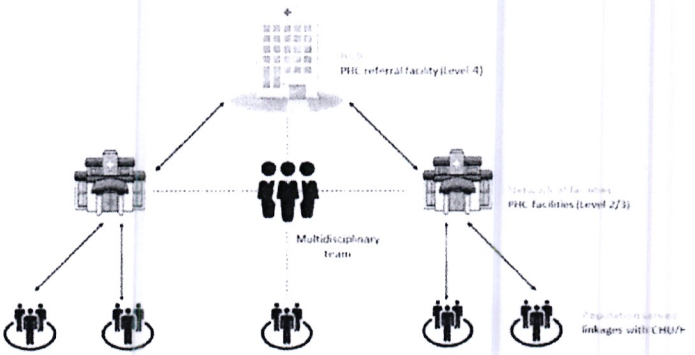

We eagerly anticipate your positive response and remain committed to collaborating with the Ministry of Health in advancing the cause of universal healthcare in Kenya.

Sincerely,

Dr. Louis S. Machogu,

President,

Pharmaceutical Society of Kenya.

NATIONAL EXECUTIVES: DR. LOUIS S. **MACHOGU** (PRESIDENT) | DR. ANGELINE **ACHOKA** (NATIONAL TREASURER)
DR. DANIELLA **MUNENE** (V.P. GOVERNANCE) | DR. JOSEPH **KATHARE** (V.P. PRACTICE) | DR. TABITHA **KIMANI** (V.P. LOBBYING)

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PUBLIC PARTICIPATION

THE SOCIAL HEALTH INSURANCE BILL 2023

[1]

Section 27 – to capture former public service employees who have retired as below

> 27(2)(a)(i) in the case of a household whose income is derived from salaried employment by a monthly statutory deduction from the wages or salary by the employer as prescribed by under this Act;
>
> 27(2)(a)(ii) in the case of a household whose income is derived from monthly pension through a monthly statutory deduction from the pension by the pension scheme as prescribed by this Act;
>
> The pension earning former officers need also be captured as one of the contributor in the definition.
>
> In the interpretation, a retiree need to be captured as one of the contributor
>
> The means testing indicator need also to be classified within the framework of a retiree.

Roman (ii) of Section 27 need to be included in the Bill to capture in the health scheme public service officers (retirees) who have served this country with dedication and valour.

Pension earning officers have felt the brunt of poor health after many years of national service. The officers do not enjoy a medical scheme due to expensive market rate medical insurance.

Available data denotes that the former public service officers die after barely enjoying retirement for 5 years mainly due to lack of a medical scheme or expensive medical scheme.

The outright recognition of the former officers in the Bill will give credence to their role in society and be identified as a special category within the social health scheme.

Ali (not real name) was a former employee of a quasi-government entity. He was enjoying a medical scheme from nhif and a private medical scheme covering him as the principle contributor, his wife and 4 children. He retired after 35 years of active service. Today, he and his school going children do not have a medical cover. His meagre monthly pension cannot sustain his nuclear family needs and also enroll in a medical scheme at market rate. Ali has a severe back pain which makes his mobility limited.

To salvage the likes of Ali, the Social Health Scheme will enable Ali to access cheap and affordable health care. Friends and family need not lose their loved.

[2]

Under SCHEDULE 2

Transitional Provisions

(6)(2): The Board of the Social Health Authority shall give first preference, where qualified, to employees of the Fund for transitioning to the Board.

- The officers have institutional memory of the health scheme and have gathered many years of service.

- Officers who have served many years within the fund might suffer mental health due to new work environment or processed to retire.

Thank you

Rashid S Osman

rsosman@yahoo.co.uk

19th September 2023

MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILLOF NO. 58 OF 2023.

The following are our proposed amendments to in the matter in consideration by the National assembly on the Social Health Insurance bill number 58 of 2023.

Section of the bill to be amended	Recommendations	Justification
(h)four persons, not being public officers, nominated by— (i) the Kenya Medical Association; (ii) the informal sector association; (iii) health care providers; and (iv) the Central Organization of Trade Unions-Kenya.	(iii) Pharmaceutical Society of Kenya to nominate a suitable pharmacist for the slot of health care providers	Medicines account for a large budget of the insurance claims. Having the pharmacist as a medicine expert will boost the board immensely in rationalizing these claims.

By Dr Peter Ongwae PSK Practice Chairman

REPUBLIC OF KENYA

OFFICE OF THE DATA PROTECTION COMMISSIONER

When replying please quote:
Ref: ODPC/ADM/4/6/3

Britam Tower
12th Floor
P.O. Box 30920 - 00100

Email: info@odpc.go.ke

22nd September 2023

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

Dear Hon. Njoroge,

RE: THE DIGITAL HEALTH BILL (NA. BILL NO. 57) 2023 & THE SOCIAL HEALTH INSURANCE BILL (NA. BILL NO. 58) 2023

Reference is made to your letter dated **15th September 2023, Ref: NA/DDC/DC-H/2023/ (088),** inviting the Office of the Data Protection Commissioner (Office) to submit views on the Digital Health Bill (NA. Bill No. 57) 2023 and the Social Health Insurance Bill (NA. Bill No. 58) 2023.

The Office has reviewed the Bills and submits as follows :

1.0 SUBMISSION ON THE DIGITAL HEALTH BILL (NA. BILL NO. 57) 2023

PROVISION IN THE BILL	ISSUE /CONCERN	RECOMMENDATIONS	JUSTIFICATIONS
Section 2 defines a health data processor as" ***a person, public authority, agency or other body who is an authorized worker to process health data".***	The definition differs from the DPA definition given in section 2 of the Act	That a health data processor should be defined as ***"a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller."***	To provide a standard definition of the term "data processor"

PROVISION IN THE BILL	ISSUE /CONCERN	RECOMMENDATIONS	JUSTIFICATIONS
Section 2 - The definition of **data privacy**	The definition is wordy and ambiguous. It is restrictive to *"Information Technology."*	That the definition of data privacy be deleted from the Bill.	'The inclusion of such a definition is too limiting. It is proposed that this matter be left open to align to the right to privacy.
Section 8(e) on inclusion of the Data Commissioner or representative onto the Board	**This provision may compromise the impendence of the Office as is required section 8(3) of the Data Protection Act**	The Bill should provide for a section that states as follows "The Agency may, in the performance of its functions collaborate with the Office of the Data Protection Commissioner."	The current provision will contradict the provisions of the Data Protection Act and may cause a situation of conflict that may affect the independence of the Office.
Sensitive health data and **aggregate health data** in section 25 and **Personal health data** in section 53.	There is no definition of these terms in the Act	That the terms be clearly defined in section 2 of the Bill.	Definition of the terms will provide a clear understanding to avoid misconstruction.
Section 31(c) which states that **"data may be held... for historical, statistical and research purposes."**	The proposed section does not align with the principles of data protection.	The reference subsection should be amended to read as follows: "or, historical, statistical and research purposes where the data is anonymised."	The proposed section does not align with the principles of data protection. The proposal will ensure that the principle of confidentiality and integrity is upheld.
Section 39(1) of the Bill has a spelling error	The provision states *"A data controller shall protect sensitive personal data and adopt reasonable administrative, technical and physical safeguards to ensure the privacy, confidentiality, security, accuracy and integrity of the* ***date".***	It should read that; "A data controller shall protect sensitive personal data and adopt reasonable administrative, technical and physical safeguards to ensure the privacy, confidentiality, security, accuracy and integrity of the **data**".	Spelling Error
Additional Provisions	There is currently no provision that referenced the Data Protection Act	The Bill should be amended so as to include a new provision that reads as follows: "Any processing of personal and sensitive personal shall be done	The addition of such provision will ensure any processing of personal or sensitive personal data under this

PROVISION IN THE BILL	ISSUE /CONCERN	RECOMMENDATIONS	JUSTIFICATIONS
		in accordance with the Data Protection Act No. 24 of 2019." The amendment will require a deletion of the proposed section 41 of the Bill.	Bill is done in accordance with the Data Protection Act and the Data Protection Principles which prompt transparency, confidentiality and integrity and accountability.

2.0 SUBMISSIONS ON THE SOCIAL HEALTH INSURANCE BILL (NA. BILL NO. 58) 2023.

PROVISION IN THE BILL	ISSUE /CONCERN	RECOMMENDATIONS	JUSTIFICATIONS
Section 26 of the Bill requires that all persons, including children, should register **Section 48** of the Bill provides for digitization by collecting data for the purposes of member registration and identification	What are the safeguards put in place for the protection of collected data?	The Bill needs to provide adequate safeguards and measures through which the persons registering understand their rights as data subjects and the Data Protection principles are applied on collection plus processing of their data.	To protect the rights of a data subject and others.
Additional Provisions	There is no reference to the personal data that may be required by the Fund from contributors.	The Bill should include a list of information the Fund may require from its contributors.	This promotes clarity and aligns with the principle of data minimization as espoused in the Data Protection Act, 2019.
Additional Provisions	There is currently no provision that referenced the Data Protection Act	The Bill should be amended so as to include a new provision that reads as follows: "Any processing of personal and sensitive personal shall be done in accordance with the Data Protection Act No. 24 of 2019."	The addition of such provision will ensure any processing of personal or sensitive personal data under this Bill is done in accordance with the Data Protection Act and the Data Protection Principles which prompt transparency, confidentiality and integrity and accountability.

The Office looks forward to working closely with National Assembly as it continues to perform its mandate to protect the data protection rights of data subjects.

In case of further clarification on this matter, please contact the Office by email address info@odpc.go.ke.

Yours Sincerely,

IMMACULATE KASSAIT, MBS
DATA COMMISSIONER

FOPA ASSOCIATION KENYA

P.O Box 40656 - 00100, Nairobi - Kenya
Tel: 0722 868852
Email: info@fopa.or.ke
Website: www.fopa.or.ke

Hughes Building, 7th Floor,
Kenyatta Avenue/Muindu
Mbingu Street

Our Ref: FOPA/KNA/23/01

22nd September, 2023

MEMORANDUM TO THE PARLIAMENT OF THE REPUBLIC OF KENYA REGARDING THE SOCIAL HEALTH BILL ON THE REMOVAL OF ENHANCED SCHEMES

Section 5(1)(2) of the Bill, First Schedule, Transitional Provisions

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

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

From the foregoing, the current Enhanced Schemes provided by NHIF will cease to exist once the Bill is enacted.

1.1 Provision of Medical Cover for Retired Public and Civil Servants

- In Kenya today, all Public Servants do not have a post-retirement medical scheme after working in government up to retirement. This exposes the retired public servant to catastrophic medical expenditures and possible impoverishment. Majority of the retired public servants are forced to purchase expensive and unsustainable private
- medical covers.
- Most private insurances profile the retired public servants as high-risk individuals and subsequently charge them high premiums coupled with many exclusions because of their medical conditions to curb utilization and enhance profits.
- Markedly, the cross-subsidization because of risk pooling from other enhanced schemes has enabled NHIF to fill this gap

P.O Box 40656 - 00100, Nairobi - Kenya
Tel: 0722 868852
Email: info@fopa.or.ke
Website: www.fopa.or.ke
Hughes Building, 7th Floor,
Kenyatta Avenue/Muindu
Mbingu Street

by providing medical insurance to retired public servants. The scheme does not have age restrictions and disease profiling which allows for cross-subsidization and favourable premiums.

- As a result, Former Parliamentarians Association (FOPA) and Kenya Association of Retired Officers (KARO) was established to allow public servants to continue assessing enhanced medical cover.
- NHIF also provides an enhanced medical cover for retired presidents, retired deputy presidents, and other public servants retirement schemes.

1.2 Proposed Post-Retirement Medical Scheme for Retired Civil and Public Servants

- The Government of Kenya commissioned an actuarial assessment in 2021 to determine the feasibility of introducing a post-retirement medical scheme for all workers.
- The assessment was completed in 2023 and the report was launched by the Ministry of Public Service.
- The proposes that all workers and employers will be required to make mandatory contributions to the post-retirement medical insurance schemes under a draft government policy meant to sustain access to health services by pensioners.
- The draft policy proposes that all retired public servants will access the proposed post-retirement medical scheme that will be administered by a government institution.
- Through the enhanced scheme, the FOPA and KARO members and beneficiaries have preferential access at affordable premiums that maintain their dignity and cushions.
- It is important to note that if the enhanced schemes are scrapped, retired presidents and other retired VIPs will no longer have affordable medical cover that does not discriminate based on age, pre-existing conditions, and other restrictions.

FOPA ASSOCIATION KENYA

P.O Box 40656 - 00100, Nairobi - Kenya
Tel: 0722 868852
Email: info@fopa.or.ke
Website: www.fopa.or.ke

Hughes Building, 7th Floor,
Kenyatta Avenue/Muindu
Mbingu Street

Since its inception in 2017, Former Members of Parliament through our registered association **FOPA (Former Parliamentarians) Association Kenya** have benefited immensely from the services provided by this NHIF's enhanced scheme. Our members are patriotic Kenyans who have contributed in the past immensely to the welfare of mankind. Former Members of Parliament whom within our FOPA Constitution are defined as Former MPs, Senators, Governors, and EALA MPs now stand to lose if the aforementioned Section 5(1) (2) are retained in The Social Health Bill. Our members will be vulnerable considering most private insurers charge exorbitant premiums and profile them based on age and pre-existing conditions.

We pray that this Honourable House will hear our plea and maintain the provisions of NHIF Enhanced Schemes for Former Members of Parliament (FOPA), retired public servants and state officers and any other such groupings that may voluntarily wish to benefit from such schemes.

Yours sincerely,

Hon.Dr. Dr. H.K.Njuguna, Ph.D(Law); Ph.D(Entrep.)
CHAIRMAN
Cell No: 0722740188/0718022888
Email: hknjuguna@yahoo.com

International Budget Partnership Kenya

Memorandum to the Standing Committee on Health of the National Assembly on the Social Health Insurance Bill 2023

(National Assembly Bills No. 58 of 2023)

Submitted on Friday, September 22, 2023

Contact Person:
Dr. Abraham Rugo Muriu.
Country Manager, IBP Kenya
Email: arugo@internationalbudget.org
Mobile: +254721431083

Introduction

Health insurance coverage in Kenya is limited, with only a small percentage of the population covered. The KDHS 2022 report highlights that 26% of females and 27% of males have some form of health insurance; this leaves out the other population to incur health services through out-of-pocket spending. This reality places social health insurance schemes like the National Health Insurance Fund (NHIF) at the center of enabling access to healthcare for Kenya's poor and marginalized populations.

Therefore, legislation governing the financing of these insurance schemes should be made inconsideration of the inequality and changes in accessing healthcare in Kenya. Furthermore, as the Social Health Insurance Health Bill has bearing on the organization of government finances, it becomes imperative that the Bill addresses the challenges faced by the current NHIF scheme including issues around the duplication and fragmentation of programmes, and transparency of fund finances. Against this background, we present the following submissions.

Submissions:

1. **Impact on unemployed Kenyans and those in the informal sector - Clause 27 (2) (b)**

Section 27 (2) (b) stipulates that in the case of a household whose income is not derived from salaried employment, that shall pay an annual contribution of a proportion of household income as determined by the means testing instrument in the manner prescribed under this Act. Under the current NHIF Act of 1993, contributions are made monthly by both salaried and non-salaried persons. There needs to be consideration for those unsalaried Kenyans without a monthly income. Whereas the salaried will make monthly payments, those who are in informal sector will make annual contribution. At what point in the year do they make such contributions for planning purposes? Does it make sense if they make quarterly contributions instead? Government will likely run into challenge where most people will default in remitting annual lumpsum amounts.

2. **Payments of Premiums for households in need of financial assistance**

Clause 27 (2) (c) states that the contributions for households in need of financial assistance shall be paid through funds appropriated by both Parliament and County Assemblies. Under the current NHIF, the National Government bears the sole responsibility of making contributions

of such households. Does this provision mean that both national and county governments are responsible for the payment of these premiums?

3. Primary Healthcare Fund

Clause 20 establishes a Primary Healthcare Fund meant to purchase primary health care services from health facilities. However, there are a number of challenges which the bill does not shed light on. These include:

I. **Issues with making claims by public health facilities as the process is not straightforward.** This has deeply affected healthcare services at the county level.
II. **The drive for autonomy of primary health facilities by counties.** How is facility autonomy related to the clause and how will it impact the purchase of services in public primary health facilities?

4. General Concerns:

The Fourth Schedule of the Constitution of Kenya, 2010, assigned various functions and responsibilities between national and county governments. Among the functions heavily devolved to county governments is the provision of primary healthcare services. Therefore, it is critical that any national level legislation that touches on the delivery of health care in county facilities must provide for the balance of functional responsibility as provided for by the constitution, and the accompanying finances necessary to facilitate the fulfillment of these responsibilities.

We are concerned that the bill may retain the primary healthcare functions at the national level. This will trap some funds at the national level belonging to county governments based on their functions. To fulfil their functions, counties should be given chance to be innovative and run primary healthcare with enough resourcing.

The National Assembly should clarify if the separation of the NHIF into the separate funds will not create an additional layer of bureaucracy in the management of social health insurance schemes. As the Bill stipulates the Cabinet Secretary should provide clear regulations for the implementation of the three Funds.

REPUBLIC OF KENYA

Telephone: 0727666444/0111052222
0720 771478/0738 504112
Fax: + 254 020 2724938
Email Address: info@kmpdc.go.ke
Email Address: ceo@kenyamedicalboard.org
Website: www.medicalboard.co.ke
When replying please quote:

MEDICAL PRACTITIONERS
AND DENTISTS COUNCIL
MP & DB HOUSE,
WOODLANDS RD, OFF LENANA RD
P.O BOX 44839 - 00100
NAIROBI

Ref. No.: KMPDC/NA/DCH/Vol.1/09/02

Date: 21st September, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41848-00100
NAIROBI
E-Mail: cna@parliament.go.ke

ATTN: **Mr. Peter K Chemweno**

Mr. Hassan A. Arale
Committee Clerk
hassan.arale@parliament.go.ke

RE: CONSIDERATION OF THE DIGITAL HEALTH BILL (N.A. BILL NO. 57) 2023 AND THE SOCIAL HEALTH INSURANCE BILL (N.A. BILL NO. 58) 2023

Reference is made to your letter dated 15th September, 2023, under reference no.: **NA/DDC/DC-H/2023/ (088)**

The Kenya Medical Practitioners and Dentists Council ("the Council" or "KMPDC") is a statutory body corporate established under Section 3 of the Medical Practitioners and Dentists Act (CAP 253 – Laws of Kenya) with the mandate to regulate the training and practice of medicine, dentistry, and community oral health within the Republic of Kenya. The Council is also tasked with the mandate of regulating all health institutions in the country.

Forwarded herewith written memoranda detailing KMPDC's submission on the following bills:

(i) Digital Health Bill;
(ii) Social Health Insurance Bill;

Thank you for your continued support and guidance.

DR. DAVID G. KARIUKI
CHIEF EXECUTIVE OFFICER
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

Copy to: **Nakhumicha S. Wafula**

Cabinet Secretary
MINISTRY OF HEALTH
E-Mail: cs@health.go.ke

Ms. Mary Muthoni Muriuki, HSC
Principal Secretary
State Department for Public Health and Professional Standards
MINISTRY OF HEALTH
E-Mail: pshealthke@gmail.com

Prof. Stanley O. Khainga
Chair
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL
E-Mail: chair@kmpdc.go.ke

KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

WRITTEN MEMORANDA

ON THE FOLLOWING BILLS:

SOCIAL HEALTH INSURANCE BILL
DIGITAL HEALTH BILL
FACILITY IMPROVEMENT FINANCING BILL
PRIMARY HEALTHCARE SERVICES BILL

Kenya Medical Practitioners and Dentists Council
KMPDC House
Woodlands Rd, Off Lenana Rd
P.O. Box 44839 - 00100
Nairobi, Kenya
Tel: 0727666444/0111052222
E-Mail: info@kmpdc.go.ke
Website: www.kmpdc.go.ke

WRITTEN MEMORANDA ON THE HEALTH SECTOR RELATED BILLS

The Kenya Medical Practitioners and Dentists Council ("the Council" or "KMPDC") is a statutory body corporate established under Section 3 of the Medical Practitioners and Dentists Act (CAP 253 – Laws of Kenya) with the mandate to regulate the training and practice of medicine, dentistry, and community oral health within the Republic of Kenya. The Council is also tasked with the mandate of regulating all health institutions in the country.

The Council is in receipt of a letter dated 15th September, 2023 under reference no.: NA/DDC/DC-H/2023/(088) from the Clerk of the National Assembly requesting KMPDC to submit written memorando on the following bills: for the following bills:

a) Social Health Insurance Bill
b) Digital Health Bill

The Council would like to submit the following comments on the above mentioned bills:

- PTO -

A. SOCIAL HEALTH INSURANCE BILL

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
PART II— ESTABLISHMENT OF THE SOCIAL HEALTH AUTHORITY	Functions of the Authority.	5 (d)	(d) contract healthcare providers and healthcare facilities upon successful certification by the relevant body;	Delete the words "relevant body" and replace with the words "Kenya Medical Practitioners and Dentists Council" to read as follows: (d) contract healthcare providers and healthcare facilities upon successful certification by the Kenya Medical Practitioners and Dentists Council;	**NB:** This section is relevant to the Council as we are a certification body. Pursuant to Section 15 of CAP 253, KMPDC is the regulator of all health facilities in the country.
	The Board of the Authority.	7(1) (h)	Board Composition indicates four persons, not being public officers, nominated by: (i) The Kenya Medical Association (ii) The informal sector association (iii) Health care providers (iv) The Central Organization of Trade Unions - Kenya	N/A	Clarity needed on composition on how the associations not represented can participate in the organization. There are multiple health professional associations that exist in the country.
	Chief Executive Officer	14 (1)(b)	A person shall be qualified for appointment as the Chief Executive Officer of the Authority if the person – (b) is an Advocate of the High Court of Kenya;	Delete the paragraph (b) to remove the qualification of being an Advocate of the High Court of Kenya as a required qualification to be the CEO of the	The is an exclusionary requirement that with no merited justification.

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
				proposed Authority	
PART VI— BENEFITS, TARRIFS, EMPANEL-MENT, CONTRACT ING AND CLAIMS	Contracting	34 (5)	(5) The Authority shall terminate the contract with any health care provider and healthcare facility where such health care provider or healthcare facility fails to meet the criteria prescribed by the Cabinet Secretary under subsection (3).	N/A	**NB:** This section is relevant to the Council due to the fact that we regulate health facilities
	Claims Management	35 (3)	(3) The Claims Management Office shall delegate the performance of its functions under subsection (1)(a), (b) and (c) to a suitable entity.	(3) The Claims Management Office shall delegate the performance of its functions under **subsection (2)(a), (b) and (c)** to a suitable entity.	Subsection 35 (1)(a), (b) and (c) does not exist
PART IX-MISCELLANE OUS PROVISIONS	Conflict of Laws	51	**51.** This Act shall prevail in the case of any inconsistency between this Act and any other legislation on matters related to provision of social health insurance.	N/A	**NB:** This will amend any other Act or legal provision that directly links KMPDC and NHIF.
	Repeal No. 9 of 1998	54	**54.** The National Health Insurance Fund Act, 1998 is repealed.	N/A	**NB:** NHIF will cease to exist

B. DIGITAL HEALTH BILL

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
PART II— ESTABLISHMENT OF THE DIGITAL HEALTH AGENCY	Functions of the Agency.	6 (b)	6 (b) establish registries, in consultation with other statutory authorities, at appropriate level to create single source of truth in respect of clients, health facilities, healthcare providers, health products and technologies;	N/A	NB: Relevant as the Council is one of the statutory authorities
	Board of Directors	8(1)	N/A	Add the Director General of Health/Representative of a health regulatory body as Board Member of the Agency	As per Section 17 of the Health Act the Director General of Health is the technical advisor to the Government on all matters relating to health within the health sector. Digital health is health related, only that the health provision is being done on various digital platforms.
		8 (g)	8 (g) one person appointed by the Cabinet Secretary representing the private sector;	Insert "in health" after the words private sector to read as follows: 8 (g) one person appointed by the Cabinet Secretary representing the private sector in health;	To be specific that the representative of the private sector be someone from the health sector too.
		47. (1) (d)	(d) for foreign facilities, be licensed by an equivalent regulatory authority recognized in Kenya;	Expunge (d)	No clear mechanism to regulate e-health care providers outside the borders of Kenya

PART NO	Marginal Note	Section	Provision	Recommendation	Rationale/Comment
PART VII—E-HEALTH SERVICE DELIVERY	E-Health services	49	49. (1) In the provision of e-health services to a client, a healthcare provider shall—	Insert (j) to include issues of scope of practice to read as follows: 49. (1) In the provision of e-health services to a client, a healthcare provider shall— (j) ensure that the provide services within their scope of practice	This is to ensure that practitioners offering e-health services do so within their scope of practice.

These memoranda are signed on this 21st day of September, 2023 as hereunder:

DR. DAVID G. KARIUKI
CHIEF EXECUTIVE OFFICER/REGISTRAR
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL

UDPK
United Disabled Persons of Kenya

CDRA
Caucus on Disability Rights Advocacy

JOINT MEMORANDUM
ON
SOCIAL HEALTH INSURANCE BILL, 2023

National Assembly Bill No.58 of 2023

SUBMITTED TO THE NATIONAL ASSEMBLY STANDING COMMITTEE

FOR HEALTH

Through

THE CLERK OF THE NATIONAL ASSEMBLY.

21st September, 2023
Nairobi,
Kenya

1. INTRODUCTION

Collaborating Parties

This memorandum is prepared by the Caucus on Disability Rights Advocacy (CDRA) and the United Disabled Persons of Kenya (UDPK).

2. UDPK is an umbrella organization of national and grassroots associations of persons with disabilities in Kenya, presently comprising more than 100 organizations with active presence in all the 47 counties.

3. CDRA is a coalition of organizations of and for persons with disabilities which seeks to promote the interests of persons with disabilities in terms of the Constitution of Kenya, 2010.

4. The memorandum is submitted in response to the National Assembly invitation for public participation in the legislative process on the Social Health Insurance Bill, 2023.

2. BACKGROUND AND CONTEXT

1. The bill seeks to provide for establishment of a framework for management of social health insurance (SHI). SHI is form of health finance mechanism to increase efficiency and coverage of Healthcare Systems facilitating realization of Universal Health Care (UHC). According to ILO, every year nearly 100 million people globally are forced into poverty by health care costs, 15% of them are persons with disabilities (15 million) and the largest percentage of persons with disabilities live in developing and middle-Income Countries including Kenya. While data from developed countries suggest that well applied Social Health Care schemes like SHI can improve access to health care by vulnerable groups including by persons with disabilities, the schemes can also negatively impact on equitable access and quality of care. The nexus between disability and poverty could result into households of persons with disabilities unable to pay the health care mandatory contributions, leading to their low enrollment and exclusion from the healthcare scheme.

2. Several studies indicate that enrolment of persons with disabilities and utilization of services in SHI is mostly low compared to the larger population. Persons with disabilities mostly need more health care services because they require disability-related services and assistive devices on top of general health services. However, their access to care is hindered by informational, financial, physical and attitudinal

barriers. Persons with disabilities have higher health costs but lower capacity to pay because they use more health services and are likely to be poor. The **World report on disability**[1] revealed that half of the persons with disabilities in 51 surveyed countries could not afford needed health care and that, overall, people with disabilities were more likely to incur catastrophic health expenditures and they are also at risk of exclusion from universal health coverage (UHC) for lack of sufficient financial protection.

1: https://www.who.int/disabilities/world_report/2011/report.pdf

3. GENERAL COMMENTS

On the backdrop of barriers alluded to previously in accessing SHI Schemes by persons with disabilities, **Government through the 2023 Budget Policy Statement (BPS) had commitment to ensure 100% enrollment rate of persons with disabilities in the HealthCare Schemes.** This bill should serve to accelerate realization of this critical commitment.

And as Schemes are developed as result of this SHI Bill 2023, care should be taken to ensure that their design and delivery is inclusive of persons with disabilities. Including

- Addressing barriers to enrollment to the schemes by persons with disabilities
- Ensuring that Healthcare services and products meet the needs of persons with disabilities including assistive devices and other disability related services
- Ensure persons with disabilities seeking healthcare receive sufficient financial support

Guiding Principles

We noted in the preliminary the bill does not have guiding principles. Guiding principles anchors the execution of the bill provisions and espouse its spirit, therefore guiding principles to the bill should be introduced, among the guiding principle you should include

- **Equitable** – Social Health Insurance should seek to maximise opportunities of equal access among populations and different groups including by persons with disabilities
- **Non-discrimination** - Social Health Insurance schemes and programmes shall not discriminate against anyone an any discriminate against anyone on any basis including on basis of disability
- **Access** - Social Health Insurance shall be accessible to a wide range of population including by vulnerable populations

3. PROPOSALS AND RATIONALE

Proposed Amendment No. 1: Part 1 – Preliminary, Section 2: Interpretation.

2. Beneficiary

The Bill in section 2(d) states that a beneficiary "**is a person with disability and is wholly dependent on and living with a contributor…. "**

Proposed improvement:

Consider deleting "**and is wholly dependent on and living with a contributor…."** And replace with **"who is not a contributor…"** so that section 2(d) reads **"is a person with disability who is not a contributor…. "**

Rationale:

The commitment of the Government is that they will ensure 100% health coverage of persons with disabilities. The provision as currently constituted will lock out persons with disabilities who might not be able to pay for the Healthcare Fund. To realize the commitment made, it is critical that definition of who qualifies to be a beneficiary be redefined to ensure 100% coverage of persons with disabilities.

2.1 Universal Health Coverage (UHC)

The Bill in section 2(d) states that Universal Health Coverage means that" **all individuals and communities receive the health care services they need ……"**

Proposed improvement:

We propose to add "**have access"** and "**full range**" to the interpretation, so that the interpretation becomes **"all individuals and communities have access and receive full range of the health care services they need** …."

We also propose to add a statement connected to interpretation of UHC. The added statement will read "**UHC also entails healthcare services for persons with disabilities which includes rehabilitative, habilitation, assistive devices, speech therapy, physiotherapy, occupational therapy and audiology"**

Rationale:

Access to services is key indicator on how effective and adequate the health care systems are. So it is paramount to have access form part of definition of UHC.**Full range** connotes all services and products needed by the person which could include assistive devices. This definition is also in line with WHO and SDGs definition of UHC

Extending the interpretation of UHC will ensure that the full range of healthcare services for persons with disabilities is provided

2.2 Disability

Proposed improvement:

We propose to add "**Disability**" to the interpretation section on the preliminary. Disability to assigned same meaning as assigned in Article 1 on Purpose in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Rationale:

Inclusion of "**Disability**" in the interpretation part of the bill will provide clarity as to who exactly is a person with a disability, because this has an effect on who qualifies to be a referred to as a beneficiary in the disability category. Lack of interpreting disability exposes the provision to various interpretations which could lead to exclusion or abuse.

Proposed Amendment No. 2: Part II – Establishment of Social Health Authority.

7 The Board of the Authority

The Bill in Part II section 7(1) establishes board of the Authority and the membership.

Proposed improvement:

There is need to explicitly reserve one spot for persons with disabilities or their representative organization. We propose to add 7(j) which should read "**One person with a disability nominated by organizations of persons with disabilities"**

Rationale:

There is a close nexus between disability and health. Persons with disabilities are likely to experience health problems and health problems can lead to disability. This close interplay between the two, places persons with disability at the center of digital healthcare, therefore becoming indispensible in decision making process, hence the need to be represented in the board of directors. Also to facilitate realization of 5% job quota on appointments of persons with disabilities envisioned by the constitution ART 54

8. Qualification for Appointment

The Bill in Part II section 8 (2) states that "**A person shall not be eligible for appointment as a member of the board under section 7 if that person** –"and 8(2) (b) states that "**is declared to be of unsound mind**"

Proposed improvement:

It is not clear what constitutes **unsound mind** and the **process to declare someone of unsound mind is not well established within the Act**. This could be applied arbitrary. We propose deletion of the whole 8(2) (b)

Rationale:

Principal of non-discrimination and inclusion is clearly outlines in our constitution. Employment Act 2007 provides that no persons will be discriminated against in work on the account of their disability. This provision 8(2) (b) seems to perpetuate stigma and discrimination. Disqualification from been appointed to the

Authority board on account of **unsound mind** seems to target conditions associated with mental health conditions. The Act ought to consider promoting application of the principle of reasonable accommodation as espoused in the UNCRPD to ensure the said board is supported is discharging his or her mandate effectively.

Proposed Amendment No. 3: Part IV – The Social Health Insurance Fund, Section 26

26. Registration

The Bill in Part Iv section 26 (1) provides that "**Every Kenyan shall register as be a member the Social Health Insurance Fund"**

Proposed improvement:

We propose deletion of the word "**be**" so that the provision reads "**Every Kenyan shall register as a member the Social Health Insurance Fund**

Rationale:

For grammatical correctness

26(4) Registration: General Notes

- As cabinet secretary prescribes the manner of registration, care should be taken to ensure that the registration process is inclusive and accessible. Action to be taken to eliminate barriers that would limit marginalized groups from participating in the exercise

Proposed improvement:

- Registration process should be Inclusive , accessible and equitable for all persons with necessary support for participation and efforts should be made to reach out to under- represented groups for enrolment

26(5) Registration: General Notes

- This provision that for a person to receive healthcare services has to provide proof of registration to the health care facility is likely to refranchised vulnerable groups including persons with disabilities. Persons with disabilities face myriad of barriers in participating in processes on an equal basis with others .The bill has no explicitly provisions on how it will facilitate enrollment of persons with

disabilities and other vulnerable groups. This will likely result to under enrollment of these vulnerable groups. And given that enrollment is primary eligibility criteria to access health care it will exclude these groups from health care systems.

Proposed Amendment No. 4: Part IX – Miscellaneous Provisions

47. Stakeholder Engagements

The Bill in Part IX section 47(1) provides THAT "**The Authority shall facilitate public participation and stakeholder engagements .....**"

Proposed improvement:

We propose to add the word "Inclusive" after the word facilitate, so that it reads **"The Authority shall facilitate Inclusive and accessible public participation and stakeholder engagements .....**"

Rationale:

Most vulnerable groups including persons with disabilities face barriers in participating in public participation processes. This limits them from exercising their rights as envisioned by our policy and legal frameworks. The barriers could be attitudinal, institutional, informational and physical. Therefore it is imperative for the Authority to ensure the public participation processes are inclusive

End.

FOR AND ON BEHALF OF THE UNITED DISABLED PERSONS OF KENYA [UDPK] AND THE CAUCUS ON DISABILITY RIGHTS ADVOCACY [CDRA]

Sally N Nduta
Chief Executive Officer, United Disabled Persons of Kenya,
And Secretary, Caucus on Disability Rights Advocacy)



Dated at NAIROBI, Kenya
September 21, 2023