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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 SOCIAL HEALTH INSURANCE BILL, 2023 (NA BILL NO. 58 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 Social Health Insurance Bill, 2023 (NA Bill No. 58 of 2023), by the Leader of the Majority Party, Hon. Kimani Ichung'wah which was published on 11th 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 fifty-five (55) clauses and seeks to repeal the National Health Insurance Act, No. 9 of 1998 and 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 Universal Health Coverage and to ensure that all Kenyans have access to affordable and comprehensive quality health services.

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 Social Health Insurance Bill, 2023 (NA Bill No. 58 of 2023) .It is my pleasure to report that the Committee has considered the Social Health Insurance Bill, 2023 (NA Bill No. 58 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
Kitutu Chache South Constituency
ODM Party

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

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

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

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

Hon. (Prof.) Jaldesa Guyo Waqo,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 SOCIAL HEALTH INSURANCE BILL, 2023 (NA BILL NO. 58 OF 2023)

6. The Social Health Insurance 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 put in place a legislative framework to regulate the provision of social health insurance, promote the implementation of the Universal Health Coverage and to ensure that all Kenyans have access to affordable and comprehensive quality health services. The Bill further repeals the National Health Insurance Act, No. 9 of 1998.

7. **Part I (Clauses 1-3)** of the Bill provides for the preliminary provisions namely the short title and commencement, interpretation and the objects of the Bill are:

   (a) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;

   (b) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;

   (c) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and

   (d) promote strategic purchasing of healthcare services.

8. **Part II (Clauses 4-19)** of the Bill establishes the Social Health Authority and provides the Board, its functions, powers, qualification of members and appointment of the Chief Executive Officer among others. The functions of the Social Health 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 out of the Funds in accordance to the provisions of this Act;

   (f) develop guidelines for the operations and implementation of the Funds established under this Act;

   (g) establish sectoral linkages for effective management and growth of the Funds;

   (h) monitor and evaluate programs and activities under the Funds;

(i) receive and address complaints that may arise from the implementation of this Act;

(j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;

(k) implement all government policies on social health insurance and related functions; and

(l) perform any other function conferred on it by this Act or any other written law.

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

(a) a non-executive Chairperson, appointed by the President;

(b) the Principal Secretary in the ministry of Health;

(c) the Principal Secretary in the ministry of Finance;

(d) the Director-General for Health;

(e) the Attorney-General or a designated representative;

(f) a representative of the Council of County Governors;

(g) a person, not a public officer, appointed by the Cabinet Secretary;

(h) 4 representatives of Kenya Medical Association, the informal sector association, health care providers and the Central Organization of Trade Unions-Kenya, appointed by the Cabinet Secretary.

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

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

(a) monies appropriated by the National Assembly;

(b) any grants, gifts, donations or bequests;

(c) monies allocated for that purposes from fees or levies administered; and

(d) monies accruing to or received by the Fund from any other source.

10. **Part IV (Clauses 25-27)** of the Bill provides for establishment of the Social Health Insurance Fund and the attendant sources of its funds, registration and membership to the fund and contributions. The purpose of the Social Health Insurance Fund established in clause 25 is to purchase primary health care services from health facilities. The sources of monies for the Fund include—

(a) contributions under the Act;

(b) monies appropriated by the National Assembly for indigent and vulnerable persons;

(c) gifts, grants, innovative financing mechanisms or donations;

(d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme; and

(e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits.

Registration to the Fund is mandatory for all Kenyans. This will be enforced requiring the proof of registration with the Fund as a precondition of dealing with or accessing public services from the national government, county government or a national or county government entities.

11. **Part V (Clauses 28-30)** of the Bill provides for the establishment of the Emergency, Chronic and Critical Illness Fund that will be defray the costs of management of chronic illness after the depletion of the social health insurance cover and will cover the costs of emergency treatment. The sources of monies for the Fund includes—

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

12. **Part VI (Clauses 31-36)** of the Bill provides for claims, benefits and empanelment and contracting of health service providers and health facilities and the establishment of the Claims Management Office within the Authority to review and process the claims.

The essential healthcare benefits package for beneficiaries of the Social Health Insurance Fund shall be prescribed by the Cabinet Secretary in consultation with the Social Health Authority Board. The benefits payable under the Bill shall be based on a tariff and the applicable tariffs will be prescribed by the Cabinet Secretary. The Social Health Authority will only make payments out of the Funds to health care providers or health care facilities that are empaneled by the relevant body and contracted by the Authority.

13. **Part VII (Clauses 37-43)** of the Bill provides for financial provisions including reporting mechanism, audits and accounts, investment and management of funds by the Board.

14. **PART VIII (Clause 44-46)** of the Bill provides for the establishment of the dispute resolution Committee to hear, and determine complaints, disputes and appeals arising from decisions made under this Act.

15. **Part IX (Clauses 47-55)** of the Bill sets out the miscellaneous provisions contains provisions for stakeholder and community participation in the carrying out of the Bill. It also provides for the mandatory requirement of digitization of all process and services under this Act. This part of the Bill also provides for the power of the Cabinet Secretary to prescribe regulations, and sets out penalties under this Act, the repeal of the National

Insurance Health Fund Act, 1998 and the handling of cash balances and assets of the Funds in the event of winding up of any of the Funds established under this Act.

16. The **First Schedule** to the Bill details the transitional provisions relating to the National Insurance Health Fund. Under this Schedule, the funds, assets and other movable and immovable property of the National Health Insurance Fund (NHIF) shall vest in the Social Health Authority without further assurance however the Social Health Authority may within one year from the commencement date dispose any of the assets vested in the Authority. The NHIF Board shall wind up the Fund within one year and the cash balances.

    All rights, powers, liabilities and duties, vested in, actions, suits or legal proceedings imposed on or enforceable by or against the Government for and on behalf of the NHIF are transferred to the Authority. The Fund shall further not provide enhanced benefits schemes and packages however all NHIF existing enhanced benefits schemes and packages vest in the Authority until the lapse of the existing contracts.

    The Board of the Social Health Authority shall competitively recruit and appoint its staff subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board. The NHIF 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. The staff of the NHIF who are not appointed by the Authority may either retire from public service or be redeployed within the public service.

17. **The Second 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. In considering the Bill, the Committee facilitated public participation as required by Article 118 (1) (b) of the Constitution of Kenya which require parliament to facilitate public participation and involvement of the public in the legislative and other business and its committees. In addition, Standing Order 127 imposes this requirement on committees of the House.

Art. 118 provides that *"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."*.

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.

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

19. The Social Health Insurance Bill, 2023 sponsored by the Leader of the Majority Party was published on 11th 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.

20. 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

21. 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, State Department for Medical Services;

2) The National Health Insurance Fund;

3) The Council of Governors (COG);

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

5) The Federation of Kenya Employers (FKE);

6) The Kiambu County Empowerment Network (KCEN);

7) Ten Civil Society Organizations (CSOs) comprising of Amnesty International Kenya, Transparency International Kenya, Organisation of African Youth-Kenya, ICJ Kenya, Kenya Human Rights Commission, Remusi Housing Cooperative Society Limited, People's Health Movement, Young Professionals for Development, Kenya AIDS NGOs Consortium (KANCO), Institute of Public Finance (IPF) and Scaling Up Nutrition Civil Society Alliance submitted a joint memorandum;

8) Confraternity of Patients Kenya (COFPAK);

9) The Office of Data Protection Commissioner (ODPC);

10) National Gender and Equality Commission;

11) Kenya Medical Association;

12) Haki Yetu Organisation;

13) Dr. Peter Ongwae, Pharmaceutical Society of Kenya Practice Chairman;

14) Mr. Rashid S Osman;

15) The Kenya Union of Commercial Food and Allied Workers;

16) The International Commission of Jurists (ICJ Kenya);

17) The Rural Private Hospitals Association of Kenya (RUPHA);

18) Moi University;

19) The Health NGOs Network;

20) The Economic and Social Rights Centre- Hakijamii;

21) The Social Protection Actors Forum;

22) The Former Parliamentarians Association (FOPA);

23) The Kenya Association of Private Hospitals (KAPH);

24) The Pharmaceutical Society of Kenya;

25) The International Budget Partnership Kenya;

26) The Kenya Health Federation (KHF);

27) The Kenya Medical Practitioners Pharmacists and Dentists' Union;

28) The Caucus on Disability Rights Advocacy (CDRA); and

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

22. **The Ministry of Health, State Department for Medical Services,** whilst expressing its support for the Bill indicated that the Ministry had conducted stakeholder engagements 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 views received from the stakeholders. The Ministry proposed the following amendments:

(a) Deletion of the word *"National"* appearing in the definition of the words *"Board"* as Clause 4 of the Bill establishes the Social Health Authority;

(b) Deletion 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) That the CEO of the Social Health Authority should have a master's degree;
(i) Deletion of the requirement that the CEO must be an Advocate of the High Court of Kenya;

(j) Deletion of the word "may" and substitution with the word "shall" in Clause 24 and 30 so as to make it mandatory for the Cabinet Secretary to make

regulations for the implementation of the Primary Healthcare Fund and the Emergency, Chronic and Critical Illness Fund respectively;

(k) 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 since the same is a social fund and therefore there are no enhanced schemes;

(l) 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;

(m) Reduction of the ten percent for failure to pay contributions under the Bill to the five percent as the current fine is too punitive;

(n) 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-authorisations;

(o) Deletion of the requirement of allowing the incurring of expenses for the purposes of pursuance of an authorisation of the Board in clause 40 (4) to avoid any overtures by the Board;

(p) 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;

(q) Amendment of the fines in Clause 49 to make them commensurate to the offences committed by individuals and institutions in Clause 49;

(r) Deletion of 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

(s) 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 remuneration and other benefits for public officers.

23. **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.

24. The **Council of Governors** submitted that it had reviewed the Bill 2023 and identified several strengths and areas of concern as follows:

(a) That the development of the Bill was initiated without a guiding policy which would have been critical as there is a paradigm shift in the way a public good is

being delivered. Although the Kenya UHC Policy 2020- 2030 exists, it does not provide for the raft shift envisaged in the Bill;

(b) That it is not clear which jurisdiction of similar social, economic and political environment has informed the policy and institutional proposals in the Bill;

(c) That in Clauses 20,23 and 25, the Bill fails to state how the three Funds shall interface and provide for separation of the collection of premiums and funds vis-à-vis reimbursement and payment;

(d) That the Bill seeks to reform the health financing framework while delicately addressing other key components albeit not comprehensively;

(e) That the Bill should legislate on the principles that underscore it namely acceptability, affordability, accessibility, equity, transparency and accountability, effectiveness and efficiency and sustainability which are key in setting the foundation for the law and institutional framework;

(f) A timeline for the development of regulations should be provided.

(g) That Clause 56 should provide that the Cabinet Secretary shall in consultation with the Board and the Council of Governors to make regulations under the Act;

(h) That Clause 26 should cover all categories of people and as such there is need to re-think the definitions of contributor, household, indigent, and vulnerable persons to allow for certain populations like children in childcare facilities and older persons in homes;

(i) That Clause 44 of the Bill is not clear whether the Dispute Resolution Committee is executive or non-executive and whether it is established as a quasi-judicial structure;

(j) That clarity should be provided in the First Schedule on whether the NHIF and its assets will transition to all the three Funds or one of them as such amendments should be proposed to take care of all issues including the NHIF officers, assets, liabilities and the NHIF Board and in particular to ensure that the NHIF staff are protected as especially their pension;

(k) Amendment of the Bill to incorporate County Governments as key stakeholders in health financing; and

(l) That the manner in which the Funds are established could be in contravention of the Public Finance Management Act, No. 18 of 2012 and may need to be relooked as the Fund established under the Social Assistance Act, 2013 could not be implemented because of the way it was established.

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

(a) The Bill should recognise the functions of KPMDC pursuant to section 15 of Medical Practitioners and Dentists Act, Cap. 253 which recognizes the Council as the regulator of all health facilities in the country;

(b) Amendment of Clause 7 on Board composition to provide for rotation of health professional associations since there are multiple health professional associations in the country;

(c) Deletion of the requirement that the Chief Executive Officer of the Authority must be an Advocate of the High Court of Kenya as it is an exclusionary requirement with no justifiable basis; and

(d) Deletion of Clause 51 on conflict of laws which gives the Bill prominence over other laws on matters related to the provision of social health insurance.

26. **The Federation of Kenya Employers,** the premier and most representative employers' body that employs 67% of formal private sector wage employees in Kenya, submitted as follows:

(a) Deletion of Clause 5(j) so that the Cabinet Secretary will consult the Authority but will not be bound by any advice given by the Authority;

(b) Inclusion of FKE under clause 7(1)(h) as representation in the labour sector representation is not complete when the Government and workers are represented without employers;

(c) Deletion of "or levies" in Part III and substitution with "monies allocated for those purposes from the fees administered" to avoid double payment and increased costs to businesses;

(d) That there is a risk of discriminating on individuals not registered under other programmes of vulnerable persons such as *Inua Jamii*;

(e) Inclusion of the terms 'social unit' and 'person' in Clause 27(1) for clarity;

(f) Prescription of specific applicable rates in Clause 2 (a) to conform with the Bill;

(g) Provision of clarity on whether the ten percent is one-off, monthly or annual and general clarity on penalties;

(h) That there is need to prescribe essential healthcare benefits in Clause 31(1) so as to clearly define the essential benefits;

(i) Provision of clear linkage between the Funds and the primary health care services in Clause 35;

(j) That the cap of administrative expense at 5%is too high should be reduced to 2% and similar to NSSF, the same should not exceed 2% of the audited financial statement;

(k) Insertion of the words "as amended from time to time" to conform with the provisions of the Data Protection Act, 2018 in Clause 48(4) to ensure consistency with the existing laws;

(l) Increase of the fine in Clause 49(1) to not exceeding one million in line with other similar provisions and subclauses (b) and (c) should stand on their own as they

deal with service providers separate legal persons from the staff in order to standardise the fines;

(m) Deletion of "Despite the generality" and substitution with "Subject to Clause 50 (2) subsection (1)" in clause 50(2) so that the making of regulations does not become optional;

(n) Addition of a new principle in clause 50(4): (e) meaningful public participation specified under Article 10(2)(a) of the Constitution to conform to the constitutional requirement of public participation in the making of regulations;

(o) Absorption of the staff of NHIF and adherence to the due process provided for in the applicable labour laws in paragraph 6(2) of the First Schedule to provide for seamless transition and protection of job and household livelihoods; and

(p) Inclusion of an express "saving" in Clause 6(2) that automatically moves all NHIF staff to the new Authority as asking staff members to apply afresh unfair labour practice.

27. The **Kiambu County Empowerment Network (KCEN)**, a network of more than thirty vibrant youth organisations rooted in Kiambu County, whilst supporting the Bill, made the following submissions:

(a) Substitution of the word 'may' with 'shall' in Clause 24 and 30 to confer a duty to the Cabinet Secretary, to eliminate possibility of hindering effective execution of the Primary Healthcare Fund and Emergency, Chronic and Critical Illness Fund;

(b) Separation of provisions within the Bill that specifically address youth concerns, aspirations and their unique role in the society in Clause 4;

(c) Review of the Bill to include mechanisms for recognising and accommodating individuals with valuable skills and potential even if they do not meet the ten-year experience requirement in Clause 8 which limits the appointment of the youth;

(d) Establishment of an Investment Committee, implementation of transparency measures, involvement of auditors or an oversight body, establishment of a code of conduct and ethics, regular audits and encouragement of public participation in Clause 38 to enhance transparency, accountability and oversight in the investment of the Authority's funds hence reducing the risk of corruption and mismanagement;

(e) Establishment of accessible registration centers, both physical and digital, across the country and launch of comprehensive awareness campaigns and seamless integration of the Social Health Insurance Fund membership verification into government systems in Clause 26 to simplify the process of providing evidence of membership when accessing public services, enhancing efficiency and reducing delays; and

(f) Inclusion of measures such as public access to financial reports, public consultation and feedback and citizen awareness campaigns in Clauses 42 and 43 to foster greater citizen participation in the audit process, enhance transparency and build trust among the public.

28. The **eleven Civil Society Organizations** involved on health, governance and human rights comprising of **Amnesty International Kenya, Transparency International Kenya, Organisation of African Youth-Kenya, ICJ Kenya, Kenya Human Rights Commission, Remusi Housing Cooperative Society Limited, People's Health Movement, Young Professionals for Development, Kenya AIDS NGOs Consortium (KANCO), Institute of Public Finance (IPF) and the Scaling Up Nutrition Civil Society Alliance** submitted as follows:

(a) Provision of a nominee of CSOs by national health NGOs Network in Clause 7 as they have in-depth knowledge on community needs;

(b) Revision of contributions to be remitted monthly for all households in Clause 27(3) as annual contribution propagates inequality;

(c) Exemption of emergency services from the precondition in Clause 27(7) since it defeats the purpose of emergency services which is to save life;

(d) Addition of the definition of the term 'individual' in Clause 2 as a contributor as the government for legal purposes is also a person, and should not be construed as a beneficiary as it is also listed a liable contributor in Clause 27;

(e) Deletion of the words 'and who has been identified as such by the relevant government body" to avoid discrimination of those who may not have been registered in clause 2 and especially for persons not registered under other programmes for vulnerable persons such as *Inua Jamii*;

(f) Inclusion of the words "transport of the ill or injured" in the definition of emergency medical treatment in Clause 2;

(g) Inclusion of two clauses in clause 11 and 41 to define the powers of the Board and the functions of the Board as the delegation clause does not make sense without express stipulation of the powers and functions of the Board;

(h) That all staff need to be competitively and openly recruited in Clause 17 because appointments will leave room for bias and possible discrimination;

(i) Abolition of the Primary Health Care Fund in Clause 20 to avoid duplicity;
(j) Revision of Clause 21 to include county governments in the sources of monies in the Primary Health Care Fund;

(k) Deletion of the precondition in Clause 26(5) which has potential to limit other fundamental rights as provided in the Constitution including access to other socio-economic rights;

(l) Addition of a clause to include a written justification as to why the revocation will be done in Clause 33(4) so as not to open a window for abuse of power by the office holder;

(m) Revision of Clause 35(4) to provide that regulations on claims management shall be made in consultation with the Authority and revision of the Bill to the effect that all regulations to be made under the Bill ought to be made in consultation with the Social Health Insurance Authority and subjected to public participation; and

(n) Deletion of the Primary Health Care Fund to avoid duplicity as the same is provided in the Primary Health Care Bill 2023;

29. The **Confraternity of Patients Kenya (COFPAK)**, a non-profit organisation made the following submissions:

(a) Deletion of '*one year*' and substitution of '*six months* or more" in Clause 2 as illnesses like tuberculosis may take between six to twelve months of treatment and yet they are chronic. This will prevent the disadvantaging of all the eligible population;

(b) Addition of '*and commodities*' in Clause 3(b) to emphasize inclusion beyond services offered by healthcare providers;

(c) Inclusion of an organisation that champions patient safety and wellbeing at all levels of healthcare in Clause 7(1)(h) as patient organisations are currently not represented; and

(d) Inclusion of patients' organisation namely COFPAK in Clause 45(b) as matters about patients can be handled without involving their representatives.

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

(a) Provision of adequate safeguards and measures through which the persons being registered understand their rights as data subjects and the Data Protection Principles are applied on collection and processing of their data in Clause 26 and 48 so as to protect the rights of data subjects;

(b) Inclusion of a list of information that the Fund may require from its contributors, as an additional provision to promote clarity and align with the principle of data minimization as espoused in the Data Protection Act, No. 24 of 2019.

(c) Amendment to include a new provision to the effect that "Any processing of personal and sensitive personal shall be done in accordance with the Data Protection Act, No. 24 of 2019." This addition will ensure that any processing of personal or sensitive personal data under the Bill is done in accordance with the Data Protection Act, 2019 and the Data Protection Principles which requires transparency, confidentiality, integrity and accountability.

31. **The National Gender and Equality Commission (NGEC)** submitted as follows:

(a) Amendment of the long title by inserting the words "to establish the Primary Healthcare Fund; to establish the emergency, Chronic and Critical illness Fund," immediately after the word "Authority";

(b) The phrase "purchase primary healthcare services from health facilities" as used in Clause 20 should be defined;

(c) The definition of the term "Health Facility" should be defined as it is used in the Bill to mean the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designated to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventive or other health service;

(d) Amendment of Clause 6 by substituting "section 39"with "section 38" for proper cross referencing;

(e) Amendment of Clause 7 to reduce the number of Board members to nine by substituting "the director general for Health" with "The Principal Secretary in the State Department for the time being in charge of social protection" in clause 7(1)(d), deletion of the 7(1)(e) and (g) without replacement. This is to align with the principles in the *Mwongozo Code* on Governance on membership of Boards. Further, the State Department of Social Protection is in charge of issues and matters relating to the indigents and vulnerable persons and is in charge of the identification and enlisting to the funds while the Attorney-General can be a co-opted member;

(f) Amendment of Clause 7 (4) by substituting the following phrase "afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalised" with "adhere to the principle of gender equality and representation of persons with disabilities" so as to align with Article 27 (8) and 54 (2) of the Constitution;

(g) Inclusion of new clause to the effect that the Board may where it deems appropriate, co-opt any person to the Board as other persons may add value to the Board but cannot be appointed as substantive members due to limitations of memberships;

(h) Deletion of Clause 8(2)(b), Clause 9(e) and Clause 46 (c) as the term unsound mind is derogatory, discriminatory and prejudicial to persons with mental disabilities and does not align with the provisions of the United Nations Convention on the Rights of Persons with disabilities (CRPD);

(i) Amendment of Clause 24 and 30 by substituting the term "may" with "shall" to make it mandatory for the Cabinet Secretary to make regulations on the implementation of the Primary Healthcare Fund and Emergency, Chronic and Critical illness Fund;

(j) Deletion of Clause 26(5) as it offends the provisions of Article 12(1) (a) of the Constitution on entitlement of citizens; and

(k) Inclusion of a new Clause 30A on the Appointment of Fund managers as follows— "There shall be Fund managers of the Fund who shall be competitively recruited and appointed by the Board".

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

(a) That the definition of the terms "beneficiary and household" ought to clarify whether beneficiaries must or must not be biological children of the contributor, whether a household is only defined by biological or nuclear family or members of the contributor or those living in the same household;

(b) Amendment of Clause 31 and 32 since the Social Health Insurance Fund is a social insurance cover and should do away with enhanced benefits package for civil servants since the law does not deprive anyone the opportunity to engage with private insurance covers for complimentary cover. This ensures equal treatment for all Kenyans;

(c) Inclusion of penalties for denial of emergency healthcare to Kenyans in clause 28 as this is a constitutional right;

(d) Supported the lowering of the minimum rates for unemployed Kenyans as well as subsidies for the vulnerable in Clause 27 as it promotes inclusivity. Without such capping, the high salaried Kenyans would end up paying more than three times what they would have paid for private medical insurance;

(e) The Board should have representation of KMA as proposed in Clause 8 (1)(h) as healthcare delivery is delivered in teams and the physician is the team leader;

(f) Amendment of Clause 7 (h) (ii) and (iv) to explicitly provide how the representatives of the contributors in informal and formal sectors will be nominated and also include patient representation in the Board;

(g) Inclusion of a requirement of a degree in health, health systems and expertise in ICT in Clause 13 as qualifications of the CEO's office must be clearly stipulated within the Bill for guidance and transparency;

(a) That the 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 in Clause 14(1)(a) as a background in healthcare provides expertise in health service delivery which is critical for the successful implementation of the Bill;

(b) Deletion of the requirement of the CEO being an advocate of the High Court of Kenya in Clause 14 1 (b) as the legal team is represented on the Board by the Attorney General;

(c) That the Corporation Secretary should have a bachelor's degree in business, finance, public administration, law or related fields and have sufficient knowledge in administration and should be a Certified Public Secretary in Clause 16 (2) (a) and (c). The Bachelors of Law degree only limits other professionals with sufficient knowledge in public administration;

(d) That Part III reaffirms and supports tax funding for primary health care which is the cornerstone of healthcare and ought to provide for sufficient funding for the PHC fund based on population health needs in Clause 23 as investment is cheaper in the long run;

(e) The period of twelve months adopted in Clause 27(1)(b) should be applied to Clause 26(2);

(f) That the contribution rate has not been prescribed in Clause 27 (2) (a) and suggested that the rate be based on Basic Salary and not Gross Pay at a rate of 2-3% of the Basic Salary as additional benefits should not be subject to health insurance contribution as it takes away from the intended cushioning;

(g) That Clause 27 (3) allow a more flexible payment: monthly, quarterly, biannual or annually. Annual payment locks out majority of self-employed and underemployed individuals who often struggle to pay.

(h) That under Clause 27(6), the penalty must not exceed 5%.

(i) That *"Sin taxes"* including taxes from alcohol, tobacco, sugar industry and other products that increase the development of chronic illnesses should be made a source of monies for the Emergency, Chronic and Critical Illness Fund.

(j) The benefits package provided under clause 31(1) should be published before the Bill is passed as health professionals, beneficiaries and Kenyans ought to know the scope of benefits that shall be provided in the Bill;

(k) That the tariff rates under Clause 32 (1) should be published for completeness of this Bill as health professionals and providers ought to be compensated fairly as per the prescribed rates . The tariffs must take into consideration the professional fee rates of medical services as prescribed by the Medical Practitioners and Dentists (Professional Fees) Rules, 2016 (Legal Notice No. 131).

(l) Amendment of Clause 32 (3) to provide for specific time frame within which tariffs are reviewed as opposed to leaving it open;

(m) That clarity is required on the constitution of the empanelling body as described in Clause 33(4) of the Bill as services under claims should not be outsourced but the department should be adequately staffed. This is the core business of the Authority and therefore claims management should be supported by doctors and health professionals to increase efficiency and reduce fraud. Outsourcing will increase costs in the current claims process as healthcare workers have faced challenges getting approval for genuine procedures for patients due to the lack of understanding from the preauthorisation team;

(n) That Clause 38(1)(a) ought to 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 as the funds are social funds whose sole purpose are to ensure equitable access to healthcare and not to make alternative income;

(o) That under Clause 49 should provide for the offences related to fraudulent activity, and ought to provide for the recovery of funds in addition to fines and imprisonment as recovery is key in ensuring justice for the contributor and the beneficiaries;

(p) The imprisonment term for misappropriation of funds under Clause 49(2) should be increased from five to ten years as financial misconduct causes greater harm; and

(q) That the amounts payable under Clause 50(2)(b) should be determined by Parliament similar to other taxation/contributions and not the Cabinet Secretary.

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

(a) That the organisation acknowledges the inefficiency and gaps within the health sector and in particular, the problems surrounding the National Health Insurance Fund which necessitates some radical change so as to attain the goals of Universal Health Coverage;

(b) 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;

(c) That the contributions rates and the minimum capping should be legislated so that Kenyans can be made aware of the same without having to rely on roadside declarations; and

(d) That Parliament exercises prudence and care while considering the Bill so as to give Kenyans efficient and more practicable healthcare solutions and to protect Kenyans from exploitation.

34. **Dr. Peter Ongwae, the PSK practice Chairman** submitted that the Pharmaceutical Society of Kenya should nominate a suitable pharmacist to fill the slot allocated to healthcare providers as medicines account for a large budget of insurance claims. The experience of a pharmacist will therefore greatly assist the Board in the rationalization of medical claims.

35. **Mr. Rashid S. Osman** made the following submissions:

(a) Amendment of Clause 27 to provide for retired public service employees;

(b) Amendment of Clause 27(2)(a) to provide for two instances (i) "in 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 and (ii) in the case of a household whose income is derived from a monthly pension through a monthly statutory deduction from the pension by the pension scheme as prescribed by this Act";

(c) Inclusion of pension earning retired employees in the definition of a contributor in clause 2;

(d) That Clause 27 provides for a health insurance scheme for public service officers (retirees) who served the country with dedication and valour as they do not enjoy a medical scheme due to the high cost of private medical insurance;

(e) He expressed concern that available data denotes that the former public service officers die after barely enjoying retirement for five years mainly due to lack of a medical scheme or expensive medical scheme and as such these persons should be treated as a special category within the social health scheme; and

(f) That the Board of the Social Health Authority should give first preference to the qualified staff of the NHIF in the transition to the Authority under paragraph 6(2) of the First Schedule to the Bill since the NHIF staff have institutional memory and a wealth of experience. The NHIF staff may also suffer mental health due because of being required to retire or to move to a new work environment.

36. The **Kenya Union of Commercial Food and Allied Workers** submitted as follows:

(a) A nominee of the Federation of Kenya Employers ought to be included in the Board of the Authority as the FKE plays a critical role in ensuring that the deduction from employees are remitted to the Authority;

(b) Amendment of Clause 8(b) by deleting the requirement of degree for a person to be the Chairperson or member of the Board;

(c) Amendment of Clause 8(1)(c) to include labour relations and human resource practice as additional areas of specialization;

(d) Addition of paragraph 2(1) of the First Schedule to include liabilities so that the Authority takes over the funds, assets and other property as well as the liabilities of the NHIF;

(e) Deletion of paragraph 2(2) of the First schedule;

(f) Amendment of the First Schedule to provide that upon operationalisation of the Authority, all the staff of the Fund on the appointed date be deemed to have automatically transited and become the employees of the Authority without being subjected to a fresh recruitment exercise or being forced into retirement or redeployment within the Public Service where they have no experience and expertise.

37. The **International Commission of Jurists (ICJ Kenya)**, whilst expressing its support for the Bill, made the following submissions:

(a) Inclusion of "vulnerable groups as defined in Article 21 of the Constitution of Kenya" in the definition of the vulnerable persons as 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. This remains a significant threat to the goal of Universal Health Coverage by 2030;

(b) Inclusion of "any monies from County Governments as may be appropriated by County Assemblies" in clause 21 as one of the Primary Healthcare Fund sources as the County Governments have a duty under Part 2 of the Fourth Schedule Part 2 of the Constitution to promote primary health care;

(c) Inclusion of a new provision in 42 (4) to the effect 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." Article 232 (1) of the Constitution provides that transparency and provision to the public of timely and 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;

(d) Introduction of a new provision in clause 43 to provide that "the Board will publish and publicize the Social Health Authority annual report transmitted to Parliament under subclause 43 (2).The Commission indicated that 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 Authority to be transparent and accountable;

(e) Introduction of a new provision to establish a structure for public participation and stakeholder engagement so as to give public participation the ability to influence decision making by the Authority; and

(f) Introduction of a new provision in clause 47 to the effect that "the Authority shall keep proper records on social health insurance funding, processes and programmes". 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. The Bill should provide stringent provisions on access to financial and non-financial information on social health insurance funding, processes and programmes.

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

(a) Deletion of the words "approved by the Board" and substitution therefor with the words "the accrediting body" in the definition of "empanelment" as this gives the Board of the Authority power to usurp the functions of another government agency, the accrediting body;

(b) Make provision for the definition of the word "healthcare facility" in line with the Health Act,2017 so as to distinguish it from a "health care provider";

(c) Make provision for "essential healthcare" in Clause 20 so as to properly demarcate the scope of primary healthcare;

(d) Definition of essential health services in the context of primary healthcare and provide a clear distinction between healthcare provider and healthcare facility as the aim of the Primary Healthcare Fund is "to purchase primary healthcare services from health facilities";

(e) Redrafting of Clause 5(f) as guidelines are advisory and non-binding in nature whereas regulations have the force of law and are enforceable;

(f) That Clause 7(1)(h)(iii) be redrafted specify that "private healthcare facilities" will be represented in the Bill;

(g) Inclusion of "monies appropriated by the National Assembly for provision of Primary Health Services to indigent and vulnerable persons" in Clause 21;

(h) Amendment of Clause 24 to require that "in consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Primary Healthcare Fund" as the implementation of the Regulations, upon publication by the Cabinet Secretary, will be carried out by the Board;

(i) That the purpose for which the Social Health Insurance Fund is established should be explicitly stated for clarity and to limit any misappropriation of monies that will be paid into this Fund;

(j) That Clause 26(1), (2) and (5) be amended and the word "contributor" be used since the term "member" is misleading as to the intent of clause 26;

(k) The phrase "after depletion of the social health insurance cover" be deleted from Clause 28(a);

(l) That Clause 30 be redrafted to state that the Board shall make regulations for the Emergency, Chronic and Critical Illness Fund so as not to weaken the Board;

(m) That the word "empanelment" be excluded in clause 39 as its 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);

(n) Amendment of Clause 32 to create sector wide acceptance of any prescribed tariffs;

(o) Renaming of the Claims Management Office to the "Claims Management and Settlement Office" since Clause 36(1) assigns the "payment function" to the "Authority" whose only other organs are the "Board" and the "Dispute Resolution Committee";

(p) Inclusion of "the settlement of valid claims on behalf of the Authority as a function of the renamed Claims Management and Settlement Office in Clause 35(2). The Bill should provide for the staffing compliment of the claim's settlement function carried out on behalf of the Authority by the Office;

(q) Clause 45 which establishes the Dispute Resolution Committee to appear first as the order of precedence of the clauses appears incorrect; and

(r) Deletion of Clause 48(2)(d) as empanelment is a not a function of the Social Health Authority and is therefore outside the ambit of the Bill.

39. The **Moi University** submitted that enhanced benefits schemes and packages for public institutions should be retained so as to cushion the staff of the university and their dependents.

40. The **Health NGOs Network,** whilst presenting the views on behalf of 112-member health CSOs, submitted their views as follows:

(a) That the Bill should incorporate clear control mechanisms to oversee the funding and operation of critical components such as the means testing instrument. An oversight committee should be established to conduct regular audits to ensure transparency, accountability, efficient resource allocation and utilisation.

(b) That CSOs be incorporated in the governance structure to ensure accountability, representation and diverse perspectives in healthcare policy formulation and implementation;

(c) That the Bill outlines a mechanism of actively engaging with and informing Kenyan citizens about the operationalisation of the Bill particularly on increasing contributions; and

(d) That sufficient time for public participation at the county level be allocated by sharing a well-defined schedule of time and dates for public consultations and feedback provided to stakeholders on how their recommendations were actioned.

41. The **Economic and Social Rights Centre-Hakijamii** noted that there is a part of the Bill that contradicts the objects of the Bill of ensure that all Kenyans have access to affordable and comprehensive quality health services.

42. The **Social Protection Actors Forum** made the following submissions:

(a) That the Bill exhibits a progressive orientation in certain aspects of its provisions. However, it also presents notable gaps, as it delegates considerable decision-making of the Authority to the Cabinet Secretary and the same should be redrafted particularly to curb budgetary irregularities that persist within the current funding structure;

(b) That it is imperative to underscore the importance of achieving transparency and accountability within the implementation of the Bill; and

(c) That the provisions of tariffs should be designed in an equitable and reasonable manner considering the distinct economic circumstances of individuals so as to ensure that the financial burden of healthcare is distributed fairly and in accordance with the prevailing economic conditions of each citizen.

43. The **Former Parliamentarians Association (FOPA)** submitted that paragraph 5(1) of the First Schedule to the Bill to allow the Social Health Authority to provide enhanced benefits schemes and packages for retired civil and public servants as the current provision will expose retired public servant to catastrophic medical expenditures and possible impoverishment as the majority do not have a post-retirement medical scheme. The Association emphasized that if 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.

44. 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.

45. The **Pharmaceutical Society of Kenya** made the following submissions:

(a) That the appointment of a non-executive chairperson should be left to Healthcare Professional bodies in Clause 7 (1) so as to ensure health ethics are always upheld and to prevent political interferences with the Board at the expense of good dispensation of healthcare;

(b) Addition of '(v) a nomination from the Pharmaceutical Society of Kenya (PSK) in Clause 7(h) as pharmacists are healthcare providers and would play a critical role in the Board of Authority on how to rationalise medical resources for positive health outcomes;

(c) That reimbursement approval should be done by the Public Service Commission as its independence can be compromised if their reimbursement needs the approval of the Cabinet Secretary of Health under clause 12;

(d) That the Claims Management Office ought to be a Department or a Directorate of the Social Health Authority as it cannot be a private entity for good stewardship and governance of use of Public Funds;

(e) Addition of the list of responsibilities in Clause 35(2) of the Pharmacist Office in the CMO to ensure that any surplus made from the Claims Management Office is expended towards the provision of healthcare;

(f) Provide for accreditation in Clause 33(2) of providers or facilities to the Social Health Insurance Fund by their respective regulatory authorities with requiring additional empanelment as it creates a barrier and adds to the cost of healthcare provision; and

(g) Inclusion of at least two healthcare practitioners possessing a bachelor's degree in Clause 45(2) as the dispute and resolution committee will be handling practicing healthcare professionals and healthcare matters.

46. The **International Budget Partnership Kenya**, whist supporting the Bill, made the following submissions:

(a) That Clause 27 (2) (b) should consider the unsalaried Kenyans without a monthly income by stipulating at what point in the year, they make such contributions for planning purposes, as Government will likely run into challenge where most people will be default in remitting annual lumpsum amounts;

(b) That clarification should be provided on whether Clause 27 (2) (c) both national and county governments are responsible for the payment of the premiums therein;

(c) That Clause 20 does not shed light on issues on the making claims by public health facilities as the process is not straightforward and has deeply affected healthcare services at the county level. Based on the Fourth Schedule of the Constitution, any national level legislation that touches on delivery of healthcare in county facilities must provide for the balance of functional responsibility and the accompanying finances necessary to facilitate the fulfilment of these responsibilities. To fulfil their functions, counties should be given a chance to be innovative and to run own primary healthcare models with enough resourcing;

(d) That the National Assembly ought to clarify whether the separation of the NHIF into the separate funds may create an additional layer of bureaucracy in management of social health insurance schemes;

(e) That legislation governing financing insurance schemes should consider the inequality and changes in accessing healthcare in the country; and

(f) That the Bill addresses challenges faced by the current NHIF scheme including issues around duplication and fragmentation of programmes as well as the transparency of the Fund's finances.

47. The **Kenya Health Federation** and the **Kenya Medical Practitioners Pharmacists and Dentists' Union**, whilst supporting the Bill, made the following submissions:

(a) That the definition of "consent" should enhance opportunities including provision of reasonable accommodation for a person with a disability to make informed choices in Clause 2;

(b) 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;

(c) Review and harmonization of the definitions and relationships of the terms: Digital Health, Telehealth, Telemedicine, E-Health, and comparison of the usage of the terms in different jurisdictions and the World Health Organisation guidelines;

(d) Amendment of the Health Act, 2017 to anchor the Agency in Bill such that issues of information management are not handled in separate laws;

(e) Inclusion of nonstate actors in Clause 6(b) and amendment of Clause 6(d) to provide that the 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) Removal of the Principal Secretary for ICT in Clause 8(1) and substitution with the Director-General for Health as the technical advisor to the Ministry of Health;

(g) Amendment of Clause 8 (1)(f) to provide that 'One person nominated by the Council of Governors from among the County Directors of Health' as counties need representation in the Board of the Digital Health Agency;

(h) Amendment of Clause 8(1)(h) to provide for the representation of the patients in the Board of the Digital Health Agency;

(i) Deletion of Clause 8(8) to provide for approval of consultancy services by the Board to guide operationalisation of mandates as there may be room for exploitation and expansion of the Board's capacity which may bring about governance issues;

(j) Amendment of clause 12 to require that the CEO ought to have a master's

degree instead of a bachelor's degree; trained persons excluded from list of qualifications provided;

(k) Inclusion of term limits in Clause 13(1) so that the Corporation Secretary will serve for period of 3 years renewable for a further 3 years;

(l) Make provision on disaggregated data in the proposed Health Information System under Clause 21(3);

(m) Amendment of Clause 28 as the custodian of digital health data as information held in the data system can only be referenced as digital health data;

(n) That the Data Controller in Clause 32 appointed by the Cabinet Secretary, to maintain and transmit health data at the national level ought to be a health professional who understands the vitalness of such data and facilitates fast transmission of the health data;

(o) Deletion of Clauses 46 to 50 as they similar to the provisions of the Health Act, 2017 which under section 103 requires the making of regulations for better operationalisation of e-health and telehealth;

(p) Alignment of Clause 51 with the Environmental Management and Coordination Act and the roles of National Environment Management Authority (NEMA) in the management of e-waste as NEMA has developed guidelines on the same;

(q) Consideration of alignment with ICT and telecommunications laws on management of e-waste and the same can be adequately covered under the Health Act, 2017;

(r) Amendment of Clause 52(1) as it does not strictly fall under digital health laws and may be adequately covered under the Health Act, 2017;

(s) A special directorate may be set up to oversight health data control and management with the health data protection regulations being enacted under the Data Protection Act, No. 24 of 2019 so that the functions of the Data protection Commissioner are not infringed upon;

(t) Harmonisation of offences in Data Protection Act, 2019 and the penalties and offences proposed in this bill;

(u) Health data controllers and processors must have healthcare training for ease of data management and comprehension of system operations; and

(v) That there is need for alignment with the Science, Technology and Innovation Act, 2013 and the Pharmacy and Poisons Act, Cap 244 on matters of healthcare research and dealing with sensitive health research data.

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

(a) That the Bill should accelerate realization of the government's critical commitment in the 2023 Budget Policy Statement to ensure 100% enrolment rate of persons with disabilities in the HealthCare Schemes.

(b) That the social health insurance schemes should consider the interests of persons with disabilities including addressing barriers to enrolment to the schemes by PWDs, provision of sufficient financial support to PWDs and ensuring that healthcare services and products meet the needs of PWDs including assistive devices and other disability related services;

(c) Inclusion of guiding principles namely equity, non-discrimination and access in the Bill as they anchor the execution of the provisions of the Bill;

(d) Amendment of the definition of the word "beneficiary" to state that a beneficiary is a person with disability who is not a contributor as the current provision locks out persons with disabilities who might not be able to pay for the Social Health Insurance Fund;

(e) Amendment of the definition of "Universal Health Coverage" to state that all individuals and communities have access and receive full range of the health care services they need and to include the fact that UHC entails healthcare services for persons with disabilities which includes rehabilitative, habilitation, assistive devices, speech therapy, physiotherapy, occupational therapy and audiology" as access to services is a key indicator of the effectiveness and adequacy of health care systems;

(f) Insertion of the definition of the word "disability" as defined in Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to provide clarity on who qualifies to be a referred to as a beneficiary in the disability category;

(g) That there is need to provide for representation of the persons with disabilities in the Board of the Social Health Authority in clause 7(1)(j) as there is a close nexus between disability and health as persons with disabilities are likely to experience health problems and health problems can lead to disability;

(h) Deletion of Clause 8(2) (b) as the principles non-discrimination and inclusion is clearly outlined in the Constitution. The Employment Act, 2007 further provides that no persons will be discriminated against at the workplace on the account of their disability;

(i) Deletion of the word "be" in clause 26 (1) for grammatical correctness;

(j) The registration process under clause 26(4) should be inclusive, accessible and equitable for all persons with necessary support for participation and as such efforts should be made to reach out to under- represented groups for enrolment.

(k) That clause 26(5) may refranchise vulnerable groups including persons with disabilities who already face a myriad of barriers in participating in processes on an equal basis with others .This is not good as the Bill has no explicit provisions on how it will facilitate enrolment of persons with disabilities and other vulnerable groups; and

(l) Insertion of the word "inclusive" after the word "facilitate" in clause 47(1) on facilitation of public participation and stakeholder engagements as most vulnerable groups including persons with disabilities face barriers in

participating in public participation processes.

49. 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.

50. 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

51. The Committee, having considered the Social Health Insurance Bill, 2023, National Assembly Bill No. 58 of 2023 and submissions from stakeholders, made the following observations:

(a) The Bill regulates the provision of social health insurance which will reduce the current high costs of out of pocket expenditure on healthcare by Kenyans. In doing this, the Bill ensures the fulfillment 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 persons in lawful custody. The Bill is therefore aligned to the Constitution of Kenya, 2010 which requires the government to provide appropriate social security to persons who are unable to support themselves and their 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 Kenyans 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.

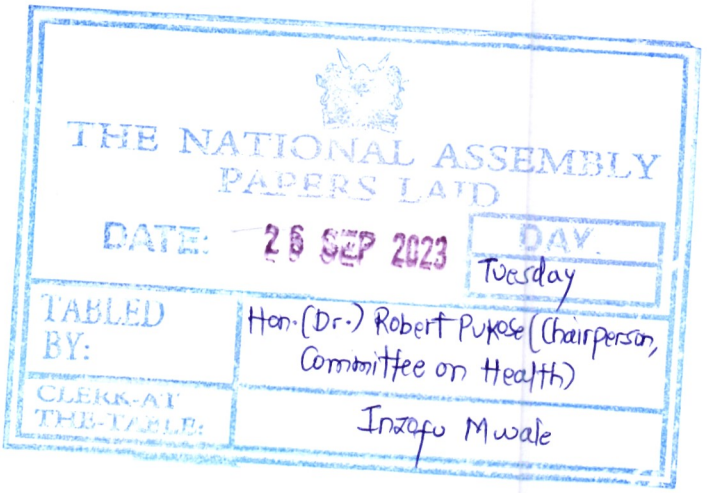
CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that the House adopts the Social Health Insurance Bill, 2023, (National Assembly Bill No 58 of 2023) with amendments

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

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



CHAPTER SIX

6.0 SCHEDULE OF AMENDMENTS

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

CLAUSE 2

THAT Clause 2 of the Bill be amended by—

(a) deleting the word "National" appearing in the definition of the term "Board";

Justification: To align with clause 4 of the Bill that establishes the Social Health Authority.

(b) deleting the words "at every stage of their development, through their full participation and at an affordable cost to the community and country, in the spirit of self-reliance and self-determination" and substituting therefor the words "at levels 1, 2 and 3 of health services, to meet their health needs at every stage of life cycle, with their full participation and at an affordable cost to the community and country";

Justification: To specify that primary health care services are offered at level 1, 2 and 3 as delineated in the First Schedule to the Health Act, No. 21 of 2017.

(c) deleting the definition of the phrase "risk spreading";

Justification: 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.

(d) deleting the words "who for the time being is named as such by the contributor for that financial year" appearing in the definition of the word "spouse";

Justification: To align the definition of this term with the definition provided in the Marriage Act, No. 4 of 2014.

(e) deleting the words "to deliver the most efficient and cost-effective care to patients" in the definition of the word "tariff";

Justification: Matters of efficiency and cost-effectiveness will be considered during the identification and setting of the applicable tariffs.

CLAUSE 4

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

Justification: The Social Health Authority is not expected to have a surplus of funds as all funds will be expended towards provision of health services.

CLAUSE 5

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

"(d) empanel and contract health care providers and healthcare facilities upon inspection, licensing and certification of the health care providers and healthcare facilities by the relevant body;

Justification: To specify that the Social Health Authority will be responsible for empanelment and contracting of heath care providers and healthcare facilities while the relevant body contemplated under clause 33 will be responsible for inspection, licensing and certification of health care providers and healthcare facilities.

CLAUSE 6

THAT Clause 6 of the Bill be amended—

(a) 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.

(b) by deleting paragraph (e) of sub-clause (2).

Justification: The Social Health Authority is not expected to have a surplus of funds as all funds will be expended towards provision of health services.

CLAUSE 7

THAT Clause 7 of the Bill be amended—

(a) in sub-clause (1) by-

(i) deleting paragraph (e) and substituting therefor the following new paragraph—

"(e) a representative of the County Executive Committee Health Caucus;

Justification: To increase representation of the counties since health is a devolved function under Part 2 of the Fourth Schedule to the Constitution.

(ii) deleting sub-paragraph (iii) of paragraph (h) and substituting therefor the following new sub-paragraph—

" (iii) a representative of the consortium of health care providers;

Justification: To specify that the Board member will be drawn from the consortium of health care providers for overall representation of the interests of faith based and private sector health care providers.

CLAUSE 8

THAT Clause 8 of the Bill be amended in sub-clause (2) by—

(a) deleting the words "private health facility" appearing in paragraph (d);

Justification: To make directors, officers or shareholders of private health facility eligible for appointment as members of the Board of the Social Health Authority.

(b) inserting the words "or parliamentary reports" immediately after the word " law" appearing in paragraph (e).

Justification: To prevent a person that Parliament has found culpable of contravening Chapter Six of the Constitution from being appointed as a member of the Board of the Social Health Authority.

CLAUSE 9

THAT Clause 9 of the Bill be amended by deleting the words "permission from the appointing authority" appearing in sub-clause (b) and substituting therefor the words "lawful cause".

Justification: 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

THAT Clause 14 of the Bill be amended—

(a) in sub-clause (1) by—

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

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

(ii) deleting paragraph (b);

Justification: The expertise required of the CEO of the Social Health Authority is more inclined to the health sector.

(b) in sub-clause (4) by deleting the words "outsource services and enter into and sign commercial contracts" appearing in paragraph (f) and substituting therefor the words "enter into and sign contracts" ;

Justification: To give the Board of the Social Health Authority discretion in determining whether or not to outsource services.

(c) by inserting the following new sub-clause immediately after sub-clause (5)—

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

Justification: To ringfence the monies administered under the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund.

CLAUSE 16

THAT Clause 16 of the Bill be amended—

(a) in sub-clause (2) by—

(i) inserting a new paragraph immediately after paragraph (a)—

(aa) is an Advocate of the High Court of Kenya;

Justification: The Corporation Secretary needs to be an Advocate of the High Court of Kenya so as to qualify to practice as such as provided under the Advocates Act, Cap. 16.

(b) by renumbering the existing sub-clause (6) as sub-clause (3).

Justification: To correct a minor error in numbering of the sub-clauses.

CLAUSE 17

THAT Clause 17 of the Bill be amended by inserting the words "upon the advice of the Salaries and Remuneration Commission" immediately after the word "determine".

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 22

THAT Clause 22 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clause (3)—

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

Justification: The National Assembly appropriates funds for expenditure by the national government and other national state organs under Article 95 of the Constitution.

CLAUSE 24

THAT Clause 24 of the Bill be amended by—

(a) deleting the word "may" appearing immediately after the words "Cabinet Secretary" and substituting therefor the words "shall in consultation with the Board ".

Justification: 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

THAT Clause 26 of the Bill be amended by—

(a) deleting the word "be" appearing immediately after the words "register as" in sub-clause (1);

Justification: To correct a typographical error.

(b) deleting the words "registration with the Social Health Insurance Fund" appearing in sub-clause (5) and substituting therefor the words "compliance with the provisions of section 26 and 27 on registration and contribution".

Justification: To enable the enforcement of the mandatory registration and contribution to the Social Health Insurance Fund.

(c) by inserting the following new sub-clauses immediately after sub-clause (5)—

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

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

Justification: To make it mandatory for all foreign nationals visiting Kenya on short term stays (less than 12 months) to have a travel insurance cover for the purposes of protection of public health especially during health-related emergencies. Many countries have implemented mandatory travel insurance especially after the Covid19 pandemic including Egypt, Rwanda, UAE, Russia, Saudi Arabia and the entire Schengen region.

CLAUSE 27

THAT Clause 27 of the Bill be amended by deleting the word "ten" appearing immediately after the words "equal to" in sub-clause (6) and substituting therefor the word "two".

Justification: The proposed penalty of ten percent for failure to pay contributions is too punitive.

CLAUSE 30

THAT Clause 30 of the Bill be amended by deleting the word "may" and substituting therefor the words "shall in consultation with the Board ".

Justification: 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

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

"(3) The Authority may, with the approval of the Board and in consultation with the Cabinet Secretary, provide enhanced benefits schemes and packages.

Justification: 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

THAT Clause 34 of the Bill be amended in sub-clause (7) by inserting the words "and is liable upon conviction to a fine not exceeding one million, or to imprisonment for a term not exceeding two years or to both" immediately after the words "commits an offence" .

Justification: To provide the penalty for the offence of displaying an identification issued by the Authority without the permission of the Authority.

CLAUSE 35

THAT Clause 35 of the Bill be amended—

(a) deleting sub-clause (3) and (4);

Justification: Claims management is a core function of the Social Health Authority.

(b) renumbering the existing sub-clause (4) as (3).

Justification: This allows for proper sequencing in the clause.

CLAUSE 38

THAT the Bill be amended by deleting clause 38.

Justification: The Social Health Authority is not expected to have a surplus of funds as all funds will be expended towards provision of health services.

CLAUSE 40

THAT Clause 40 of the Bill be amended in sub-clause (4) by deleting the words "or in pursuance of an authorization of the Board".

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

CLAUSE 41

THAT Clause 41 of the Bill be amended by deleting the proviso in sub-clause (2).

Justification: The proviso is superfluous as limit on administrative expenses is provided in sub-clause (2).

PART VIII

PART VIII be amended by deleting the word "**Committee**" and substituting therefor the word "Tribunal".

Justification: To establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature.

CLAUSE 44

THAT Clause 45 of the Bill be amended by—

(a) deleting the word "Committee" wherever it appears and substituting therefor the word "Tribunal";
(b)
(c) inserting the following new sub-clause immediately after sub-clause (2)—

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

Justification: 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

THAT Clause 45 of the Bill be amended by—

(a) deleting the word "Committee" wherever it appears and substituting therefor the word "Tribunal";

(b) in sub-clause 2 by—

(i) deleting the words "Cabinet Secretary" appearing in paragraph (a) and substituting therefor the word "President";

(ii) deleting the words "Cabinet Secretary" appearing immediately after the word "appointed by the" in paragraph (b) and substituting therefor the word "Judicial Service Commission";

Justification: To establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature.

CLAUSE 46

THAT Clause 46 of the Bill be amended by deleting the word "Committee" wherever it appears and substituting therefor the word "Tribunal".

Justification: To establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature.

CLAUSE 48

THAT Clause 48 of the Bill be amended in sub-clause (1) by—

(a) inserting the words "continue to" immediately after the words "under this Act shall"; and
(b) deleting the words "developed pursuant to the relevant written law".

Justification: To emphasize that the existing systems will be leveraged upon in digitization of processes under the Bill.

CLAUSE 49

THAT Clause 49 of the Bill be amended—

(a) in sub-clause (1) by deleting the words "one million" appearing in the proviso and substituting therefor the words "two million".
(b) in sub-clause (5) by deleting the words "five hundred thousand" appearing in paragraph (a) and substituting therefor the words "two million".

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

(c) by inserting the following new clause immediately after Clause 49—

Recovery of sums due under this Act.

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

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

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

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

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

Justification: To give the Authority power to recover monies lost or due besides the payment of the fines imposed under the Bill.

CLAUSE 50

THAT Clause 50 of the Bill be amended in sub-clause 2 by deleting the words "which shall be within a period of one month from the date of submission of the claim; and" appearing in paragraph (e).

Justification: The timeframe of settling claims ought to be set out in the proposed regulations.

CLAUSE 52

THAT Clause 52 of the Bill be amended by deleting the words "risk spreading and appearing immediately after the words " in respect to risk" ".

Justification: 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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 an 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.

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 26TH 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.
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 24/09/2023

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.....24/09/2023

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 SOCIAL HEALTH INSURANCE BILL, 2023

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

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 NOTIFIED 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

REPUBLIC OF KENYA

> 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;

IT IS NOTIFIED 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
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 Mr. Dache,

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

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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
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Dr. Simon Mucara Kigondu
The President
The Kenya Medical Association
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Mr. Eric Theuri
President
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Ms. Jacqueline Mugo, EBS
Chief Executive Officer
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Mr. Stephen Mutoro
Secretary General
Consumers Federation of Kenya
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NAIROBI

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

Dear Dr. Kigondu,

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) 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.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly, the Committee resolved to hereby invite relevant stakeholders to submit memoranda on the said Bills. 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.

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 SOCIAL HEALTH INSURANCE BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 58 OF 2023)

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT/COMMENT	RATIONALE	COMMITTEE RESOLUTION
1	Long Title	Health NGOs Network	Amend the long title as follows— '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.	To refer to policy guidance in the Bill.	**Rejected.** There is no need to enumerate the policies involved as the same is taken into account in the overall drafting of the Bill
		NGEC	Amend by inserting after the word "Authority" the following "To establish the Primary Healthcare Fund; to establish the emergency, Chronic and Critical illness Fund;"	To be explicit.	**Rejected.** The overall purpose of the Bill is to provide for social health insurance in the country which is being implemented through the three funds.
2	Clause 2	Haki Yetu Organisation	The definition of Chronic and critical illness to include all ailments under this category in order to avoid ambiguity.		**Rejected.** Drafting is done in general terms without too much specificity which will be limiting.
		KAPH	Redefine chronic illness to "means a condition that is existing at diagnosis and is expected to persist for more than one year or more and require ongoing medical attention, or limit activities of daily living or both"	Chronic illness" disease can be existing and envisioned to persist even before and after diagnosis has been made Use the word healthcare provider and its	**Rejected.** The current definitions are in order and encompasses the proposed amendment.

			Redefine healthcare provider and do not use it interchangeably with health service delete the word health care services where its used to mean healthcare providers	definition as it is in the Health Act, 2017.	
		NHIF	Define the term "household" to mean 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. The proposed definition is subject to many interpretations.	
		KMA	Clarify if the beneficiaries must or must not be biological children of the contributor. Clarify if a household is only defined by biological/nuclear family members of the contributor or those living in the same household. Expand the definition of a household to give clarity on extents/limits of primary healthcare.	The Kenyan household is diverse and have many dependents who may not be biological/nuclear members of a contributor	**Noted.** The definition of a beneficiary addresses the issues raised.

		NGEC	Define "Purchase primary healthcare services from health facilities as used in clause 20. Define a "Health Facility" as follows— "health facility" means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated od designated to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventive or other health service;	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 defined. interpreted.	
		Health NGOs Network	Define "beneficiary" to include: A vulnerable person is defined under Part 1 but not included as a beneficiary in the interpretation.		**Rejected.** The government is a beneficiary on behalf of a vulnerable person.
		MOH	Deletion of the word "National" appearing in the definition of the words "Board". Deletion of the words "in the spirit of self-reliance and self-determination" in the definition of "primary health care".	Clause 4 of the Bill establishes the Social Health Authority. The proposed definition best captures the term.	**Adopted.** The proposals from MOH and justification of the same is are in order.

			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". Deletion of the term "risk spreading".	To ensure there is provision for the protection of the spouse against abuse of removal by the contributor. In social insurance practice, there is no risk of spreading as the scheme has only one pool.	
		COG	Amend the definition of "Chronic illness" to mean a condition that lasts six months or more and require ongoing medical attention or limit activities of daily living or both;	One year is a long period and may beat the essence of having the Fund.	**Rejected.** The current definition is in order and encompasses the proposed amendment.
		FKE	Need to make provision for refugees in the definition of a beneficiary.	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 naturalisation.	**Rejected.** The definition of a "beneficiary" is sufficient.
		CSOs	Add 'individual' to read individual contributor in the definition of a "beneficiary".	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.	**Rejected**. The government is also a contributor on behalf of vulnerable persons.

			Delete 'and who has been identified as such by the relevant government body "to avoid discrimination of those who may be missed from registration" in the definition of a vulnerable person;	Left as it is, there is a risk of discriminating upon individuals not registered under other programmes for vulnerable persons e.g. *Inua Jamii.*	**Rejected.** The responsibility of identifying indigents and vulnerable persons has to be placed on a national government agency for purposes of accountability.
			Include the words, "transport of the ill or injured" in the definition of emergency medical treatment.	Emergency medical services include transport of the ill or injured by ambulance or air medical service.	**Rejected.** The current definitions of chronic illness, emergency medical treatment, beneficiary and universal health coverage are sufficient to cover the proposed amendment. There is no need to define the term "disability" as the same is defined in the Persons with Disabilities Act, No. 14 of 2003.
		COFPAK	Define 'Chronic illness' to mean a condition that lasts six months or more and requires ongoing medical attention or limit activities of daily living or both;	TB, for example, may take between 6 to 12 months of treatment. In the proposed Bill, by going by the durational classification of Chronic Illness, eligible population may be disadvantaged.	
		UDPK CDRA	In the definition of beneficiary, delete the words "and is wholly dependent on and living with a contributor…." And replace with "who is not a contributor…" so that clause 2(d) reads "is a person with disability who is not a contributor…."	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.	

			Define the term "Disability" which has the same meaning as assigned in Article 1 in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) On the definition of Universal Health Coverage, add "have access" and "full range" to the interpretation,	To 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. 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.	
		ICJ	Include, "vulnerable groups as defined in Article 21 of the Constitution of Kenya," in the definition of the vulnerable persons,	The lack of a comprehensive social health insurance scheme in Kenya has led to exclusion of members of marginalised, vulnerable, and disadvantaged groups such as women, youths and other key populations from accessing quality healthcare services and remains a significant threat to the goal of Universal Health Coverage by 2030.	**Rejected.** The current definition takes into account the aspects of vulnerabilities that are relevant in respect of social health insurance.

		RUPHA	In the definition of "empanelment" "approved by the Board" be deleted and be substituted therefore by "the accrediting body".	The inclusion of the words "approved by the Board" give the SHA Board power to usurp the functions of another government agency, namely "the accrediting body" referred to in clause 33(2).	**Rejected.** The current definitions are in order.
			Define "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.	
			Given that "Primary health care" is defined as "essential health care" provide a definition of "essential healthcare"	A definition of essential health care will properly demarcate the scope of primary health care	
3	Clause 3	COFPAK	Add the word "commodities" in clause 3 (d).	To promote strategic purchasing of healthcare services and commodities	**Rejected.** Issues of commodities are taken into consideration in strategic purchasing.
4	Part II	Health NGOs Network	Insert a clause on the objects and purpose of the fund recommended.	To provide clarity on what the Fund is intended	**Noted.** The issues raised have been addressed in the Bill.

				for. The functions of the Chronic illnesses fund have clearly been outlined in two bullets. However, that of the Social Health Insurance Fund is missing.	
5	Clause 4	MOH	Deletion of the words "investing" in clause 4 (2)(c).	The Authority is not expected to have a surplus of funds for investment.	**Adopted.** The Authority is not expected to have a surplus of funds for investment.
		COG	Amend to include (2)— (2) The Authority shall be a successor in title to the National Health Insurance Fund, 1998	For emphasis.	**Noted.** The issue is addressed in the First Schedule of the Bill.
6	Clause 5	COG	Review the Functions of the Authority line of the establishment of a claims management office and consider making this office, Directorate within the Authority.	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.	**Noted.** Some of the functions have been proposed for amendment.
		KMPDC	Amend Clause 5 (d)by deleting the words "relevant body" and replacing them 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	Pursuant to Section 15 of CAP 253, KMPDC is the regulator of all health facilities in the country.	**Rejected.** Owing to several cadres in the health sector, there is multiple regulation on different aspects.

			Medical Practitioners and Dentists Council.		
		FKE	Delete clause 5(j).	To avoid potential conflict of interest and bias in the provision of advice to the Cabinet Secretary .	**Rejected.** The advisory role is important as the Cabinet Secretary relies on such advice to be able to make policy.
		RUPHA	Amend Clause 5(f) as follows— "In consultation with the Cabinet Secretary, develop regulations and guidelines for the operations and implementation of the Funds established under this Act;"	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.	**Rejected.** The Board ought to be autonomous in the performance of its functions.
		KAPH	Add the following to Clause 5 (d) "a uniform contract for healthcare providers with incremental essential packages as you go up the levels in private hospitals shall be provided"	To provide the minimum requirements for contracting and checklist per incremental level of healthcare and services needs as opposed to current discriminatory NHIF Act that negated care up the levels for private hospitals.	**Rejected.** This matter ought to be addressed in on the package to be developed by the Cabinet Secretary.
7	Clause 6	MOH KAPH	Delete clause 6(2)(e).	The Authority is not expected to have a surplus of funds for investment. Investment	**Adopted.** The Authority is not expected to have a surplus of funds for investment. Investment

				clauses have been abused in the past.	clauses have been abused in the past.
		NGEC	Substitute "section 39" with "section 38" in clause 6(2)(e).	For proper cross referencing.	**Adopted with amendment.** The clause deleted.
8	Clause 7	UPDK CDRA	Insert a new clause 7(j) as follows— "One person with a disability nominated by organizations of persons with disabilities"	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.	**Rejected.** Clause 7(4) places an obligation on the Cabinet Secretary to afford equal opportunity to persons with disabilities in making appointments to the Board of the Social Health Authority.
		COFPAK	Include an organisation that champions patient safety and wellbeing at all levels of healthcare Clause 7(1)(h)	The Board lacks representation of patient organisations.	**Rejected.** The issues of patients will be represented by the Ministry and the rest of the members of the Board.
		MOH COG NGEC	Deletion of clause 7(1)(e) "the Attorney-General or a designated representative" and substitution with the words "a representative of the CEC health caucus".	Health being a devolved function calls for more inclusion of county government representation on the Board. To provide for representation of other interests and constituencies such as non-state actors comprising, faith-based health service providers, private for-profit service providers; and consumers of the health	**Adopted.** To increase the representation of the counties in the Board as the legal advice to the Board will be provided by the Corporation Secretary. The Attorney General can be a co-opted member.

				services who are the contributors and who cannot be limited to salaried and unionisable workers represented by COTU.	
			Insertion of the words "Faith based and private sector" immediately before the words "health care forum or association" in clause 7(1)(h)(iii).	The representative will represent health providers from the faith based and private sector. Public health facilities are represented by the Director-General and the COG.	**Adopted with amendments.** The representative of the Consortium of health care providers represents the interests of both the faith based and private sector health care providers.
		FKE	Amend Clause 7(1) (h) to add FKE to the Board as follows— h) five persons, not being public officers, nominated by— (v) the Federation of Kenya Employers	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 formal employment. Kenya has ratified ILO Conventions including Convention 144 on Tripartite Consultations and hence recognises the arrangements and tripartism engagement	**Rejected.** The Bill relates to social health insurance that shifts the focus from the formal to the informal sector.

				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.	
		KPMDC	In Clause 7 (1)(h), provide a provision for rotation of the Health professional Associations	To provide an avenue for associations not represented in the board to participate in the organization. There are multiple health professional associations that exist in the country.	**Rejected.** KMA is best placed as it represents interests and concerns of all health care professionals. Doctors have legal responsibilities and liability associated with patient care, which reinforces their leadership role.
		CSOs	Provide for a nominee of the CSOs by national health NGOs Network or have at least one representative from Civil Society Organisations.	CSOs have in-depth knowledge of community needs including the marginalised communities.	**Rejected.** Such persons may be appointed by the Cabinet Secretary by virtue of clause 7(1)(g).
		NGEC	Reduce the number of Board members to 9 by: (a) In 7(1)(d), by substituting "the director general for Health" with "The Principal Secretary in the state Department for the time	To align with the principles in the Mwongozo Code on governance on membership of boards at 7-9.	**Rejected.** The State Department may advice on matters of indigents and vulnerable persons through the usual channels of collaboration between government ministries.

			being in charge of social protection. (b) Deleting (g) without replacement.	The Ministry of Health is already ably represented by the Principal Secretary. The proposed representation of the state department of social protection is because the PS is in charge of issues and matters relating to the indigents and vulnerable persons and of the identification and enlisting to the funds.	
			Amend clause 7(4) by substituting the following phrase "afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized" with "adhere to the principle of gender equality and representation of persons with disabilities".	To align with Article 27 (8) and 54 (2) of the Constitution.	**Rejected.** The current provision is more specific on the special interest groups to be considered.
		KMA	KMA to be retained in Clause 7 (h) (i)	KMA represents interests and concerns of all health care professionals. Doctors have legal responsibilities and liability associated with patient care, which	**Adopted.** KMA represents interests and concerns of all health care professionals. Doctors have legal responsibilities and liability associated with patient care, which

				reinforces their leadership role.	reinforces their leadership role.
			Explicitly state that the nominees in clause 7 (h) (ii) and (iv) 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.	**Noted.** Patients' issues are cross cutting and will be represented by all members of the Board particularly the KMA, the Director-General of Health and the representative of the informal sector.
		KAPH	Replace with the word "healthcare provider" with "a representative of the consortium of heath care provider associations" in Clause 7(h)(iii).	To include a majority of stakeholders since the associations represent a wider constituency of healthcare providers	**Adopted.** The representative of the Consortium of health care providers represents the interests of both the faith based and private sector health care providers.
		Dr. Peter Ongwae	Amend clause 7(1)(h) (iii) to state that the 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 rationalising these claims.	**Rejected.** KMA represents interests and concerns of all health care professionals. Doctors have legal responsibilities and liability associated with patient care, which reinforces their leadership role.
		Kenya Union Of Commercial Food and Allied Workers	Clause 7(h) should make provision for a nominee of the Federation of Kenya Employers.	FKE plays a critical role in ensuring that the deductions from employees are remitted to the Social Health Authority.	**Rejected.** The Bill relates to social health insurance that shifts the focus from the formal to the informal sector.

		NGEC	Insert a new clause 7(5) as follows— (5) the Board may where it deems appropriate, co-opt any person to the Board.	There are other persons who may add value to the Board but cannot be appointed as substantive members due to the limitations of memberships.	**Rejected.** This is already provided for in the Second Schedule.
		RUPHA	Retain clause 7(1)(h)(i) and amendment of Clause 7(1)(h)(iii) as follows— "private healthcare facilities"	To align with the definition assigned by the Health Act, 2017.	**Adopted with amendments.** The representative of the Consortium of health care providers will represent the interests of both the faith based and private sector health care providers.
		Health NGOs Network	Insert a clause 7(1)(j) as follows— (j)Two representatives from health Civil Society Organisations (CSOs) and (k) Youth-led and serving health Civil Society Organisations (CSOs)	CSOs play a vital role in ensuring transparency, accountability, and representation in policy formulation and implementation, especially in matters related to healthcare. Health CSOs are not only employers, but represent the voices, needs and desires of the community on matters health.	**Rejected.** Such persons may be appointed by the Cabinet Secretary by virtue of clause 7(1)(g).
		PSK	The appointment of the non-executive chairperson under Clause 7 (1)should be left to Healthcare Professional bodies.	This will ensure that health ethics are always upheld as healthcare professionals are guided	**Rejected.** This is taken care of in clause 8(1)c).

				by the Hippocratic oath. It will prevent political interference with the Board at the expense of good dispensation of healthcare.	
			Insert a new Clause 7 (h)(v) as follows— Five persons not being public officers nominated by- (v) a nomination from the Pharmaceutical Society of Kenya (PSK)	Pharmacists are healthcare providers. A Pharmacist would play a critical role in the Board of Authority on how to rationalise medication resources for positive health outcomes.	**Rejected.** KMA represents interests and concerns of all health care professionals. Doctors have legal responsibilities and liability associated with patient care, which reinforces their leadership role.
		COG	Delete (g) in clause 7(4).	The qualification for the member appointed under (g) is already spelled out.	**Rejected.** This is necessary for emphasis.
		NHIF	Include the Federation of Kenya employers in the Board of the Social Health Authority.	Employers are a major stakeholder in the Social Health Authority with regard to the payment of statutory contributions deducted from employees.	**Rejected.** The Bill relates to social health insurance that shifts the focus from the formal to the informal sector.
			Merge paragraph (g) with paragraph (h) (ii) of subclause (1) to read as follows— "two persons, not being public officers, appointed by the Cabinet Secretary;	To remove ambiguity as the Bill does not define who the informal sector association is and there is no existence of such a body.	
			Set out express provisions on the nominating institutions in	Inclusion of an umbrella body for all health care	**Adopted with amendments.** The

			clause 7 (i) (ii) and (iii) and include the umbrella body representing all health care providers in the Board of the Social Health Authority.	providers, or secondments from recognized affiliated bodies on a rotational basis.	representative of the Consortium of health care providers will represent the interests of both the faith based and private sector health care providers.
	Clause 8	MOH KAPH	Deletion of the words "the private health facility" in clause 8 (2)(d).	A member of a private health facility can be a member of the Board.	**Adopted.** To make directors, officers or shareholders of private health facility eligible for appointment as members of the Board of the Social Health Authority.
		MOH	Insertion of the "and parliamentary reports" after the words "any law" in clause 8 (2)(e).	Parliament has a responsibility to vet nominees and hence parliamentary reports should also be considered.	**Adopted.** To prevent a person that Parliament has found culpable of contravening Chapter Six of the Constitution from being appointed as a member of the Board of the Social Health Authority.
		UDPK CDRA NGEC	Delete Clause 8(2) (b).	The term unsound mind is derogatory. The provision is also discriminatory and prejudicial to persons with mental disabilities which does not align with and offends the provisions of the UN Convention on the Rights of Persons with disabilities (CRPD).	**Rejected.** The Bill as drafted is in order.

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

		KCEN	Review the qualifications to include mechanisms for recognising and accommodating individuals with valuable skills and potential, even if they do not meet strict ten-year experience requirement.	The provision limits appointment of youths to the Board.	**Rejected.** Clause 7(4) places an obligation on the Cabinet Secretary to afford equal opportunity to the youth in making appointments to the Board of the Social Health Authority.
		Kenya Union of Commercial Food and Allied Workers	Amend Clause 8(b) by deleting the requirement for degree for a person to be the Chairperson or member of the Board. Amend Clause 8(1)(c) be amended to include areas of specialisation to include Labour Relations and Human Resource Practice.		**Rejected.** The Chairperson must be possess some knowledge on matters on social health insurance.
		NHIF	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.	The clauses are too prescriptive thus limiting the powers of the appointing authorities. The clause should enable the appointment of duly qualified persons with experience various areas.	**Rejected**. The qualifications required of a member of the Board are in order as drafted.
			Delete clause 8(2)(e).	The provisions of clause 8(2)(e) are already provided for under clause 8(2)(a). A breach of the provisions of Chapter 6 of the	**Rejected.** The two clauses are different. The first handles the general convictions while the other handles convictions for integrity related offences.

				Constitution will be addressed by clause 8(2)(a) through criminal convictions.	
	Clause 9	MOH	Delete the word "permission" and substitution with the words "lawful cause" in clause 9(b).	This will ensure that the clause is not abused to dismiss Board members.	**Adopted.** To prevent misuse of this provision as it is impractical to get permission to be absent from a Board meeting from the President.
			Delete clause 9(e).	The CRPD provides for reasonable accommodation and the provision as proposed is prejudicial to persons with disabilities.	**Rejected.** The Bill as drafted is in order.
	Clause 11	CSOs	Provide for the powers and functions of the Board.	The delegation clause does not make sense without express stipulation of the powers and functions of the Board.	**Rejected.** This is provided for in clause 5 and 6 of the Bill.
	Clause 12	PSK	The approval of reimbursement of allowances for Board members should be done by the Public Service Commission.	Independence of the Board can be compromised if their reimbursement needs are approved by the Cabinet Secretary of Health.	**Rejected.** The Social Health Authority is a semi-autonomous agency under the Ministry of Health.
	Clause 13	KMA	Define the basic technical qualification/requirements for the CEO's role by including a 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.	**Noted.** This is provided for in clause 14(1)(c).

	Clause 14	KMPDC MOH KMA KAPH	Delete Clause 14(1)(b).	This is an exclusionary requirement with no merited justification.	**Adopted.** The expertise required of the CEO of the Social Health Authority is more inclined to the health sector.
		MOH Health NGOs Network	Delete the word "bachelor's" and substitute with the word "masters" in clause 14(1)(a).	A Chief Executive Officer bears a huge responsibility.	**Adopted.** To ensure that the CEO has a high level of technical expertise required of the specialized entity established in the Bill.
		KMA	Provide that the 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.	**Rejected**. The qualifications required of a member of the Board are in order as drafted.
		NHIF	Redraft clause 14 as follows— (2) A person is qualified for appointment as a chief executive officer if the person- (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	The requirement that the CEO must be an Advocate is not appropriate for the position and objective as it limits other qualified professionals. A Master's degree is a requirement as per the Public Service Commission guidelines for directors and above.	**Adopted with amendments** in light of the master's degree.

			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.		
	Clause 16	COG	Delete the words "or a similar governance role" in clause 16(2)(b).	The practice of corporation secretaries is a profession regulated under the Certified Public Secretaries Act, Cap 534 of 1988 and is clear that only a certified secretary can serve as a corporation secretary and hence the qualification has no other equivalence.	**Rejected.** The provision is in order as drafted.
		KMA	The Corporation Secretary should have a bachelor's degree in business, finance, public administration, law or related fields and have sufficient knowledge in administration under Clause 16 (2) (a).	Having a law degree only limits other professionals with sufficient knowledge in public administration.	**Rejected.** The Corporation Secretary must be able to guide the Board on legal matters especially as the Attorney-General is no longer on the Board.
			Supports Clause 16 (2) (c) that the corporation secretary should be a Certified Public Secretary.		**Adopted**. The Corporation Secretary must be able to guide the Board on legal matters especially as the

					Attorney-General is no longer on the Board.
	Clause 17	MOH	Delete the word "appoint" and substitute with the word "recruit".	The staff of the Authority ought to be recruited through a competitive process.	**Noted.** The appropriate word is "appointing" as staff are normally appointed after undergoing a recruitment process in line with the Public Service Commission's guidelines on recruitment and selection.
		CSOs	All staff need to be competitively and openly recruited.	Appointments will leave room for bias and possible discrimination.	
	Part III	COG	Provide that County governments will be given conditional grants to support primary health facilities in clause 20 to 24.	The provisions of the Primary Health Care Fund running from clauses 20 to 24 of the bill on the Primary Healthcare Fund are inadequate and should be amended to address the many gaps that exist. There are many unanswered questions including the pathways of accessing the resources in the fund, which if not addressed will cripple primary health facilities and services in the counties which have been heavily relying on Development Partners' support.	**Rejected.** This issue is best handled under the Primary Health Care Bill, 2023 originating in the Senate.

	Clause 20	COG	Amend clause 20 to ensure that the objects of the fund include the purchase of primary health care services such as preventive and promotive primary health care services that may not be provided through health facilities.	The object of the fund in the its current form is very restrictive as it is limited to purchasing primary health care services from health facilities.	**Noted.** The object of the PHC Fund is already provided for in the clause.
			Delete the Primary Health Care Fund.	To avoid duplicity.	**Rejected.** The Fund is in order.
		RUPHA	Define essential health services in the context of primary healthcare and provide a clear distinction between healthcare provider and healthcare facility.	The provided aim of the Primary Healthcare Fund is "to purchase primary healthcare services from health facilities".	**Noted.** The term primary health care is defined in clause 2.
		Health NGOs Network	Review the purpose of the fund to clearly articulate its purpose then add a clause on the objects and purpose Include CSOs as an entity providing primary health care services that the government can purchase services from.	Part iii-primary healthcare fund under article 20. 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.	**Noted.** The object of the PHC Fund is already provided for in the clause. The clause is sufficient as there is for provision for the making of regulations on the operationalization of the PHC Fund.
		KAPH	Insert new clauses as follows— clause 20 (a) purpose of the Fund clause 20 (b) functions of the Fund	The purpose and function of the Fund is not provided. There should be timelines within which claims are settled to	

			clause 20 (c) how the services shall be purchased clause 20 (d) to define the deadline for settlement of claims by the Fund.	allow facilities to meet their obligations.	
	Clause 21	RUPHA	Include "monies appropriated by the National Assembly for provision of Primary Health Services to indigent and vulnerable persons" in clause 21.	The absence of appropriation for the Primary Healthcare Fund for indigent and vulnerable persons is worrying.	**Rejected.** The PHC is mainly funded by the National government.
		ICJ	Include, "any monies from County Governments as may be appropriated by County Assemblies," as one of the Primary Healthcare Fund sources in clause 21.	County Governments have a duty under Part 2 of the Fourth Schedule to the Constitution to promote primary health care.	
			There is need for revision of the clause to include county governments in the source of the funds in clause 21.	There is interference in health service provision as a devolved function	
		KMA	Reaffirms its support for a tax funding for PHC.	PHC is the cornerstone of health care.	**Noted.**
		FKE	Delete "or levies" in Clause 21 (c)and replace with: (c) "monies allocated for those purposes from fees administered;"	The proposal of charging levies will result in unpredictability of the costs and may lead to double payment and increased costs to businesses.	Levies will be huge source of money for the PHC Fund.
	Clause 22	COG	The provisions should be amended to clearly state how county governments which are constitutionally responsible for	The proposed amendments are necessary to ensure that there are clear	**Noted.** These matters will be handled through Regulations under clause 24.

			primary health care will access finances from this fund.	provisions on the pathways for accessing money from the PHC Fund.	
		NHIF	The Regulations to stipulate the conditions for payments out of the Fund. Add the words "as per approval by the Board" in clause 22(1).	To make it clear that control and oversight of the Fund's expenditure is by the Board. The Bill does not provide for the Management of the Fund, whether the same is vested in the Board of the Social Health Authority.	**Noted.** These matters will be handled through Regulations under clause 24.
	Clause 23	KMA	Sufficient funding should be provided for the PHC Fund based on population health needs.	Investment in PHC is cheaper in the long run	**Noted.**
	Clause 24	MOH KCEN NGEC	Delete the word "may" and substitute with the word "shall".	This implies that it is the responsibility of the Cabinet Secretary to make the regulations	**Adopted.** To obligate the Cabinet Secretary to make regulations.
		KAPH	Redraft clause 24 as follows— "The Cabinet Secretary shall make regulations for the implementation of the Primary Healthcare Fund in consultation with the board and stakeholders"	All major stakeholders should be involved in the process and this should be captured in the Bill.	**Rejected.** Regulation of public participation in the making of regulations is already set out in the Statutory Instruments Act, No. 23 of 2013.

	Clause 25	RUPHA	The purpose(s) for which the SHIF is established should be stated explicitly.	For clarity and to limit any misappropriation of monies that will be paid into SHI Fund	**Noted.** The clarity will be provided in Regulations under clause 50.
			In Clause 25(1)(d), 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".		
		KAPH	Insert the following new clauses— clause 25 (a) purpose of the fund; clause 25 (b) functions of this fund	The functions of SHIF and those of Primary Health Care Fund are not clearly defined.	
		ICJ	Include, "any monies from County Governments as may be appropriated by County Assemblies," and "any interest or return on investment made by the Social Health Insurance Fund" as one of the Social Health Insurance Fund sources in Clause 25 (1)	Health is a devolved function under Part 2 of the Fourth Schedule to the Constitution. A social insurance provider does not have a profit-making objective and therefore, all the revenue it raises, even from investments, should benefit its members.	**Rejected.** SHI will be managed at the National level.
		MOH	Delete clause 25 (2) (d) and (e).	The Social Health Insurance Fund is a social fund therefore	**Rejected.** Enhanced schemes will be provided as

				there are no enhanced schemes.	approved by the Board and the Cabinet Secretary.
		FKE	Delete Clause 25 (d) and substitute with – d) funds from the national government, county governments and their respective entities for the administration of employees' benefits;	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.	**Rejected.** The provision is in order as it focused on insurance benefits and not benefits in general.
		NHIF	Include a new paragraph (f) in clause 25(2) as follows— "Investment income including but not limited to rental income."	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.	**Rejected.** Tax exemption cannot be handled under this Bill.
	Clause 26	MOH	Delete the words "proof of registration with the Social Health Insurance Fund" and substitute with the words "proof of compliance with the provisions of section 26 and 27 on registration and contribution" in clause 26(5).	Registration and contribution under the SHI is mandatory. The proposed amendment facilitates the enforcement of this mandatory requirement to comply with contributions and other requirements	**Adopted.** Facilitates the enforcement of the mandatory requirement to comply with contributions and other requirements under the Bill.
		CSOs NHIF	Delete Clause 26 (5).	This has the potential to limit other fundamental rights as provided in the Constitution including	**Rejected.** The requirement facilitates enforcement of compliance of the Bill.

				access to other socio-economic rights. The clause may raise operational challenges in access to government services.	
		KCEN	Simplify the process of providing evidence of membership when accessing public services, enhancing efficiency and reducing delays by establishing accessible registration centres, both physical and digital, across the country, launch comprehensive awareness campaigns and integrating Social Health Insurance Fund membership verification seamlessly into government systems.		**Noted.** The issues shall be addressed through regulations made under clause 50.
		KMA	Under Clause 26(2), the period exceeding 12 months should apply as in 27(1)(b)		
		RUPHA	Amend Clause 26(1) as follows— "Every Kenyan shall register as a contributor to the Social Health Insurance Fund". Define the term "member"	The term "member" is misleading as to the intent of clause 26(1) 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	

			Introduce new provisions to describe how Kenyans shall be "assigned membership to the various established Funds"	to the term contributor in the preliminaries b) An interpretation of the term "member" is not provided to demarcate how Kenyans will interact with the three funds established by the Bill.	
			Amend clause 26(2) as follows— ""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". Substitute the word "member" with "contributor" in Clause 26(5).	The term "member" does not achieve the intended effect of this bill.	**Rejected.** The clause is in order as drafted.
		UDPK CDRA	Delete the word "be" in Clause 26 (1).	For grammatical correctness.	**Adopted.** To correct a typographical error.
		NHIF	Insert the words "in consultation with the Board" immediately after the term "Cabinet Secretary" in clause 26(4).	To take into account the Board's day to day operations on registrations.	**Noted.** The clause as drafted is in order as the Cabinet Secretary is bound to consult the Board.
	Clause 27	FKE	Provide clarity on whether the ten percent is one-off; monthly or annual.	There is need for clarity on the penalty	**Noted.** The clause that the penalty is for the period that the contribution was due.

			Define the words "social unit" and "person" as used Clause 27 (1).	Does the Bill 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 Bill needs to provide for the unemployed and non-income earning class.	**Rejected.** The term household is used in the Bill and the same has been defined.
		KMA	Clause 27 (2) (a) does not prescribe the rate of contribution. Proposes that the rate be based on Basic Salary and not Gross Pay at 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.	**Noted.** This will be addressed through regulations.
		CSOs	Delete clause 27 (3)	The clause is unnecessary.	**Rejected.** This is necessary to ensure strict compliance.
			Exempt emergency services from this precondition in Clause 27 (7)	The clause defeats the purpose of emergency services, which is to first, save life.	
		COG	Amend by deleting clause 27(1)(d).	The clause contemplates a scenario where	**Rejected.** The clause as drafted is in order.

			Amend by deleting the phrase "County Assemblies" to read as follows: (a) in the case of Households in need of Financial Assistance as determined by the means testing instrument, by the government at a rate apportioned from funds appropriated by parliament for that purpose as prescribed under this Act.	counties send their appropriated monies to SHI. How practical is it for counties to transfer monies to a fund managed by MOH at the national level? Counties risk their equitable share being deducted at source akin to MES and directed to indigents.	
			Amend by deleting clause 27(6)	It is not proper to criminalize non-payment. Further, it does not address employers who fail to remit the contributions on time. 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…"	**Adopted with amendment.** The penalty reduced to 2% as it currently too punitive.
		MOH	Delete the word "ten" and substitute with the word "five" in clause 27(6).	The ten percent fine is high, given that fines are supposed to act as deterrent and resources	

				mobilization opportunities.	
		KMA	The penalty in clause 27(6) must not exceed 5%.		
			Allow a more flexible payment: monthly, quarterly, biannual or annually in Clause 27(3).	What is the rationale for annual payments? Annual payment locks out majority of self-employed and underemployed individuals who often struggle to pay.	**Noted.** This is necessary to ensure strict compliance.
		Rashid S Osman	Clause 27 to capture former public service employees who have retired as follows— 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;	Pension earning former officers/ retirees need to be captured as one of the contributors in the definition and in the Bill. The means testing indicator also needs to be classified within the framework of a retiree.	**Rejected.** These are covered under contributions under clause 25(2)(a).
		Social Protection Actors forum	Clause 27 (2) (b) and (c) to provide elements that point out to what issues may lead to the	Lack of clarity may result in confusion and inconsistencies in	**Noted.** This will be determined through means testing.

			classification of a given household as being unable to make contributions for their hospital needs (means testing instrument)	determining contributions.	
			Specify the procedures and mechanisms for enforcing the penalties in clause 27 (6).	This will promote effectiveness.	**Noted.** This will be addressed through regulations.
		Health NGOs Network	Consider the financial circumstances of individuals, especially those facing temporary setbacks, when dealing with late payments in Clause 27 (4) and 6). Penalties for delayed payments should consider cases where individuals who have consistently met their obligations experience a temporary default.	To ensure a fair and balanced approach that does not disproportionately penalize those who may have a brief lapse in their payment history thus promoting a more equitable and supportive system for all.	**Noted.** This will be determined through means testing.
		Economic and Social Rights Centre (Hakijamii)	Delete clause 27 (4).	The provision limits the right to health care services as provided in Article 43 (1).	**Rejected.** This is necessary to ensure strict compliance.
			Consider the financial circumstances of individuals, especially those facing temporary setbacks, when dealing with late payments in Clause 27 (4) and 6). Penalties for delayed payments should consider cases where		**Noted.** The penalties are necessary to ensure strict compliance and has been reduced to 2%

			individuals who have consistently met their obligations experience a temporary default.		
	Clause 28	KAPH	Add a clause on functions of the Emergency, Chronic and Critical Illness Fund.	There is no clear distinction between the 3 funds and the crossover from one to the other.	**Noted. This is already set out in clause 28.**
		RUPHA	Delete the phrase "after depletion of the social health insurance cover" Clause 28(a). The clause should be amended to read.	The phrase "after depletion of the social health insurance cover" clause appears to "presciently" craft a regulation for this Fund contrary to Clause 30 which empowers the Cabinet Secretary to make such regulations as well as Article 43 of Constitution.	**Rejected.** The Emergency, Chronic and Critical Illness Fund kicks in on depletion of the SHI cover.
		NHIF	Amend clause 28 to provide guidance on who is able to access the funds. The criteria to be set by the Cabinet Secretary in consultation with the Board of the Authority. Include a clause on who is eligible to access benefits for treatment of Chronic and Critical Illness.	This will aid in preventing misuse of the funds therein as clause 28 does not provide the eligibility criteria for access to the Fund. Operationally, the Fund is an excess-of-loss account for members who exceed the cover limits when managing chronic/critical	**Noted.** This will be handled in regulations.

			The modalities of access to be addressed in the regulations.	conditions; and for purchase of road ambulance evacuation, and Accident and Emergency services at a hospital.	
	Clause 29	KMA	Supports public funding for the Fund and recommends that "sin taxes" include taxes from alcohol, tobacco, sugar industry and other products that increase the development of chronic illnesses be ringfenced for the Emergency, Chronic and Critical Illness Fund.	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.	**Noted.** This may be considered in regulations to be made under clause 50.
		Health NGOs Network	Specify a designated percentage of the funds appropriated by the National Assembly for allocation to different healthcare components.	For greater transparency and accountability in resource allocation.	**Noted.** This is best left to the discretion of Parliament.
	Clause 30	MOH KCEN NGEC	Delete the word "may" and substitute with the word "shall".	This implies that it is the responsibility of the Cabinet Secretary to make the regulations.	**Adopted with amendments.** To obligate the Cabinet Secretary to make the regulations.
		KAPH	Amend the clause to read: "The Cabinet Secretary shall make regulations for the implementation of the Emergency, Chronical and Critical Illness Fund in consultation with stakeholders"	All major stakeholders should be involved in the process and this should be captured in the Bill.	**Rejected.** Regulation of public participation in the making of regulations is already set out in the Statutory Instruments Act, No. 23 of 2013.

		RUPHA	Amend the Clause to read: "In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Emergency, Chronic and Critical Illness Fund"	The provision weakens the Board and defeats the purpose for which the Board is established.	**Noted.** Regulation making is a preserve of the cabinet Secretary.
		COG	Amend by deleting and substituting clause 30 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. They 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.	**Rejected.** This will be handled in regulations.
		NHIF	Insert the words "in consultation with the Board" immediately after the term "Cabinet Secretary" in clause 30.	The Board is not involved. The proposed amendment shall ease the Authority's operational activities.	**Adopted.** The Cabinet Secretary is bound to consult the Board in making any regulations under the Bill.
	PART VI	RUPHA	Amend the title of the Part to exclude "empanelment".	"Empanelment" is not envisaged as a function of the Social Health	**Rejected.** Empanelment is critical component of the management of the Fund.

				Authority but rather it is a function of a separate accrediting body alluded to in clause 33(2).	
	Clause 31	COG	Amend clause 31 in line with the amendments proposed in respect of clause 5 which deals with the functions of the Authority and the separation of roles and vesting them in different structures.	The role of determining the essential healthcare benefits package is too important to be left to the Cabinet Secretary and the Board.	**Noted.** The Cabinet Secretary must ensure stakeholder participation in the development of the essential healthcare benefits package.
		FKE	Define what essential healthcare benefits constitute Clause 31(1).	Essential Benefits need to be clearly defined and secured in the Bill.	**Noted.** This will be handled in regulations.
		KAPH	Introduce new clause 31 3) to read: "The essential benefit package shall be accessible to beneficiaries in any healthcare facility of choice"	Patients/beneficiaries have a right to access healthcare from any preferred healthcare provider be they public, private, faith based, community or non-governmental. In addition, the Fund should pay a uniform benefit package of care for any service given across all levels of care.	
		KMA	The benefits package ought to be published before the 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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		RUPHA	Delete the word "essential" Clause 31(1).	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.	**Rejected.** The use of the word essential is in order as it connotes an appropriate package.
	Clause 32	KMA	Amendment of clause 32(3) to provide a specific time frame within which tariffs are reviewed as opposed to leaving it open and suggested that the review of tariffs be done every 2-3 years.	2-3 years allows for improvement of benefits.	**Rejected.** The current provision is in order as it allows flexibility.
		COG	Amend clause 32 in line with the amendments proposed in respect of clause 5 which deals with the functions of the Authority and recommends the separation of roles and vesting them in different structures.	The determination of the tariffs applicable to the benefits package is too important to be left to the Cabinet Secretary and the Board. Effective accountability will be secured through the separation of roles.	**Noted.** The Cabinet Secretary must ensure stakeholder participation in the development of tariffs. The current provision is in order as it also allows flexibility in the timeline of review of the tariffs.
		RUPHA	Amend clause 32 as follows— 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	To create sector wide acceptance of the prescribed tariffs.	

			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.		
		KAPH	Amend clause 32(2)to read: "The Cabinet Secretary shall in consultation with the board other stakeholders prescribe the tariffs applicable to the benefits package under this Act".	All major stakeholders should be involved in the process and this should be captured in the Act.	**Rejected.** Regulation of public participation in the making of regulations is already set out in the Statutory Instruments Act, No. 23 of 2013.
	Clause 33	COG	Amend the clause to clearly identify the body responsible for accreditation and empanelment of health care service providers.	For clarity.	**Noted.** The relevant body is already specified in the Health Act, No. 21 of 2017.
		CSOs	Add a clause or revise the clause 33 (4) to include a written justification of why the revocation will be done.	Revocation of accreditation at any time without any written notice/justification opens a window for abuse of power by the office holder.	**Noted.** The clause as drafted is in order.
		KMA	Application procedure and accreditation criteria should be clearly outlined Clause 33(2). Clarity is required on the constitution of the empanelling body as described in the Bill.	For transparency and accountability.	**Noted.** This will be handled in regulations.

		KAPH	Introduce a clause to indicate explicitly that the 3 funds are run under the Social Health Insurance Authority. Introduce clauses showing interdependencies of the funds.	The relationship of the 3 funds is currently ambiguous.	**Noted.** This is already provided for in the Bill.
		RUPHA	The clause 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.	Inclusion of a clause on "empanelment" usurps the power of another body and gives the SHA supervisory powers on a function that it is ill equipped to meet.	**Noted.** Issues of empanelment and contracting are well addressed in the Bill and amendments have been proposed to clause 5 to specify that the Authority will only be responsible for empaneling and contracting.
			Clause 33(2)be transferred to the "contracting clause" and be re-written as follows; "The Authority shall make payments out of the Funds to health care facilities that are contracted in accordance with the provisions of this Act." Clause 33(3) be transferred to the "contracting clause" 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".	To correct errors in interpretation of the terms (health care provider vs health care facility) and to ensure proper separation of functions between the SHA (contracting) and the accrediting body (empanelment and quality of care).	

			Clause 33(4)be transferred to the "contracting clause" and be re-written as follows. "The Authority shall revoke any contract with a health facility whose empanelment is revoked by the accrediting body. Clause 33(5) should be transferred to the contracting clause 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.		
		PSK	Providers/facilities to be accredited to the Social Health Insurance Fund should be licensed by their respective regulatory authorities. There should be no requirement for additional empanelment.	Empanelment creates a barrier and adds to the cost of healthcare provision. It also erodes the trust on the respective regulators that are mandated by law.	
		NHIF	Delete clause 33(2). Proposed that the procedure of empanelment and contracting be clearly stated as a function of the Authority.	Clause 33(2) provides for accreditation, which is not a function of the Board. The enrolment into the panel of providers, and contracting of the	

			Insert a provision for gazettement upon empanelment by the Board. Delete clause 33(4). Substitute the word "body" with the word "Board" in clause 33(4).	services should be a function of the Board. Clause 33 lacks clarity on the procedure and criteria to be followed in the empanelment and subsequent contracting of healthcare providers. Licensing and accreditations are functions carried out by separate bodies, and posted on their respective websites/platforms. An application for empanelment can only be made by a provider licensed by the bod(ies).	
	Clause 34	KAPH	Amend clause 34(5) to read; 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	To ensure the parties are aware of their legal obligations under the Act and to introduce a due and fair process before contract termination.	

		RUPHA	Delete Clause 34(1) is superseded by the amended Clause 33		
		FKE	Provide clear linkage between the Authority (Funds) and the primary health care services.	How will the authorities work together?	**Noted.** This will be handled in regulations.
		KMPDC	Amend Clause 34(5) to include collaboration with KMPDC.	The KMPDC regulates health facilities.	**Rejected.** Owing to several cadres in the health sector, there is multiple regulation on different aspects.
		RUPHA	Clause 34(2) 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.		**Noted.** Issues of empanelment and contracting are well addressed in the Bill.
			Clause 34(3) be rewritten 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). The term "declaration" to be defined.		
			Clause 34(6) be redrafted 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). Clause 34(7)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.		
		NHIF	Provide for publication of termination of contract on the Authority's website in clause 34(6).	This is to inform the public and flows from the provision of gazettement upon empanelment.	
	Clause 35	MOH	Delete subclause (3) and (4) and substitute therefor the following new subclause— (3) 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.	Pre-authorisations for access to healthcare need to be separated and will not be among the functions to be delegated. To further make clear that the claims office is restricted on whom to contract if need be.	**Rejected.** Outsourcing by the Claims Management Office deleted from the Bill.

		COG	Amend clause 35 in line with the amendments proposed in respect of clause 5 which deals with the functions of the Authority and recommends the separation of roles	The establishment of the Claims Management Office within the Authority does not satisfy the need to separate the roles for the purpose of enhancing accountability.	**Noted.** Outsourcing by the Claims Management Office deleted from the Bill.
			Delete clause 35(3).	To separate roles and establish an independent body to deal with receiving, assessing, and paying claims. There is absolutely no justification for delegating such functions.	
		PSK	Make a Claims Management Office a department or a Directorate of the Social Health Authority.	The CMO cannot be a private entity and for good stewardship and governance of use of Public Funds. The public sector should be striving to have its own mechanism of handling its operations fully and not delegating or relying on private entities. The funds to be used in setting up a private entity should be used for healthcare provision to Kenyans.	**Rejected.** The Claims Management Office is established within the Authority.

				Private healthcare providers in Kenya are yet to provide healthcare successfully and profitably through public funding (NHIF).	
		PSK	Add to list of responsibilities under clause 35(2) as the functions of the Pharmacist Office in the CMO. Ensure that any surplus made from the CMO go towards provision of healthcare.	The pharmacist's office will be responsible for: i) Medication therapy validation, ii) The appraisal of medication therapies iii) Pre-authorization of medication therapies. Having CMO resident Pharmacist(s) will ensure constant availability of pharmacy knowledge to facilitate timely decisions.	
		KMPDC	Amend to read clause 35(3) to read as follows: (3) The Claims Management Office shall delegate the performance of its functions under subsection (2)(a), (b) and (c) to a suitable entity.	Subclauses 35 (1)(a), (b) and (c) do not exist	**Noted.** Outsourcing by the Claims Management Office deleted from the Bill.

		CSOs	Revise Clause 35(4) to read: The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section in consultation with the Authority.	The regulations ought to be made in consultation with the Authority.	**Noted.** The Cabinet Secretary is bound to consult the Board in making any regulations under the Bill.
		KAPH	Amend Clause 35 (4) to read as follows— "The Cabinet Secretary shall make regulations for the implementation of the better carrying out of the provisions of this section in consultation with other stakeholders.	All major stakeholders should be involved in the process and this should be captured in the Bill.	**Rejected.** Regulation of public participation in the making of regulations is already set out in the Statutory Instruments Act, No. 23 of 2013.
		KMA	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	The 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 preauthorization team. Medical professionals may also assist in detecting fraud	**Adopted.** Outsourcing by the Claims Management Office deleted from the Bill.
		RUPHA	The Claims Management Office in Clause 35 (1) be renamed the	Settlement of claims is not a function of the suitable entities to whom	**Rejected.** The current name is in order.

			"Claims Management and Settlement Office".	the Claims Management Office shall delegate its functions in clause 35(3) as it is assigned to the Authority in clause 36(1).	
		NHIF	Insert the words "under the direction of the Board" immediately after the words "Claims Management Office" in clause 35(1). Delete the word "shall" and substitute therefor the words "may with the authority of the Board" in clause 35(3). Correct the numbering of clause (4). The regulations under the clause must be in place at least 6 months after commencement of the Act for ease of transition.	To provide clarity that the Claims Management Office works under the directions of the Authority. The functions of claims management are functions of the Authority and where any delegation is required, it should be at the discretion of the Board.	**Noted.** The Claims Management Office is established within the Authority.
	Clause 36	COG	Amend the clause to align it with the other amendments proposed in respect of the establishment of an independent body to handle claims.		
		RUPHA	Redraft clause 36(1) to read: "The Claims Management and Settlement Office shall on behalf of the Authority make payments to a contracted	To cure the anomaly of the Claims Management Office, an organ of the Authority, appearing to submit claims to itself.	

			healthcare facility upon receipt of a claim from the suitable entities under clause 35(3).		
		NHIF	Insert the words "in consultation with the Board" immediately after the term "Cabinet Secretary" in clause 36(2).	To ease the Authority's day to day operations	**Adopted.** The Cabinet Secretary is bound to consult the Board in making any regulations under the Bill.
	Clause 38	MOH KAPH	Delete clause 38.	The Authority is not expected to have a surplus of funds for investment.	**Adopted.** The Authority is not expected to have a surplus of funds for investment.
		KCEN	Establish an Investment Committee, implement transparency measures, involve auditors or an oversight body, establish a code of conduct and ethics, regular audits, encourage public participation and strengthen legal safeguards and penalties.	To enhance transparency, accountability and oversight in the investment of the Authority's funds, reducing the risk of corruption and mismanagement.	**Rejected.** The Authority is not expected to have a surplus of funds for investment.
		KMA	Specify that investments must be in the form of low risk, cash and cash equivalents and not fixed assets in 38(1)(a).	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.	
	Clause 40	MOH	Delete the words "or in pursuance of an authorization of	To avoid any overtures by the Board.	**Adopted.** To enhance financial accountability as contemplated under the

			the Board." appearing in clause 40 (4).		Public Finance Management Act, No. 18 of 2012.
	Clause 41	MOH	Delete the proviso in clause 41(2).	Administrative costs must remain low.	**Adopted.** The proviso is superfluous as limit on administrative expenses is provided in sub-clause (2).
		FKE	Administrative expense is too high and needs to be capped at 2% in Clause 41(2).		**Rejected.** The capping of 5% is informed by the Public Finance Management Act, No. 18 of 2012.
		CSOs	Expressly provide for the functions and powers of the Board.	To cure the ambiguity in the Bill.	**Noted.** The functions are already provided for under clause 5 and 6 of the Bill.
	Clause 41	ICJ	Introduce a 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.	To align with Article 232 (1) of the Constitution on transparency and provision to the public of timely, accurate information.	**Rejected.** The processes on accounts and audit in clause 42 are in order.
	Clause 42	KCEN	Include measures such as public access to financial reports, public consultation and feedback and citizen awareness campaigns.	To foster greater citizen participation in the audit process, enhance transparency and build trust among the public.	**Noted.** This is the common practice that is handled administratively.

	Clause 43	KCEN	Include measures such as public access to financial reports, public consultation and feedback and citizen awareness campaigns.	To foster greater citizen participation in the audit process, enhance transparency and build trust among the public.	
			Introduce a subclause 43 (3), providing that, "The Board will publish and publicise the Social Health Authority annual report transmitted to Parliament under subclause 43 (2).	The Board must publish and publicise the Social Health Authority annual reports and financial statements on its website to enhance accountability and build the public's confidence.	
	Clause 44	Social Protection Actors forum	Clarify the process under the act to ensure transparency and fairness and provide for an appeals procedure.	There are no clear procedures and mechanisms for handling complaints.	**Adopted.** An appeals mechanism to the High Court proposed in the amendments by the Committee.
		NHIF	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? Provide the role of the Board in managing complaints and have the tribunal as a resort as follows— **Complaints** (1) An affected user, health care service provider, health establishment or supplier, may	To conform with the constitutional requirements of access to justice and fair hearing.	**Adopted with amendments.** A Tribunal established to handle disputes related to social health insurance which are complex and specialized in nature.

			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.		
	Clause 45	RUPHA	Clause 45 establishing the Dispute Resolution Committee should come before clause 44.	The order of precedence of the clauses appears incorrect.	**Rejected.** The sequence is in order.
		MOH	Delete the word "one" appearing and substitute with the word "two" in clause 49(1).	The penalty raised to match the offence	**Adopted.** To enhance the fines to make them more deterrent and to make them commensurate to the

					offences committed under the Bill.
		COFPAK	Include patients' organisation (COFPAK) in the dispute resolution committee.	For representation of patients' interests.	**Rejected.** The Tribunal as proposed is specialized and JSC will have discretion on who to appoint.
		PSK	Out of the 4 other persons to be approved by the Cabinet secretary in Clause 45(2)(b)at least two should be Healthcare practitioners possessing a bachelor's degree.	The dispute resolution committee will be handling practicing healthcare professionals and healthcare matters. Therefore, the levels of training, knowledge and experience is critical in dispute resolution and decision making.	
	Clause 46	NGEC	Delete 46 (c).	The provision is discriminatory and prejudicial to persons with various categories of disabilities.	**Rejected.** The provision is in order.
	Clause 47	ICJ	Introduce a sub-clause establishing a structure for public participation and stakeholder engagement as follows: "The Cabinet Secretary, by notice in the Gazette, appoint a Public Participation and Stakeholder Engagement Committee comprising of representatives from both national and county governments, statutory legal	Leaving Clause 47 as it is without establishing a structure for public participation and stakeholder engagement may undermine meaningful public participation and deny stakeholders opportunity to influence decision making by the Authority.	**Rejected.** These issues are best addressed through regulations as contemplated under clause 48(2).

			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 marginalised groups and that no more than two-thirds of the members are of the same gender		
		UDPK CDRA	Add the word "Inclusive" after the word "facilitate" in Clause 47(1).	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.	**Noted.** The clause has drafted is in order.
		NHIF	Insert the words "in consultations with the Board" immediately after the term "Cabinet Secretary" in clause 47(2).	This will ease the Board's day to day operations.	**Adopted with amendments** as the Cabinet Secretary is bound to consult the Board in making regulations.
	Clause 48	RUPHA	Delete Clause 48(2)(d).	Empanelment is a NOT a function of the Social Health Authority and is therefore outside the ambit of the Act.	**Rejected.** As proposed for amendment, the Authority will be responsible for empanelment.
		FKE	Amend clause 48 (4) as follows—		**Rejected.** This is implied as cross reference to a law

			The digitisation 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.		includes any future amendments that may arise.
		NHIF	Delete clause 48(5).	Digitization is an operational matter that does not require regulations.	**Rejected.** Regulations on digitization are necessary for effective incorporation into the Authority's processes and services.
	Clause 49	MOH	Delete the word "one" appearing and substitution with the word "two" in Clause 49(1). Delete the words "one million" and substitution with the words "five hundred thousand" in Clause 49(4). Deletion of the words "five hundred and substitution with the words "two million" in Clause 49(5)(a).	The penalty raised to match the offences.	**Adopted with amendments.** To enhance the fines to make them more deterrent and to make them commensurate to the offences committed under the Bill.
		FKE	Increase the fine to not exceeding one million in clause 49(1) Paragraphs (b) and (c) of clause 49(1) need to be sections on their own addressing service providers as separate legal persons from the staff	To standardize the fines. Clause 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 can also engage in fraud individually.	
		KMA	Provide for recovery of funds accrued from fraudulent activities on addition to the sentencing and fining in the section on tackling offenses and penalties.	Recovery is key in ensuring justice for the contributor and the beneficiaries alike.	**Adopted.** To give the Authority power to recover monies lost or due besides the payment of the fines imposed under the Bill.
			Amend Clause 49(2)to increase the penalty of misappropriation sentence to be increased from 5 to 10 years.	The funds of the SHI have direct impact on the lives of Kenyans and therefore financial misconduct causes greater harm than just fiscal harm.	**Rejected.** The fine is in order.
		RUPHA	Clause 49(6) and (7) be rewritten considering that the actions/decisions of the Board with respect to healthcare facilities and healthcare providers shall now be subject to the right of appeal with the Dispute Resolution Committee.	It is important that 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	**Noted.** Appeal to the Tribunal only arises after the Board's decision.
	Clause 50	MOH	Delete 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).	Validity of claims is not tied to any time frame.	**Adopted.** The timeframe of settling claims ought to be set out in the proposed regulations.

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		KMA	Amend Clause 50 (2) (b)by deleting Cabinet Secretary and replacing thereafter with Parliament.	Amounts payable should be determined by Parliament similar to other taxation/contributions.	**Rejected.** Regulation making is function of the Cabinet Secretary under the Statutory Instruments Act, No. 23 of 2013.
		FKE	Delete "Despite the generality" and replace with "Subject to subsection (1)" Clause 50(2).	Consultation with the Board in making regulations should not be left optional but should be mandatory.	**Rejected.** The clause is in order as drafted.
			Add a new principle in Clause 50(4) as follows— (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.	**Rejected.** Regulation of public participation in the making of regulations is already set out in the Statutory Instruments Act, No. 23 of 2013.
		COG	Amend Clause 56 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. (2) Regulations contemplated under this Act shall be made within a period of six months after the effective date of the Act	Health is primarily a devolved function hence need to consult the County Governments in the development of the Regulations. To provide timelines for the development of the regulations is key otherwise implementation of the Act will be a challenge.	**Rejected.** Regulation of public participation in the making of regulations is already set out in the Statutory Instruments Act, No. 23 of 2013. The Cabinet Secretary has the discretion in terms of when to make the regulations.
	Clause 51	COG KMPDC	Delete clause 51.	The clause will be unconstitutional in cases where there is a conflict between this Act and	**Rejected.** The Bill takes precedence on matters of social health insurance.

				county laws establishing their own social health insurance systems such as the Kisumu Marua. The clause will also amend any other Act or legal provision that directly links KMPDC and NHIF.	
	Clause 52	MOH	Delete the words "risk spreading and" in clause 52	The Social Health Insurance Fund is a social scheme and there is one pool therefore there is no element of risk spreading.	**Adopted.** 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.
	Clause 54	KMPDC	Delete clause 54.	This means NHIF will cease to exist.	**Rejected.** The intention is to repeal the NHIF Act.
	Clause 55	COG	Amend clause 55 to take care of all issues i.e. the officers, the assets, liabilities, and the Board	This is very important for preservation of the Fund.	**Noted.** The clause is in order as winding up generally all these aspects into consideration.
	Fist Schedule	FKE	The Authority to absorb the staff of NHIF and follow the due process provided for in the applicable labour laws. Amend clause 6(2) (a) as follows— On the appointed day, the Staff of the Fund shall without	For seamless transition and protection of jobs/household livelihoods.	**Adopted with amendments.** The position in the NHIF Act, 1998 retained.

			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		
		Kenya Union Of Commercial Food and Allied Workers	Proposes that upon operationalisation 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 in paragraph 6(2). Delete paragraph 6(4(b)	To ensure that all employees of the NHIF 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 .	
			Delete paragraph 2(2).	To 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	**Adopted.** 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.
			Insert a new paragraph (8) as follows: 8.Agreements, Deeds etc		**Rejected.** The matters already addressed in paragraph 2 and 3 of the First Schedule.

			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 submitted in respect of anything done on or after the appointed day.		
			Add a new paragraph (9)as follows: 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.		**Adopted with amendments.** The position in the NHIF Act, 1998 retained.

			This will guarantee workers the enjoyment of their negotiated terms and conditions of service		
		KAPH	Under paragraph 6(1), establish a multi-disciplinary team/committee comprising of 1.Health Principal Secretary or his representative 2.the Chairman of the NHIF Board 3.the CEO of the NHIF 4.A representative of – (a) KAPH (b) RUPHA (c) CHAK (d) KCCB (e) KMA (f) FKE (g) COG; and (h) any other person(s) deemed relevant Remove the 1-year transition period timeline and replace it with the clause and cognizant of the task at hand the committee should be the one tasked to come up the timelines on winding up the NHIF.	The multi-disciplinary committee to oversee the transitional period to ensure historical issues are satisfactorily settled before the NHIF is wound up.	**Rejected.** The winding up process in paragraph 6 (1) retained.
		MOH	Insert the words "in consultation with Salaries and Remuneration Commission" immediately after the words	The Salaries and Remuneration Commission provides advice on remuneration	**Noted.** The position in the NHIF Act, 1998 retained.

			"determined by the Board" in paragraph 6(2).	and other benefits for public officers.	
		FOPA	Delete 5(1).	To allow the Authority to continue providing enhanced medical schemes for retired civil and public servants. Majority of civil and public servants including retired politicians do not have post-retirement medical schemes. This will expose them to medical hardships since they cannot be accommodated by private insurance providers.	**Adopted.** The Social Health Authority will provide enhanced benefits schemes and packages.
		Office of the Data Protection Commissioner	Under paragraph (6)(2, the board of the Social Health Authority shall give first preference, where qualified, to employees of the fund for transitional to the board	These officers have institutional memory of the health scheme and have gathered many years of service.	**Adopted with amendments.** The position in the NHIF Act, 1998 retained.
		NHIF	Delete paragraph 2 (2) in its entirety.	The Authority shall be guided by the provisions of the Public Procurement and Assets Disposal Act.	**Adopted.** 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.
			Amend paragraph 6(1) to increase transition period to two years. Delete paragraph 6(2), (3) and (4) and substitute therefor the following new paragraphs— (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. (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 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	The timelines are too short to undertake the whole transition processes. The period for transition should be guided by deliverables. NHIF has running contracts with healthcare providers and the exit from these contracts need to be properly managed as most expire in June 2024. There is need to prepare contracts for the new benefit packages to be provided 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	**Adopted with amendments.** The position in the NHIF Act, 1998 retained.

			(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 (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 (such as pension benefit, loans , medical cover etc.); or (b) undertake early separation with suitable compensation. Include a clause addressing the transition of pension scheme management. Include transition for the members of the Board who are eligible under the new Act until the end of their term.	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. This will ensure patients admitted in hospitals and those with chronic illnesses will continue to access uninterrupted medical care and are properly transitioned to the new way of accessing care. The clauses do not address the transition of pension benefits for the NHIF staff and the NHIF Board's transition. There is need to plan for the staff benefits to manage exits and transfers. 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.	
	General Comments	NGEC	There is a need for a provision in the Bill prescribing for penalties for denial of emergency health care to Kenyans. Since this is a social insurance cover, it should do away with enhanced benefits packages for civil servants since the law does not deprive anyone the opportunity to engage with private insurance covers for complimentary cover. Supports the idea of lowering the minimum rates for unemployed Kenyans as well as the subsidies for the vulnerable as it promotes inclusivity. The need to have maximum contribution capping.	This is a constitutional right. This will ensure equal treatment for all Kenyans. This will go a long way of making the cover "social" and affordable to all Kenyans. 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	The comments noted by the Committee.

				whole idea becomes exorbitant.	
		KCEN	To allow for a more focused approach to addressing challenges and promoting opportunities that are specific to the youth demographic while still upholding principles of equal opportunity and inclusivity to marginalised groups, separate the provisions or mechanisms within the Bill that specifically address youth concerns, aspirations and unique role in society.		The comments noted by the Committee.
		Kenya Union Of Commercial Food and Allied Workers	The Bill should not subject the employees of NHIF to unfair labour practices unemployment as: (a) it proposes no guarantee for their continued employment. (b) There is 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; (c) There is uncertainly as the Bill does not propose any guarantee on their Pension Scheme, Medical Benefits and other terms; and		The comments noted by the Committee.

			(d) Like any other property, employees hold their jobs dearly and same should NOT be taken away from them by the creation of this Authority.		
		Office of the Data Protection Commissioner	To promote clarity and align, with the principle of data minimisation as espoused in the Data Protection Act, 2019, the Bill should include a list of information the Fund may require from its contributors.		The comments noted by the Committee.
		MOH	Indicated that the Ministry conducted stakeholder engagement on the Bill and prepared a memorandum on the consolidated feedback received from the stakeholder engagement. Submitted that the memorandum is a true reflection of the stakeholder engagement		The comments noted by the Committee.
		UDPK CDRA	The registration process under the Bill 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.		The comments noted by the Committee.
		Social Protection Actors forum	As there is a potential challenge in implementing the funding		The comments noted by the Committee.

			structure effectively, include specific details on how individual contribution will be divided to cover all the three funds for their health care coverage.		
		ICJ	Although the Bill provides for public participation and stakeholder engagement by the Social Health Authority in carrying out its functions, it does not establish structures to facilitate public participation. Further, it does not provide for access to information which is crucial for meaningful public participation. The Bill does not include the rights of beneficiaries of the Social Health Insurance Fund. The ICJ recommended 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.		The comments noted by the Committee.

			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		
		FKE	Prescribe the specific applicable rate in the Act.		The comments noted by the Committee.
		NHIF	Highlighted the laws and policies that underpin social health insurance in Kenya including the Constitution, the Health Act, No. 21 of 2017, the National Health Insurance Act, No. 9 of 1998, Public Health Act, Cap. 242, Vision 2030, the Kenya Health Policy 2014-2030, the Kenya Health Financing Strategy 2016-2030,		The comments noted by the Committee.

			Sessional Paper No. 7 of 2012 on the policy on Universal Healthcare Coverage and Universal Health Coverage policy, 2022 among others. Highlighted that Article 43 of the Constitution guarantees the right to the highest attainable standards of health including the right to healthcare services and reproductive healthcare. This right binds the Government to take measures that are necessary including 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 and Peoples Rights, amongst others, and in key institutional documents on health such as the Constitution of the World Health Organisation. The Government has shown commitment 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. The Health Act specifically mentions Social Health Insurance and in 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 UHC. Besides this, 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 UHC culminating in the Bill. Provided a comparative analysis on Social Health Insurance models adopted by other countries namely Germany, France, Rwanda, South Africa, Nigeria.		

			Highlighted that 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 and which the Bill must be alive to prevent future challenges in implementation. Further, 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, 2017. 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 Authority. It fully supports the Bill 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.		

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
CLERK'S OFFICE
NAIROBI

Copy to: **Cabinet Secretary**
Ministry of Health
NAIROBI

D/DC
Please deal
26/09/23

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

Telephone: Nairobi 254-020-2717077
Fax: 254-2719008
Email: ps.medical@health.go.ke
When replying please quote:

AFYA HOUSE
CATHEDRAL ROAD
P. O Box 30016-00100

Ref: MOH/ADM/1/2

Date: 22nd September, 2023

NATIONAL ASSEMBLY RECEIVED
25 SEP 2023
DEPUTY CLERK S. KIOKO
P. O. Box 41842 - 00100, NAIROBI

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

Hassan Noor
to facilitate
26/9/23

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.

Attached herewith, please find copies of memoranda received by the Ministry from Stakeholders and consolidated feedback memoranda for the Social Health Insurance Bill 2023, and the Digital Health Bill 2023, for your consideration

For Social Health Insurance 2023;

- Association of Public Health officers Kenya
- Clinical Officers Councils
- Council of Governors
- Dental Surgeon and Health Economist
- Federation of Kenya Employers
- Health Economics Association Kenya
- Health NGOs Network
- Kenya Association of Private Hospitals
- Kenya Association of Radiologist
- Kenya Clinical Officers Association
- Kenya Environmental Health and Public Health Practitioners
- Kenya Faith Faith Based Health Services Consortium (comprising CHAK, KCCB, MEDs, SUPKEM
- Kenya Medical Association
- Kenya Network of Cancer Organizations
- Kenya Progressive Nurses Association

NATIONAL ASSEMBLY RECEIVED
26 SEP 2023
DEPUTY CLERK S. KIOKO
P. O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY RECEIVED
25 SEP 2023
CLERK'S OFFICE
P O Box 41842 - 00100 NAIROBI

26 SEP 2023
Committees

- Kenya Society of Plastic, Reconstructive and Aesthetic Surgeons Menelik Medical Centre (KSPRAS)
- Kenya Union of Nutritionists and Dieticians (KUNAD)
- Kidney Cardiac Society
- Nairobi City County Government Health Wellness and Nutrition Department
- National Assembly Departmental Committee on Health
- National Nurses Association of Kenya
- Oral Health Association of Kenya
- Public Health Officers and Technicians Council Kenya
- Rural Private Hospitals Association of Kenya
- Senate Health Committee
- Society of Community Health Caregivers
- State Corporations under the Ministry of Health
- University of Nairobi African Women Studies Research Centre
- Consolidated Feedback Memoranda

For the Digital Health Bill;

- The National Assembly Health Committee
- The Senate Health Committee
- Council of Governors representation
- Federation of Kenya Employees
- Kenya NGO Alliance Against Malaria
- DPE Company Limited
- Health Records and Information Management Officers
- University of Nairobi African Women Studies Research Centre
- Kenya Society of Plastic, Reconstructive and Aesthetic Surgeons Menelik Medical Centre (KSPRAS)
- Consolidated Feedback Memoranda

Yours Sincerely,

Harry K. Kimtai, CBS
PRINCIPAL SECRETARY

Encls.

Copy to: Cabinet Secretary
Ministry of Health
NAIROBI

THE SOCIAL HEALTH INSURANCE BILL, 2023 MEMORANDUM

S/No	Clause of the Bill	Proposed Amendment	Justification
1.	**2 Interpretation** "Board" means the Board of the National Social Health Authority constituted under section 7	The Bill is amended under clause 2 by deleting the word ***"National"*** appearing immediately after the words "Board of the".	Clause 4, establishes the Social Health Authority, hence need to delete "National".
	2 Interpretation "primary health care" means essential health care based on practical, scientifically sound and socially acceptable methods and technology that is made universally accessible to individuals and families in the community at every stage of their development, through their full participation and at an affordable cost to the community and country, in the spirit of self-reliance and self-determination;	The Bill is amended under clause 2 by deleting the words ***"in the spirit of self-reliance and self-determination"*** appearing immediately after the words "the community and country".	The definition of the term is best captured by the proposed amendment
	2 Interpretation "spouse" means the wife or husband of a contributor who is for the time being named as such by the contributor for that financial year;	The Bill is amended under clause 2 by deleting the words ***"who is for the time being named as such by the contributor for that financial year"*** appearing immediately after the words "husband of a contributor".	To ensure there is provision for protection of spouse against abuse of removal by contributor
	2 Interpretation "risk spreading" means the transfer, sharing or distribution of the risk insured as between one or more insurance companies or other providers with a view to reducing the financial cost in the eventual happening of the insured event hereby referred as a loss for special, enhanced or negotiated scheme;	The Bill is amended under clause 2 by deleting the words ***""risk spreading" means the transfer, sharing or distribution of the risk insured as between one or more insurance companies or other providers with a view to reducing the financial cost in the eventual happening of the insured event hereby referred as a loss for special, enhanced or negotiated scheme;"***	In social insurance practice there is no risk spreading as the scheme has only one pool
2.	**4. Establishment of the Social Health**	The Bill is amended under clause	The Authority is not

S/No	Clause of the Bill	Proposed Amendment	Justification
	Authority. (c) receiving, investing, borrowing money; and	4 by deleting the words *"investing"* appearing immediately after the word "receiving".	expected to have a surplus of funds for investment
3.	6 **Powers of the Authority** (e) Invest the funds of the Funds not immediately required for its purposes in the manner provided in this Act under section 38.	The Bill is amended under clause 6 by *deleting sub-clause (e).*	The Authority is not expected to have a surplus of funds for investment, and investment clauses have been abused in the past
4.	**7 The Board of the Authority** (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:	The Bill is amended under clause 7 by deleting sub-clause (e) "the *Attorney-General or a designated representative*" and replacing it with the words *"a representative of the CEC health caucus".*	Health being a devolved function calls for more inclusion of county government representation on the Board
	7 The Board of the Authority h) four persons, not being public officers, nominated by— (iii) Health care providers.	The Bill is amended under clause 7 by inserting the words *"Faith based and private sector"* immediately before the words *"health care forum or association"*	The representative will represent the health providers under the faith based and private sector who are not currently represented, as public are represented by DG and COG.
5.	**8. Qualifications for appointment** 2. (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	The Bill is amended under clause 8 by deleting "*the private health facility"* appearing immediately after the words "member of the insurance industry".	A member of a private health facility can be a member of the board
6.	**8. Qualifications for appointment** (e) has been found in accordance with any law to have misused or abused a state office or public office or in a way	The Bill is amended under clause 8 by adding "*and parliamentary reports"* after the words "any law"	Parliament has a responsibility to vet nominees; thus, parliamentary reports should also be

S/No	Clause of the Bill	Proposed Amendment	Justification
	to have contravened the provisions of Chapter Six of the Constitution.		considered
7.	**9. Vacancy of office** (b) is absent from three consecutive meetings of the Board without permission from the appointing authority;	The Bill is amended under clause 9 by deleting "*permission*" appearing immediately after the words "meetings of the Board without" and replacing with the words *"lawful cause"*	This will ensure no abuse of the clause to dismiss board members
8.	**14 Qualification for appointment as Chief Executive Officer** (a) has a minimum of a bachelor's degree from a university recognized in Kenya;	The Bill is amended under clause 14 by deleting "*bachelor's*" appearing immediately after the words "meetings of the Board without" and replacing with the words *"masters"*	Due to the position of Chief Executive Officer bearing huge responsibility, there is need for the appointee to have a Master's degree
	14 Qualification for appointment as Chief Executive Officer (b) is an Advocate of the High Court of Kenya	The Bill is amended under clause 14 by deleting *paragraph (b).*	The CEO need not be an Advocate and should majorly be qualified in health matters.
9.	**17.Staff** The Board may appoint such staff as may be necessary for the proper discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine.	The Bill is amended under clause 17 by deleting *"appoint"* appearing immediately after the words " The Board may " and replacing with the words *"recruit"*	There needs to be a competitive recruitment process in sourcing of staff
10.	**24. Implementation of the Primary Healthcare Fund.** The Cabinet Secretary may make regulations for the implementation of the Primary Healthcare Fund.	The Bill is amended under clause 24 by deleting *"may"* appearing immediately after the words "The Board may" and replacing with the words *"shall"*	This implies that it is the responsibility of the Cabinet Secretary to make the regulations

S/No	Clause of the Bill	Proposed Amendment	Justification
11.	**25 Establishment of the Social Health Insurance Fund.** (d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme; and (e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits.	The Bill is amended under clause *25 by deleting sub-clause (d) and (e).*	SHA is a social fund therefore there are no enhanced schemes that will be managed by the Authority.
12.	**26 Registration** (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 entity.	The Bill is amended under clause 26 (5) by deleting the words *"proof of registration with the Social Health Insurance Fund"* and replacing with the words *"proof of compliance with the provisions of section 26 and 27 on registration and contribution".*	Registration and contribution under the SHI is mandatory. The proposed amendment facilitates the enforcement of this mandatory requirement to comply with contributions and other requirements.
13.	**27. Contributions.** (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 amount due for contribution for the period which the contribution remains unpaid and the total annual contributions.	The Bill is amended under clause 26 (5) by deleting the word *"ten"* and replacing with the words *"five".*	Ten percent fine is high, give that fine are supposed to act as deterrent, not resources mobilization opportunities.
14.	**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.	The Bill is amended under clause 30 by deleting *"may"* appearing immediately after the words "The Cabinet Secretary" and replacing with the words *"shall"*	This implies that it is the responsibility of the Cabinet Secretary to make the regulations
15.	**35. Claims Management.**	The Bill is amended under clause 35 by deleting *"shall"* appearing	Pre-authorizations for access to healthcare

S/No	Clause of the Bill	Proposed Amendment	Justification
	3. The Claims Management Office shall delegate the performance of its functions under subsection (1) (a), (b) and (c) to a suitable entity.	immediately after the words "The Claims Management Office" and replacing with the word *"may"* and deleting "*(1)(a) (b) and (c) to a suitable entity"* appearing immediately after the words "functions under subsection " and replacing with the words *"(1)(a) and (b) to a medical insurance provider licensed by the Insurance Regulatory Authority under the Insurance Act in a manner to be prescribed by the Cabinet Secretary in Regulations."*	need to be separated will not be among the functions to be delegated
16.	**35. Claims Management.** 4. The entity referred 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 identified in the manner prescribed in the regulations	The Bill is amended under clause 35 by deleting "*clause 35 sub-clause (4)*	To make clear that claims office is restricted on whom to contract if need be.
17.	**38. Investment of Funds.** (1) All monies in the Authority 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.	The Bill is amended under clause 38 by deleting the words " *38. Investment of Funds.* *(1) All monies in the Authority 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*	The Authority is not expected to have a surplus of funds for investment

S/No	Clause of the Bill	Proposed Amendment	Justification
	(2) All investments made under this section shall be held in the name of the Authority.	*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 Authority.* "	
18.	**40. Annual estimates.** (4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Board.	The Bill is amended under clause 24 by deleting " *or in pursuance of an authorization of the Board."* appearing immediately after the words " approved under subsection (3) "	To avoid any overtures by the Board
19.	**41. Expenses of administering the Funds.** (2) The administrative expenses referred to under subsection (l) shall not exceed five percent of the annual expenditure of the Fund: Provided that the administrative expenses shall not at any time exceed the cost of benefits payable under this Act.	The Bill is amended under clause 41 by deleting *"Provided that the administrative expenses shall not at any time exceed the cost of benefits payable under this Act."* appearing immediately after the words "expenditure of the Fund"	There is need to keep administrative costs low
20.	**45. Establishment of Dispute Resolution Committee.** (2) The Committee shall consist of— (a) a Chairperson who shall be appointed by the Cabinet Secretary from among persons qualified to be judges of the High Court; and	The Bill is amended under clause 45 by deleting "*Cabinet Secretary"* appearing immediately after the words " appointed by the " and replacing with the word *"President"*	This is to strengthen the office and bring right right expertise.
21.	**49. Offences and penalties.** (c) for the purpose of obtaining any benefit for himself or for any other person, knowingly makes any false statement or representation, or produces or furnishes, or causes to be produced or	The Bill is amended under clause 49 by deleting "*one* " appearing immediately after the words " fine not exceeding " and replacing with the words *"two"*	The penalty was raised to match the offence

S/No	Clause of the Bill	Proposed Amendment	Justification
	furnished, any document or information which he knows to be false in any material particular, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.		
	49. Offences and penalties. (4) Any person who with intent to obtain the payment of any benefit under this Act, impersonates any person whether living or dead, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.	The Bill is amended under clause 49 by deleting "*one million*" appearing immediately after the words " fine not exceeding " and replacing with the words "*five hundred thousand*"	The penalty was reduced
22.	**49. Offences and penalties.** (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;	The Bill is amended under clause 49 by deleting "*five hundred thousand*" appearing immediately after the words " fine not exceeding " and replacing with the words "*two million*"	The penalty was raised to match the offence
23.	**50. Regulations.** (2) (e) the settlement of valid claims, which shall be within a period of one month from the date of submission of the claim; and	The Bill is amended under clause 50 by deleting "*which shall be within a period of one month from the date of submission of the claim; and*" appearing immediately after the words " settlement of valid claims "	Validity of claims is not tied to any time frame
24.	**52 Application of Cap. 487.** The provisions of the Insurance Act shall apply to the Authority only in respect to risk spreading and claims administration services.	The Bill is amended under clause 52 by deleting the words "*risk spreading and*".	SHI is a social scheme and there is one pool therefore no risk spreading.

S/No	Clause of the Bill	Proposed Amendment	Justification
25.	**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.	The Bill is amended under clause 6 by adding "*in consultation with Salaries and Remuneration Commission*" appearing immediately after the words "determined by the Board "	Salaries and Remuneration Commission have the mandate of validating terms of remuneration

REPUBLIC OF KENYA

OFFICE OF THE DATA PROTECTION COMMISSIONER

When replying please quote:
Ref: ODPC/ADM/4/6/3

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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

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.

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KAM_Kenya
Kenya Association of Manufacturers

MEMORANDA FROM HEALTH RECORDS AND INFORMATION MANAGEMENT OFFICERS REGARDING THE INCLUSION AND ESTABLISHMENT OF DIGITAL HEALTH AGENCY IN PROPOSED DIGITAL HEALTH BILL 2023

BACKGROUND ABOUT HEALTH RECORDS AND INFORMATION SERVICES

1. WHO WE ARE

HRIM Act no. 15 of 2016 defines Health Records and Information Managers as ''Officers trained in health records and information and charged with the responsibility of managing health records and information for health services which includes (i) consulting in clinical coding; (ii) coding for insurance firms; (iii) capacity building in disease classifications and health information management; (iv) appraisal of medical documentations and audits; (v) medical data analytics and research; (vi) design and *use of e-health applications*; (vii) development of strategic documents and policies in health records and information management services; (viii) advice on medical legal issues; (ix) advice on retrieval and disposal of medical records; (x) management of bed bureaus; or (xi) consultancy in administrative statistics and big data analytics

2. THE HEALTH RECORDS AND INFORMATION MANAGEMENT (HRIM) FUNCTION

Approved Scheme of Services for HRIM personnel describes the following functions; collecting, collating, compiling, analyzing, reporting, evaluating, storing and disseminating health and health-related data and information for use by all Development, implementation and review of the health records and information management policies, strategies, guidelines, procedures and standards; management and administration of health records and information services; documentation of medical, surgical and related procedures; scheduling and management of *bed bureau;* coding and indexing diseases and surgical procedures in accordance with the international statistical classification of diseases 2 (ICD) and international classification of procedures (ICPM);

organization of patients appointments; registration and scheduling of patients; maintenance of Patient Master Index; development and review of health data collection and reporting tools; custodian of health records and maintenance of confidentiality; provision of advice on medico-legal aspects in relation to health records and information; collection, analysis and dissemination of health data; development, monitoring and evaluation of health records and information systems; capacity building on health records; and conducting health research and surveys.

3. HEALTH RECORDS AND INFORMATION MANAGERS BOARD OF KENYA

HRIM profession is regulated by Health Records and Information Managers Board. The Board is established pursuant to section 3(1) of the HRIM Act and the board is established as body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of —

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing money or making investments; and

(d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. **LEGAL INSTRUMENTS GOVERNING HEALTH RECORDS AND INFORMATION**

a) **The Health Records and Information Management Act No. 15 of 2016** which is an Act of Parliament to make provision for the training, registration and licensing of the health records and information managers; to regulate their practice; to provide for the establishment, powers and functions of the Health Records and Information Managers Board and for connected purposes

b) **The scheme of service for health records and Information management** officers (Rev 2018) which is administered by the Public Service Commission and which the cabinet secretary for Health is the custodian and the

scheme of service has a detailed job description for health records and information which stipulates they are charged with the responsibility of managing health records and information for health services.

c) **The Health Act 2017**

Section 103, 104 and 105 of the Health Act 2017 is discussed below;

1. **Section 103 recognizes eHealth as mode of service** delivery in Kenya,

2. **Section 104 on e-Legislation** which obligates Cabinet Secretary for health to establish within three years of the operation of this Act, to ensure the enactment of legislation that provides for among other things;

(a) administration of health information banks including interoperability framework, data interchange and security;

(b) collection and use of personal health information;

(c) management of disclosure of personal health information;

(d) protection of privacy;

(e) business continuity, emergency and disaster preparedness;

(f) health service delivery through M-health, E-learning and telemedicine

(g) E-waste disposal; and

(h) Health tourism.

3. **Section 105 of the Act** states that Ministry of health shall facilitate the establishment and maintenance of a comprehensive integrated health information system. The section further obligates the Cabinet Secretary in consultation with the Director General may, for the purpose of creating, maintaining or adapting databases within the national health information system desired in subsection (1), prescribe categories or kinds of data for submission, collection and the manner and format in which and by whom the data is to be compiled or collated and submitted to the Ministry of health.

4. POINTS OF DEPARTURE IN THE PROPOSED DIGITAL HEALTH BILL 2023

Its important to note that we support the government in its digitization agenda in line with her manifesto but its our collective understanding that some sections of the proposed bill will create disharmony and confusion in the health sector due to the oppressive clauses and provisions. Below is a summary of some sections of the Health Act that defines digital health bill and which appears conflicting according to us;

1. Section 104 and 105 (3) of the Health Act obligates the Cabinet Secretary and Director General to facilitate development of policy guidelines that ensures maintenance of comprehensive integrated health information system but does NOT talk about creating another legislation to facilitate this function. The inclusion of this section in the proposed digital health bill clearly undermines this provision in the Health Act. This function is already being performed by existing HRIM Professionals regulated by HRIM Board.

2. Under Section 105, the Health Act obligates Cabinet Secretary and Director General should facilitate development of policy guidelines to ensure accomplishment of comprehensive integrated health information but nowhere does the section calls for development of legislation or

inclusion in the inclusion in any other proposed legislation. The proposal in the digital health bill to include this section is meant to undermine this section in the health act and should be removed. The development of policy guidelines would easily achieve the objects of the proposed digital health act without undermining the health act.

3. Lastly, while the Health Act 2017 clearly stipulates the development of various policy documents and guidelines, nowhere in the Health Act is the creation of Digital Health Agency envisaged or provided for in Health Act.and its inclusion in the proposed digital health bill is meant to undermine other existing legislation's like HRIM Act no 15 of 2016 and Health Act of 2017. This should not be allowed to pass unnoticed and should be knocked out completely from the proposed digital health bill.

4. The Health Act of 2017 envisaged that a number of policy guidelines shall be developed under Section 105 (3) to accomplish a comprehensive integrated health information under the guidance of CS Health and Director General for health. In the proposed digital health bill, all the objects of the proposed digital health bill are NOT in congruent with the provisions of the already existing Health Act 2017. The inclusion of the this section in a new legislation without repealing the Health Act will undermine this Act that is already being utilized in the health sector. The objects should be dropped from the proposed digital health bill.

5. Under Section 6 (f-k)(j)(n)(o) in the proposed digital health bill, there is duplication of functions outlined in the Health Act 2017 and which HRIM officers undertake or perform on day to day basis. There exists no vacuum in the practice and the inclusion of the functions in the proposed digital health bill shall conflict with HRIM Act and Health Act and this should not be admitted in the proposed digital bill.

6. Under Section 8 (1) on the board of the directors, the proposed list of board members completely ignores 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 and nowhere in the proposed digital health bill is this cadre recognized or even mentioned. This omission in the proposed bill obliterates this noble profession and eventually sack thousands of officers working in the public and private sector. Their livelihoods are at stake and shouldn't be allowed to suffice but should be amended by ensuring that there is one representative from this noble profession to safeguard the interests of the members of this profession.

7. Under Section 21 of the proposed digital health bill, there is proposed establishment of a system known as comprehensive integrated health information system under the custodian of the proposed Digital Health Agency. Its important to to note that in Health Act of 2017, it is envisaged that a number of policy guidelines shall be developed under Section 105 (3)

to accomplish a comprehensive integrated health information under the guidance of CS Health and Director General for health. In the proposed digital health bill, the proposal to place this responsibility under the proposed and yet to be established digital health agency is a direct conflict and subversion of intent of the drafters and legislators of the Health Act 2017. The inclusion of the this section in a new legislation without repealing the Health Act 2017 creates two parallel authorities and will undermine this Act that is already being utilized in the health sector. The proposal should be dropped from the proposed digital health bill.

8. Section 2 of the HRIM Act no 15 of 2016 defines a Health Records and Information Manager as an officer trained in health records and information as an officer charged with the responsibility of managing health records and information health services which includes—

(i) Consulting in clinical coding;

(ii) Coding for insurance firms;

(iii) Capacity building in disease classifications and health information management;

(iv) appraisal of medical documentations and audits;

(v) medical data analytics and research;

(vi) coordinate development use of e-health applications;

(vii) Development of strategic documents and policies in health records and information management services;

(viii) Advice on medical legal issues;

(ix) Advice on retrieval and disposal of medical records;

(x) Management of bed bureaus; or

(xi) Consultancy in administrative statistics and big data analytics.

A closer look at Section 21 (3) of the proposed digital health bill proposes integrated comprehensive health information system shall operate as a

point of collection, collation, analysis, reporting, storage, usage, sharing, retrieval or archival of data related to the state of physical or mental health of the data subject and includes records regarding the past, present or future state of the health, data collected in the course of registration for, or provision of health services, or data which associates the data subject to the provision of specific health services is a clear conflict with the provisions of section 2 of the HRIM Act in terms of who a manager is.

This shouldn't be allowed to suffice since it is a direct conflict with the HRIM Act. The same should be expunged from the proposed digital health act to avoid conflicts in regulation once the new digital health law is enacted.

The same case applies to Section 22 (a-e) of the proposed digital health bill and should be expunged from the proposed digital health act due to its conflicting nature.

9. The objects of the digital health bill under Section 23 of the proposed digital health bill is a cut and paste of some of the functions of HRIM managers provided in Section 2 of the HRIM Act no 15 of 2016 which 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 if allowed to pass as proposed. This section should be expunged from the proposed digital health bill since it serves no purpose and couldn't comprehend what its supposed to cure.

10. Section 28 of the proposed digital health bill empowers the Digital Health Agency to be the sole custodian of health data in Kenya. It should be noted that health data belongs to the patient and its held in trust by the state on behalf of the patient. Secondly 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 ensures that the 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 since they won't be answerable to the Authority created by the Digital Health Bill. This should not be allowed since patients are likely to suffer and their privacy and confidentiality compromised. This is against Section 18 of the Data Protection Act 2019 that establishes registration of data controllers and processors for all public and private organizations and individuals

11. The same case applies to section 29 of the proposed digital health bill and should be expunged from the proposed digital health bill.

12. Section 32 of the proposed digital health bill obligates Cabinet Secretary to establish health data banks and establish county health data banks. In my view this shift in responsibility from 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. This is pure conflict in the roles and responsibilities between the office of Cabinet Secretary and Digital Health Agency.

OBSERVATIONS, CONCLUSION AND RECOMMENDATIONS

1. The practice of HRIM is regulated by the HRIM Act 2016 and HRIM board established pursuant to section 3(1) of the act and the proposed bill has outlined Digital Health Agency functions that conflicts with the core functions of the HRIM Act 2016.

2. The HRIM board is the advisory agent to the CS on matters pertaining to health records and information management in this country according to HRIM act 2016 and there is perceived conflict between the proposed digital bill agency bill and the board and therefore undermines the board mandate. HRIM profession is not enlisted among the membership of

board of directors for digital health agency and is the key player in this space which should be ignored at own peril due to their crucial roles.

3. The practice demands that anyone handling health record or patients data, s/he must be licensed and regulated by the HRIM board and since it's a legal requirement in the Health Act 2017 that all health professionals be regulated, the issues of patient health information confidentiality cannot be guaranteed if people are deployed in the agency are not licensed meaning confidentiality of patient information will be compromised which is against the Data Protection Act 2019. Every health practitioner must be licensed according to the Health Act 2017

4. The proposed bill does not provide for a transition clause for serving HRIM officers and its completely silent on the role the HRIM profession who are crucial actors in health information management and who are directly affected by the bill. There is no clause that shows how the cadre will transition in the proposed regulatory framework thus rendering thousands of the HRIM professionals already working for the health industry in Kenya jobless.

5. Key stakeholders including the training institutions, private and NGOs were not involved in the process and have not been consulted. The agency will not be able to regulate the work of the private and NGOs.

6. The proposed digital health is creating another cadre called digital health or health informatics by looking at the objects and qualifications of the board membership and which is not provided in law clear what gap is filling on the space of information management as currently all health information systems are managed by HRIM profession and so far there hasn't been any serious reported gaps that the proposed bill is going to cure by establishing a digital health agency.

25 SEP 2023
Secretariat of Departmental Committees

DDC
Please deal.
Sgd.
25/09/23

COUNCIL OF GOVERNORS

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P.O. BOX 40401-00100,
Nairobi.

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Our Ref: COG/6/40 Vol.87(113)

NATIONAL ASSEMBLY
RECEIVED
21 SEP 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

20th September 2023

Hassan Arale
to facilitate
Sgd
25/9/23

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;

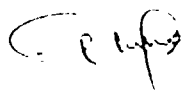
i. **Clause 5 (1)**- Changing the name of the central authority namely Digital Health Agency to read Digital Health Service. The term agency pre-supposes a principal- agent relationship yet the institution as conceptualized is independent.
ii. **Clause 8**- Increasing the membership of the Council of 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.

NATIONAL ASSEMBLY
RECEIVED
21 SEP 2023
DEPUTY CLERK S. KIOKO
P. O. Box 41842 - 00100, NAIROBI

We wish to note that the Council of Governors has presented its views on the Bills to the Ministry of Health, through a Technical Working Group that was established on 7th September 2023, in which the Council is a member. Our views are there submitted for your information.

Please accept our highest esteem and regards.

Yours sincerely,



Mary Mwiti
Chief Executive Officer

Copy: Excellency Governors

CECMs In Charge of Health



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE SOCIAL HEALTH INSURANCE BILL, 2023

FROM

THE COUNCIL OF GOVERNORS

TO

THE NATIONAL ASSEMBLY

Introduction

The Council of Governors,

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

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

Aware of the need to ensure that legislation reflects the spirit and objects of devolution and are aligned to the Constitution in the assignment of functions between the National Government and County Governments.

Conscious that Government at either level is to perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level and respect the constitutional status and institutions of government at the other level.

Noting that health is a primarily a devolved function.

Appreciating the move to put in place a legislative framework to regulate the provision of social health insurance, promote the implementation of the Universal Health Coverage and ensure that all Kenyans have access to affordable and comprehensive quality health services through the **The Social Health Insurance Bill, 2023**. This is in line with the resolution made at the World Health Assembly in 2005 calling for member countries to transition their health systems towards Universal Health Coverage.

Recognizing and noting that the Bill seeks to establish a framework for the establishment of the Social Health Authority, a body corporate that is vested with the responsibility of managing three funds established in the law.

Premised on the above, the Council wishes to submit its views and /or proposals to the Bill as follows;

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.

5) The Bill seeks to reform the health financing framework while delicately addressing other key components namely Leadership and governance, service delivery, health information system, health workforce, medical products, albeit not comprehensively.

6) Section 4 of the bill establishes a very powerful Social Health Insurance Authority to manage all the three funds established by the Bill.

7) Section 5 sets out the functions of the Authority. It fails to recognize the fact that one of the 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. receiving, processing, and making of payment of claims.

8) This combination creates a conflict of interest which undermines accountability. Available evidence indicate that an Expert Panel established by MOH in 2019 in their report recommended the separation of roles and establishment of more independent structures to be assigned different roles and act as checks and balances on each other and enhance accountability.

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.

How to cure- The mandate of the Office should be comprehensively captured under section 5 as the role of the Authority and the power to delegate provided in sec 6. The Office should then be established administratively through an Organizational Structure as a Directorate and assigned the roles rather than creating three centers of power.

10) Section 7 provides for the membership of the Board of the Authority but fails to provide for adequate representation of county governments and the Council of governors. It also fails to provide for representation of other interests and constituencies such as non-state actors comprising, faith-based health service providers, and private for-profit service providers; and consumers of the health services who are the contributors and who cannot be limited to salaried and unionisable workers represented by COTU. Contributors must include non-unionisable workers, informal sector contributors, and employers.
11) The provisions on the Primary Health Care Fund running from section 20 to 24 are inadequate and raise very many unanswered questions including the pathways of accessing the resources in the fund, which if not addressed will cripple primary health facilities and services in the counties which have been heavily relying on Development Partners support.
12) County Governments are expected to contribute towards the Social Health Insurance Fund. This is not practical considering the financial constraints that Counties face. The only way counties can achieve this is by being given conditional grant.
13) The provisions on Chronic and Critical Illness and Emergency Fund are inadequate as they do not provide for how the fund will be accessible by health facilities and persons suffering from chronic and critical illnesses.

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?

20) Peer to peer learning and sharing good practices is critical when there is a major shift in a governance structure in a country. It is not clear which jurisdiction of similar social, economic, and political environment we have borrowed from to inform the policy and institutional proposals in the Bill.

21) It is important to determine if Public Funds can be established and managed by Authorities. The Fund established under the Social Assistance Act could not be implemented because of the way the Fund was established. Establishment of the Fund in the manner proposed could be in contravention of the PFMA.

B. SPECIFIC COMMENTS

Section of the Bill	**Provision of Section in the Bill**	**Proposed Amendment**	**Rationale/Justification for Amendment**
Interpretation Sec 2	"Chronic illness" means a condition that lasts one year or more and require ongoing medical attention or limit activities of daily living or both;	**Amend to read** "Chronic illness" means a condition that lasts **six months** or more and require ongoing medical attention or limit activities of daily living or both;	One year is a long period and may beat the essence of having the Fund.
Establishment of the Social Health Authority Sec 4	(1) There is established an Authority to be known as the Social Health Authority.	**Amend to read** (1) There is established an Authority to be known as the Social Health Authority.	The emphasis is good.

		(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)

	out of the Funds in accordance to the provisions of this Act; (f) develop guidelines for the operations and implementation of the Funds established under this Act; (g) establish sectoral linkages for effective management and growth of the Funds; (h) monitor and evaluate programs and activities under the Funds; (i) receive and address complaints that may arise from the implementation of this Act; (j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;		receiving, processing and making of payment of claims. This combination creates a conflict of interest which undermines accountability. Available evidence indicates that an Expert Panel established by MOH in 2019 in its Report recommended the separation of roles and establishment of more independent structures to be assigned different roles and act as checks and balances on each other and enhance accountability.

	(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

	being responsible for matters relating to health 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	unionisable workers represented by COTU. Contributors must include non-unionisable workers, informal sector contributors, and employers. ***(e) Remove the*** Attorney-General or a designated representative	manage the social health insurance. The Attorney General is the Chief Principal advisor to the Government and should be a neutral party. Having the office represented compromises on neutrality that the office should retain.

	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.		

Qualifications for appointment Sec 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— (c) has knowledge and experience of not less than ten years in data science, information technology, health governance, health administration, health policy, finance or economics, five of which shall be at managerial level	***Amen by removing (g)***	The qualification for the member appointed under (g) is already spelt out i.e. *"one person, not being a public officer with proven experience in matters of health insurance, health financing, financial management, health economics, healthcare administration"* *Further, there is need to have a Board with a skill mix. Important is to consider a person with Human Recourses management as Human Resource for health is critical.*
Corporation Secretary Sec 16	16(1)(b)has at least five years' experience as a corporation secretary or a similar governance role;	***Amend by deleting the words*** "or a similar governance role"	Corporation secretary is a profession regulated under the Certified Public Secretaries **Act,** Cap 534 of 1988 [illegible] clear that only a certified [illegible]y can serve

			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

			which are rendered by county governments?
Sources of funds Sec 21	21. There shall be paid into the Primary Healthcare Fund— a) monies appropriated by the National Assembly; b) any grants, gifts, donations or bequests; c) monies allocated for those purposes from fees or levies administered; and d) monies accruing to or received by the Fund from any other source.	These provisions of the bill on Primary Healthcare Fund are inadequate and should be amended to address the many gaps that exist, some of which are mentioned in the justification column.	These provisions raise a lot of questions about the financing of primary health facilities and services. Currently, level 2 and 3 primary health facilities and services are heavily funded by development partners such as DANIDA and World Bank through the THS programme. These development partners pay money directly to the level 2 and 3 health facilities. The provisions of the Bill have identified "any grants, gifts, donations or bequests" as some of the sources of funds. Does these mean that these development partners will stop funding county governments and

			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

			one of the objects of our devolved system of government. How will equity in the accessing and sharing of resources in the fund be ensured? If these issues are not addressed, primary health facilities and services which heavily rely on development partners are likely to suffer and collapse.
Expenditure of the fund Sec 22	22(1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established. (2) The expenditure incurred on the Fund shall be limited to annual budget estimates prepared by the Authority at the beginning of the financial year to which they relate.	The provisions should be amended to clearly state how county governments which are constitutionally responsible for primary health care will access finances from this fund.	The proposed amendments are necessary to ensure that there are clear provisions on the pathways for accessing money from this fund. Will County Governments health facilities be left to compete with private health facilities from this fund on the bases of claims for services the same way it has been happening with NHIF? If so, then

	(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*

	(d) The County Government		*transfer monies to a fund managed by MOH at national level? Counties risk their equitable share being deducted at source akin MES and directed to indigents*
	(2) Contributions under this Act shall be paid as follows- .... (c) in the case of Households in need of Financial Assistance as determines by the means testing instrument, by the government at a rate apportioned from funds appropriated by parliament and County Assemblies for that purpose as prescribed under this Act	***Amend by deleting the phrase "County Assemblies" to read as follows:*** ***(c)*** in the case of Households in need of Financial Assistance as determines by the means testing instrument, by the government at a rate apportioned from funds appropriated by parliament for that purpose as prescribed under this Act	
	(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 amount due for contribution for the period which	***Amend by deleting the clause***	It is not proper to criminalize non payment Further, it has not address employers who fail to remit the contributions on time

	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

			case the provision does not obligate the Cabinet Secretary to make regulations but merely empowers him with a discretion which he may exercise or not.
Benefits Sec 31	30(1) Every beneficiary shall be entitled to an essential healthcare benefits package prescribed by the Cabinet Secretary in consultation with the Board.	The provision should be amended in line with the amendments proposed in respect of section 5 which deals with the functions of the Authority and recommends the separation of roles and vesting them in different structures.	The role of determining the essential healthcare benefits package is too important to be left to the Cabinet Secretary and the board.
Tariffs Sec 32	32(1) The benefits payable under this Act shall be based on a tariff. (2) The Cabinet Secretary shall, in consultation with the Board, prescribe the tariffs applicable to the benefits package under this Act.	The provision should be amended in line with the amendments proposed in respect of section 5 which deals with the functions of the Authority and recommends the separation of roles and vesting them in different structures.	The determination of the tariffs applicable to the benefits package is too important to be left to the Cabinet Secretary and the Board. Effective accountability will be secured through separation of roles.

	(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.

	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. (4) The body under subsection (2) may, at any time, revoke any accreditation under this section. (5) A healthcare provider or healthcare facility aggrieved by the decision of the body under subsection (2) may appeal to the Dispute Resolution Committee within 30 days of the decision of the Board.		
Claims management Sec 35	35(1) There is established within the Authority an office to be known as the Claims Management Office which shall review and	The provision should be amended in line with the amendments proposed in respect of section 5 which deals with the functions of the Authority and recommends the separation of roles	The establishment of the Claims Management Office within the Authority does not satisfy the need to separate the roles for the purpose of enhancing

	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).

	e) undertaking quality assurance surveillance in respect of claims; f) establishing systems and controls for detecting and identifying fraud appropriate to the Fund's exposure and vulnerability; g) sensitizing claimants on the consequences of submitting false and fraudulent claims; h) collecting and analyzing data for purposes of claim management; i) preparing quarterly reports on claims for submission to the to the Board and the Cabinet Secretary; and		

	j) performing any other functions as may be necessary for the better carrying out of its functions under this Act.		
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.

	identified in the manner prescribed in the Regulations. (5) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.		
Settlement of claims Sec 36	36(1) The Authority shall make payments to a contracted healthcare provider or healthcare facility upon submission of a claim by the Claims Management Office. (2) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section.	The provision should be amended to align it with the other amendments proposed in respect of the establishment of an independent body to handle claims.	The proposed amendment is necessary to align it to the other proposed amendments.
Conflict with other laws Sec 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.	**Amend by deleting the entire section.**	The proposed amendment is necessary as the provision will be unconstitutional in cases where there is a conflict between this Act and county laws establishing

			their own social health insurance systems such as 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

		(2) Regulations contemplated under this Act shall be made within a period of **six months** after the effective date of the Act	implementation of the Act will be a challenge
First Schedule	Transitional Provisions	**Amend to take care of all issues i.e the officers, the assets, liabilities, and the Board**	This is very important for preservation of the Fund

ECONOMIC & SOCIAL
RIGHTS CENTRE
Hakijamii

"Putting people first"

Our Ref: 22/09/23 Date: 22nd September, 2023

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

Dear Mr. Njoroge,

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

We refer to the above subject matter and the invitation to submit Memoranda dated 15th September, 2023.

The Economic and Social Rights Centre- Hakijamii is a National Human Rights Organization that supports marginalized communities to claim their economic and social rights. As such, we are committed to champion for laws and policies that ensure human rights-based approaches are met in the framework for provisioning of digital health services and social health insurance. This is to foster a society that guarantees and protects the right to the highest attainable standard of health, which includes the right to health care services for every person.

We hereby submit the legislative memorandum on the Digital Health Bill, 2023 attached herewith for your consideration. We further recommend as follows with regards to the Social Health Insurance Bill 2023:

Deletion of clause 27 (4) – the provision limits the right to health care services as

provided for in Article 43 (1) (a) of the Constitution of Kenya 2010. It further contradicts the object of the Bill which is to ensure all Kenyans have access to affordable and comprehensive quality health services.

Yours Sincerely,

for

Zipporah Muthama
Executive Director

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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

— 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**

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.

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

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

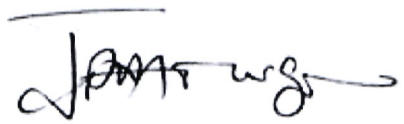
Section of the Bill	Details of the specific section in the Bill with the issue	Proposal	Justification
First Schedule Transitional Provisions	6 (2) Despite subparagraph (1), the Board of the Social Health Authority established under section 4 of the Act shall competitively recruit and appoint its staff 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

REPUBLIC OF KENYA

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MEDICAL PRACTITIONERS
AND DENTISTS COUNCIL
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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
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Prof. Stanley O. Khainga
Chair
KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL
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REPUBLIC OF KENYA

MINISTRY OF INFORMATION, COMMUNICATIONS AND THE DIGITAL ECONOMY

STATE DEPARTMENT FOR ICT AND DIGITAL ECONOMY

A MEMORANDUM ON THE DIGITAL HEALTH BILL - NATIONAL ASSEMBLY BILL NUMBER 57 OF 2023.

A. THE BACKGROUND

1.0. T**he National Assembly Departmental Committee on Health** is in the process of consideration of the Digital Health Bill (N.A. Bill No. 57) 2023. The principal objective of this Bill is 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.

2.0. 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 Bill. The State Department for ICT & Digital Economy being a key stakeholder, in the process, was invited among other stakeholders to submit its memorandum on the Bill.

3.0. The Ministry of Information, Communications and The Digital Economy is required to promote both universal access to information and ICT Services as envisaged in the Constitution 2010 and the Kenya Vision 2030. This also contributes to attainment of Bottom-up Economic Transformation Agenda (BETA).

4.0. The mandate of the Ministry is derived from the Executive Order No. 1 of January 2023 and cascades the following functions to the State Department for ICT & Digital Economy; Facilitate the Development of the Information and Communication

Sector (including Broadcasting multimedia); Data Protection Policy and Regulation of Personal Data Services; National ICT Policy; Promotion of ICT Innovation and Digital Economy; Promotion of E-Government; Promotion of Software Development Industry; Provision of ICT Technical Support to MDAs; Policy on Automation of Government Services; Development of National Communication Capacity and Infrastructure; and Management of National Fibre Optic Infrastructure

5.0. The Public Service Commission, a constitutional body charged with responsibility of creation and establishment of functions in Government Ministries, Departments and Agencies created the Directorate of ICT in the State Department for ICT & Digital Economy and assigned it functions among them Promotion of E-Government, Provision of ICT Technical Support to MDAs, Development of National Communication Capacity and Infrastructure, Management of National Fibre Optic Infrastructure, among others. This is more clearly defined in this year's 2023 newly approved ICT functions and structure for the public sector ICT function.

6.0. In order **to provide the necessary technical support to MDAs,** the **State Department for ICT and Digital Economy (SDICTDE), has Directorates of ICT in all MDAs**. The MDAs ICT Directorates cascade the functions of SDICTDE at the MDAs level. And these cascaded functions include the development, operationalization and maintenance of the agencies' Integrated Management Information System, management of core agencies/sector digital systems and infrastructure required for seamless information exchange; promote development of enterprise sector application systems etc. Moreover, under the State Department for ICT & Digital Economy, there two key Agencies - Information Communication Technology Authority (ICTA) and Konza Technopolis Development Authority (KoTDA) whose functions include the development, operationalization and support of the government digital systems across the public sector institutions.

B. STATE DEPARTMENT FOR ICT AND DIGITAL ECONOMY TECHNICAL ANALYSIS OF THE DIGITAL HEALTH BILL.

OBSERVATIONS

7.0. **The functions of the Agency were analyzed against those of other Government Agencies** mandated to perform digital functions with view of determining whether there are functional duplication/overlaps, existing gaps for improvement, etc. The State Department for ICT & Digital Economy, as earlier indicated, plays a critical role in public sector digital systems as one of its key functions.

8.0 As per some of the selected Agency functions, the State Department for ICT and Digital Economy observes the following;

8-1. For function **6(a): develop, operationalize and maintain the Comprehensive Integrated Health Information System, to manage the core digital systems and the infrastructure required for its seamless health information exchange;** the State Department noted that this is the Agency's anchor/main function.

8-2. The State Department **also appreciates that according to the Health Act, 2017, Section 105, part 15:** the Ministry of Health has been mandated to facilitate the establishment and maintenance of a Comprehensive Integrated Information System, without creation of an Agency. In the Public Sector for example, there are a number of Government Ministries which have developed, operationalised and maintained Ministry specific integrated management information systems to address their digital systems aspects. For example, the Ministries of National Treasury & Planning and Lands, Housing, Urban Development and Public Works have developed, operationalised and they are maintaining the integrated financial management information system (IFMIS) and Integrated Lands Management Information System (ILMIS) respectively.

8-3. The State Department further observes that if every ministry were to create an agency to manage its own integrated systems, sustainability would be a challenge to the economy.

8-4. In addition, the State Department observes that, the State Department for ICT & Digital Economy **has a fully-fledged Directorate of ICT at the Ministry of Health** that can perform this function as part of its mandate.

8-5. The State Department observes **on ICT infrastructure that, the State Department for ICT & 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.

8-6. For function **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, health care providers, health products and technologies**; the State Department observes that this is a function that can be effectively performed by the Directorate responsible for ICT at the Ministry of Health.

8-7. For function **6(d): establish a system of shareable and portable personal health records based on practices and standards;** the State Department observes that this is duplicated in subsections (a) and (c) above, which can be performed by the Directorate responsible for ICT at the Ministry of Health.

8-8. For function **6(h): strengthen existing health information systems, by ensuring their conformity with the defined standards and integration with the proposed Comprehensive Integrated Health Information System**; the State Department observes that this subsection encroaches on the mandate of other statutory bodies who own the systems.

8-9. For function **6(i): develop and implement the infrastructure for health data exchange of health information in a secured manner**; the State Department observes that this is a mandate for the State Department for ICT & Digital Economy and is a repetition of subsection (a).

8-10. For function **6(k)**: **support the development and implementation of standards for enhanced interoperability**; the State Department observes that this is a repetition of subsection (c**).**

8-11. For function **6(m): certify digital health solutions based on best practice and standards;** the State Department observes that the Agency cannot implement and regulate itself Digital components can only be certified by the Ministry responsible for ICT.

SUMMARY OF OBSERVATIONS

9.0. The creation of this Agency will lead to **duplication and overlapping of functions with other MDAs**. Furthermore, it will encroach on the mandate of the Ministry responsible for ICT.

10.0. The Ministry of Health should **consider stakeholder engagement** to address gaps, misrepresentation and duplication of functions.

11.0. 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.

12.0. Some of the proposed functions of the Agency are **being performed by the other Government agencies** e.g e-waste management which is largely done by the National Environment Management Authority (NEMA).

C. RECOMMENDATIONS

13.0. There is **no need for the Government to create an Agency; rather the Directorate of ICT at The Ministry of Health should be strengthened** to execute its functions effectively.

ANNETTE K. NYAKORA
SENIOR STATE COUNSEL

FOR: PRINCIPAL SECRETARY

STATE DEPARTMENT FOR ICT & DIGITAL ECONOMY.

REPUBLIC OF KENYA

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

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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.

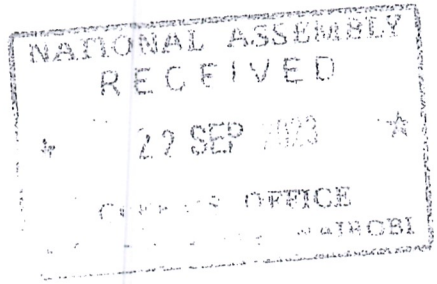
The Ministry conducted Stakeholder Engagement on the Proposed Bills and we propose certain amendments to the Bills as highlighted in the Memoranda. The Memoranda prepared and attached herewith is a true reflection of the recently concluded Engagement.

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



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,	

KANCO
Healthy people, empowered communities

Memorandum on The Digital Health Bill, 2023

Presented to:

The Clerk of the National Assembly

P. O. Box 41842-00100, Nairobi

Email: cna@parliament.go.ke

Date: 22/09/2023

KENYA AIDS NGOs CONSORTIUM (KANCO) INPUTS AND COMMENTS

This memorandum is submitted following a Public Notice from The Clerk of the National Assembly on 15th September, 2023 which called for public participation on The Digital Health Bill, 2023 (National Assembly Bill, No. 57 of 2023).

THE DIGITAL HEALTH BILL, 2023 NOTABLE CONCERNS

The existence of yet another proposed bill in the Senate, the E-Health Bill causes duplication. The E-Health Bill addresses issues such as telemedicine, and regulation of health apps and has detailed principles of E-Health governance. The two should be collapsed, and the applicable provisions of the E-Health Bill should be adopted.

The Title of the Bill is also somewhat misleading. Health Data may not always be digitized, and thus, the generalization of the bill's title to THE HEALTH DATA GOVERNANCE BILL rightfully encompasses all aspects of Health Data.

The board of the Digital Health Agency should consider nominees by the Civil Society Organizations to the board. This will give better insight into the Agency's operations as regards the experience of patients and direct end users.

The principles of Health Data Governance protection as per the provisions of the Data Protection Act should be more elaborate in this proposed law. Issues such as consent, access, purpose limitation, data minimization, the responsibilities of healthcare institutions in data processing, and healthcare practitioners' responsibilities in data processing should be more concise.

Sec 37 of the bill that provides consent should be reviewed to consider other instances where patients may not be in a capacity to authorize consent for the processing of their health data. The Bill should consider what may be implied as consent.

The retention and disposal of health data, which has been provided for twenty (20) years, should provide for the transition from the source to the National Data Bank.

The provision of health data principles should consider the issues of protecting the people, promoting health value and prioritizing equity.

The Bill should also consider the responsibilities of the agency to include the mapping of different communities to ensure that the principles of equity are enshrined in the operationalization of the bill to meet the expectations of all.

Data tourism and sharing data with people outside Kenya should be made more elaborate to factor in the sharing of urgent medical records.

Regulation/Clause	**Issue of Concern**	**Justification**	**Recommendation**
Existence of the E-Health Bill	Duplication	The E-Health Bill seemingly seeks to address issues that are similar to the Digital Health Bill.	We recommend collapsing the two bills into one.
Title	Not generalized	The bill deals with general health data issues with the digital aspect being a mere component.	We recommend renaming the bill's title to HEALTH DATA GOVERNANCE BILL.
Sec 26	Principles	The provision of health data principles should consider the issues of protecting the people, promoting	We recommend the addition of the principles to consider the issues of protecting the

		health value and prioritizing equity.	people, promoting health value and prioritizing equity.
Sec 8	Composition of the board	The bill's provision should consider a civil society nominee.	Amend the section to include a civil society nominee.
Sec 31	Retention and Disposal of Data in the System	The retention and disposal of health data, which has been provided for twenty (20) years, should provide for the transition from the source to the National Data Bank.	We recommend the provision of the transition from the source to the National Data Bank.
Sec 37	Consent	The provision for consent should consider the unique nature of the health sector.	Amend the definition of 'consent' in the proposed law.
Part VI	Confidentiality, Privacy and Security of Data	Sec 25 of the Data Protection Act's Principles of Data Protection should all be provided.	Part VI should be amended to expound further on issues of purpose limitation, data minimization, the responsibilities of healthcare institutions in data processing, and healthcare practitioners' responsibilities in data processing should be more concise.
Sec 42	Health Data Portability	Access to Health Data should not be circumlocutious.	Amend the section 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.
Part IX	Data Tourism	Part IX does not provide for modalities for urgent sharing of patients' health data to persons outside the Kenyan frontiers.	Amend Part IX of the bill to provide for the sharing of patients' data for emergency purposes.

CONCLUSION

We hope that you will review, address and include our concerns raised in this memorandum.

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KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS' UNION

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SUBMISSIONS ON THE DIGITAL HEALTH BILL 2023

PRESENTED TO

THE SPEAKER OF THE NATIONAL ASSEMBLY,
THE SPEAKER OF THE SENATE,
THE HEALTHCOMIITTEE NATIONAL ASSEMBLY,
THE HEALTHCOMMITTEE SENATE,
AND
THE CABINET SECRETARY FOR MINISTRRY OF HEALTH

24TH SEPTEMBER, 2023

Deputy Chairman
Dr. Kahura Mundia

Deputy Secretary General
Dr. Miskellah Dennis

Deputy Treasurer
Dr. Anbar Ganatra

INTRODUCTION

Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) is a registered trade union in Kenya championing for the rights of healthworkers in the country and the progressive realization of right to healthcare.

Pursuant to requirements of public participation as stipulated by the Constitution of Kenya, 2010, Article 10 on principles and values of good governance, and following requests for submission of memoranda.

Clause	Proposed Amendment	Rationale for Amendment and Recommendations
GENERAL PROPOSALS		
1.Elaboration of all forms of Teleconsulting-Telemedicine, Telehealth, Teledentistry,Teleradiology,Telecounselling 2. Elaboration of forms of E-Health 3. Elaboration of digital health components 3. Consideration of setting up and operationalizing E-Health at section 103 ,Telelehealth under the Health Act of 2017 4. Consideration of setting up Health Data Protection regulations under the DPA Act of 2019 with a special directorate to oversight Health Data Control and Management 5. Review and harmonize all aspects of existing regulations draft and gazetted-virtual health service providers, m-health, telehealth and e-health regulations 6. Amend Health Act of 2017 creation of DHA, CIHIS 7. Consideration of harmonization of penalties under the DPA and this draft digital health bill 8. Consideration of establishment and actioning of internet connectivity standards requirements for each of the level of healthcare facilities 9. Consideration that the Data protection commissioner is a technical person who is well-versed in their job and needs not to have their duties and mandates usurped in the guise that health data is too special to be handled by their office and needs to be housed under case of the CS Health which is a political office and appointment often times. 10. Harmonization of offences in Data Protection Act of 2019 and the penalties and offences proposed in this bill. 11. Health data controllers and processors to be persons with healthcare background training; makes it easier for data management and comprehension of system operations; Alternative provide for various levels of access and system controls based on users background training 12. Maps of existing private healthcare systems HIS to be aligned to the CIDHIS		

13. Provide for qualifications of the chairperson of the DHA 14.Ensure mechanism of business continuity in case of system breaches and crashes 14. Provide within the law for continuous systems improvement and continuous training of all users of the health data systems 15. Alignment with the Science,Technology and Innovation Act of 2013(NACOSTI) and Pharmacy and Poisons Board(Cap 244) when it comes to conducting healthcare research and dealing with sensitive health research data 16. Some aspects of health data collected such as dental radiographs-Orthopantomograms my require special ways to enforce data anonymization and minimization because of risk of personal data indentification and abuse. 17. Align the meanings of consent as in Health Act of 2017 and DPA of 2019 with the consent descriptions of the proposed Digital Health Bill 18. In case IP rights in health data ; Provide elaborations in emerging health data ownership concepts 19. Provide regulations and local listings and certifications of digital health products ,softwares and pharmaceuticals made in Kenya 20. Create regulations on how to maintain and manage all health systems users registers and access rights of CIDHIS in the whole country. 21. Create regulations on e-health/digital health e-learning/digital health literacy 22. Create regulations on spread of healthcare misinformation and disinformation on social media and online spaces by unqualified and untrained persons and attachment of liability and provide recourse to any persons who rely on such forms of information 23. Provide for statutory guide and regulations on health data monetization; Meta-data mining and exploitation-AI and Machine Learning 24. Provide statutory guide and support on innovations in and around ehealth and digital health		
2)interpretation "consent" has the meaning assigned to it under the Data Protection Act, 2019;	The Bill assigns meaning of consent as is assigned under the Data Protection Act 2019. The definition and exceptions for consent provided for in Data Protection Act 2019 deprive a person with a disability especially persons with intellectual and/or developmental disabilities from freely exercising their choice **Proposal:** Consider adopting interpretation	The current interpretation of consent centers the guardian or caregiver of the Data subject in decision making process. Data Subject regardless of their disabilities or vulnerabilities should be at the center of decision making process on issues affecting him or her. This addresses issue of data privacy and confidentiality.

	of "Consent" that seeks to enhance opportunities including provision of reasonable accommodation for a person with a disability to make informed choices.	
(2) New word addition **Data Disaggregation**	We propose to add "**Data Disaggregation"** to the interpretation section of the preliminary. Data disaggregation should be interpreted as 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.	Inclusion of Disaggregation of data will enhance the quality of reports and information generated by the healthcare systems and actors which will aid in development of targeted intervention, policies and strategies as well as enhance data driven decision making process.
"Digital health" means the field of knowledge and practice that is associated with the development and use of digital technologies to improve health;	Proposal to review definition to the most acceptable and broad meanings of the compound words, 'digital' and 'health' Example of definitions to use: **(a)Digital health** refers to the use of information and communications technologies in medicine and other health professions to manage illnesses and health risks and to promote wellness. Digital health has a broad scope and includes the use of wearable devices, mobile health, telehealth, health information technology, and telemedicine. **(b)Digital health, or digital healthcare**, is a broad, multidisciplinary concept that includes concepts from an intersection between technology and healthcare. Digital health applies digital transformation to the healthcare field, incorporating software, hardware and services. Under its umbrella, digital health includes mobile health (mHealth) apps, electronic health records	Current meaning has room for misinterpretation and ambiguity and may need improvement;

	(EHRs), electronic medical records (EMRs), wearable devices, telehealth and telemedicine, as well as personalized medicine. Define **'Stakeholders in Digital Health'**: Stakeholders in the digital health field include patients, practitioners, researchers, application developers, and medical device manufacturers and distributors.	
E-health-means the combined use of electronic communication and information technology in the health sector including telemedicine;	Proposal: Consider to review and harmonize the definitions and relationships of the terms: Digital Health Telehealth Telemedicine E-Health Compare usage of terms in different jurisdictions, synonyms and interchangeability of definition of terms and usage Alignment with WHO guidelines and strategy to be also considered	Definitions and meanings should be wide enough to include all the meanings of the concepts of Telehealth such: Teledentistry,Teleradiology, Telepharmacy,Teleaudiology, Teleneurology, Telenursing Telepalliativecare,Telepsychiatry Telenutrition,Teleneuropsychology Telerehabilitation,Teletrauma care Telecardiology,Telepathology, Teledermatology, Teleophthalmology,Telesurgery
National Health Data Dictionary	Provide definition of word and concept	Missing in the Bill
3(g)establish a regulatory framework for e-waste management; and	Proposal: Consider alignment with EMCA Act of 1999 on Environmental protections	Matters environment and how they affect healthcare can be well addressed through the public health and environmental laws

5.(1) There is established an Agency to be known as the Digital Health Agency.	Proposal consider amendment of the Health Act of 2017 and house the Agency here for the functions listed under clause/section 6	Information organization on healthcare and systems should ideally be organized from one statutory platform rather than from multiple statutes speaking and addressing issues from different points of view.
6. The Agency shall— (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;	The Bill in Part II section 6 (b) provides that Digital Health Agency should establish registries in consultation with other statutory authorities, at appropriate levels to create single source of truth in respect of clients, health facilities, health providers, health products and technologies. Delete the word-'truth', replace therefor with the word 'reference' **Proposal:** There is need to involve and consult other actors in Health space including nonstate actors and OPDs. The proposed framing therefore should read "establish registries in consultation with other statutory authorities and non-state actors, at appropriate levels to create single source of reference in respect of clients, health facilities, health providers, health products and technologies"	Data collection exercise in Healthcare systems needs to be exhaustive and comprehensive. To achieve this, it will be vital to have involvement of state and non-state in the process. Enhancing the component of citizen generated data to compliment the official data could facilitate narrowing the heath data gap.
6. The Agency shall— (d) establish a system of shareable and portable personal health records, based	The Bill in Part II section 5 (e) provides that Digital Health Agency should ensure health data portability Proposed:	Heath data should be provided in accessible formats and in accessible platforms that wide range of data subject can interact with and use effectively .This guarantees seamless access to

on best practices and standards;	The need to have health data portability is key in the event of data agent need to access their health information. However the portability of health data will not be effective if the issue of accessibility is not considered. We propose that the Function be amended by adding accessible, so that the new function reads "Ensure health data accessibility and portability"	information as guaranteed in our constitution and other legal frameworks
6. The Agency shall— (e) ensure health data portability	The need to have health data portability is key in the event of data agent need to access their health information. However, the portability of health data will not be effective if the issue of accessibility is not considered. We propose that the Function be amended by adding accessible, so that the new function reads "Ensure health data accessibility and portability"	Heath data should be provided in accessible formats and in accessible platforms that wide range of data subject can interact with and use effectively. This guarantees seamless access to information as guaranteed in our constitution and other legal frameworks
Clause 7 and 8	Interchange for 8 to be 7 or vice versa	Incoherency in drafting and clause flow
8.(1) There shall be a Board of Directors of the Agency which shall consist of— ..... (d) the Principal Secretary responsible for Information, Communication and Technology or a representative designated in writing;	The Bill in Part II section 8 (1) establishes board of directors of the Health and provides its membership. Remove Principal Secretary for ICT. Replace with the Director General for Health. There is need to explicitly reserve one spot for persons with disabilities or their representative organization. We propose to add 8(j) which should read "One person with a disability representing persons with disabilities"	The objective is to improve healthcare hence the need to have a composition of members in charge of health matters. 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.

Clause8: Composition of the Board of the Digital Health Agency Part 1(f):	Proposal: Change to '*One person nominated by the Council of Governors from among the County Directors of Health.*'	Justification: 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.
Part 1(g):	Proposal: Change to '*The Director General of Health.'*	Justification: The Director General as the technical advisor to the Ministry of Health.
Part 1(h):	Proposal: Change 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 professional with knowledge and experience in digital health or healthcare related backgrounds.'*	Justification: 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 and knowledge of digital health protects health care worker interests.
8(4)d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or	Proposal delete the words: 'sentenced to imprisonment for a term exceeding six months; '	Convicted persons should not hold public office.
8 (4) A person appointed to the Board under subsection (1)(a) and (i) shall cease to be a member of the Board if he– (e) is unable to perform the functions of his office by reason of mental or physical infirmity.	The Bill in Part II section 8 (4) establishes the criterion of ceasing to the Health Agency Board Member. 4(e) states that a person shall cease to be a board member if the person "is unable to perform the functions of his office by reason of mental or physical infirmity" **Proposed improvement**: It is not clear what constitutes mental or physical infirmity. This could be applied arbitrary. We propose deletion of the whole 4(e)	Owing to principles of inclusiveness and non-discrimination envisioned by our constitution, this provision 4(e) borders on exclusion and discrimination. Removal from the board on account of mental or physical infirmity seems to target conditions associated with disabilities. The Act ought to consider advancing the principle of reasonable accommodation as espoused in the UNCRPD to ensure the said board is supported is discharging his or her mandate effectively.
8(8) The Board may co-opt any other person with necessary expertise as it	Proposal for non-coption; Delete full clause; Provide for consultancy services approval by board to guide	Room for exploitation and expansion of board capacity which may bring about governance issues

necessary to assist the Board in discharging its duties and responsibilities.	operationalization of mandates; Cooption of technical persons into board committees still serves same purpose as request for consultancy services to guide board and leadership mandates	
12. (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;	Delete Minimum of a bachelor's degree and Replace with the words, 'Has a minimum of a master's degree' Include the qualification healthcare background training professionals under 12(1)(b)	Persons with a bachelor's degree may not have adequate skills and experience in handling expected mandates Healthcare trained persons excluded from list of qualifications provided.
13. (1) There shall be a Corporation Secretary who shall be competitively recruited and appointed by the Board on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.	Missing term limits Include period of 3 years renewable for a further 3 years.	Need to provide for service term limits for corporation secretary
21. (1) There is established a system to be known as the comprehensive integrated health information system which shall be adminstered by the Agency.	Body system can be created under Health Act of 2017	Need to have one stop reference for all healthcare related matters, laws and regulations.
21. (3) The Bill in Part Iv section 21 (3) provides that (3) The system shall operate as a point of collection, collation, analysis, reporting, storage, usage, sharing, retrieval or archival of data	The data to be analyzed by the health information system needs to be disaggregated by various variable including by disability. Therefore we propose to add disaggregation as one on the functions on the proposed Health Information System, so that section 21(3) the reads " The	Data disaggregation is key component when it comes to data driven planning and resource allocation. Lack of reliable data creates barriers for marginalized groups to access digital health care. Disaggregated data will inform

related to the state of physical or mental health of the data subject and includes records regarding the past, present or future state of the health, data collected in the course of registration for, or provision of health services, or data which associates the data subject to the provision of specific health services.	system shall operate as a point of collection, collation, disaggregation, analysis, reporting, storage, usage……. ".	design and continuous improvement, scale up of the information Health care system to bridge the gap in accessing digital health care experienced by some sections of the populations including persons with disabilities.
25. For the purposes of this Act, health data shall be 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	Consider addition of new categories of data; Eg. Emerging areas-AI Health data	Need to be ready for new changes happening in the technological world
28. The Agency shall be the custodian for all health data in Kenya.	Amend to read custodian of digital health data	Information held in the data system can only be referenced as digital health data
Clause 32, the Cabinet Secretary shall establish a national health data bank and designate county health data banks.	We propose that the 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 specimens, health images, human tissues and organs) as need be. Similar qualification should apply to the data controller at county level.	
33. The Bill in Part VI section 33 provides for the use sensitive persons data contained in the data bank. Section 33(a) to (i) provides for the reasons where sensitive personal data could be applied.	The areas given in the section to apply sensitive personal data are comprehensive, but we propose adding section 33(j) which will read "develop targeted healthcare service interventions and programmes"	The sensitive personal data held at the data should be used to analyse certain patterns of diverse groups of identities in various dimension including location, age and disability ,then use the emerging patterns to design targeted intervention to improve access to healthcare services for that identified group
36. (1) A data controller may disclose sensitive personal data about a person who is	Delete the word, 'may' replace with 'shall'	Control for abuse of discretion by officer

deceased, or is reasonably suspected to be deceased when—		
41(1)(e) loses data;	Digital health data contained in a system may not be lost by an individual but as a result of system breaches.	Align reality to aspects of system breaches, lack of maintenance and eventual data loss
The Bill in Part VI section 42(1) provides that "subject to this Act, a person has a right, on request, to examine and receive a copy of his or her personal health information maintained by the data controller". Section 42(2) provides that "a request under subsection (1) shall be made in writing to the relevant healthy facility or health information bank" and section 42 (3) states that" the health data controller shall comply with provision of section 38 of Data Protection Act in enabling access and portability of personal health records".	These provisions seem to create accessibility bottlenecks for data portability by data subject. We propose amend section 42(1) and add accessible formats so that it reads subject to this Act, a person has a right, on request, to examine and receive a copy of his or her personal health information maintained by the data controller in accessible formats. We also propose to amend Section 42(2) of the bill by adding accommodative to the data subject so that the section reads "a request under subsection (1) shall be made in writing or in a manner that is accommodative to the data subject to the relevant healthy facility or health information bank". Redundacies and duplication of laws should be minimized; Where the data protection act of 2019 is adequate; this should serve all data governance issues from healthcare data, engineering data, education data, financial data; Proposal for Health Data Regulations to be formulated under the Data Protection Act of 2019 to cater for special aspects of managing and usage of health data.	There is overarching need to ensure that when data subject request for their personal data, the data is useful to them in making health decisions. This implies that the data has to be presented in a way the data subject can interact with. Hence the need for presentation of data in accessible formats. Section 42(2) limits the request to accessing personal data only through writing, there is good percentage of population who might not know how to write and others who use other forms of communication to make communicate. Limiting these requests to only writing creates access barriers excluding data subject from exercising their rights to information. Most sections of the Digital Health Bill are copy paste sections of the Data Protection Law which is general enough and captures all forms of data, sensitive and personal data. There is no much uniqueness and complexity exists in healthcare care. Risk of splintering and loss of accountability and data governance to persons who may be less proficient in principles of data protection. Data protection commissioner is a technical person who is well-versed in their job and needs not to have their duties and mandates

		usurped in the guise that health data is too special to be handled by their office and needs to be housed under case of the CS Health which is a political office and appointment often times.
The Bill in Part VI clause 44. (1) A health data bank and health data controller, before releasing any personal health data to any person, shall– (b)take reasonable steps to ensure that any personal health information intended for a person is received only by that person or— (i) where the data subject is a minor, by a person who has parental authority or by a guardian; (ii) where the data subject has a mental or other disability, by a person duly authorised to act as their guardian or administrator; or (iii)in any other case, by a person duly authorised by the data subject or by a court order.	The import of this provision is that persons with disabilities are not in position to consent or they don't have capacity to directly receive their personal health information. Their guardian seems to be central in the whole process. In light of this we propose deletion of where the data subject has a mental or other disability and adding data subject at the end so that the section reads "by a person duly authorized by the data subject"	Persons with disabilities have the capacity and whewithal to receive and use their person's health information without intermediaries. The implication that persons with disabilities have to always rely on other persons for activities of daily living is misplaced and disempowering. The provision as constituted serves to increase stigma among person with disabilities and undermine provisions of legal framework where independent living and equal participation of persons with disabilities is espoused
46. (1) E-Health shall be a recognized model of health service. (2) E-Health Services are complementary to existing healthcare service delivery modalities	Delete clauses 46-50; Repetitions present in the Health Act of 2007; Section 103 Regulations under the Health Act of 2017 can be made to better operationalize ehealth and telehealth	Bill creates repetition laws in already legislated upon matters; Wheel re-invention to be minimized and plan to strengthen existing laws. This clause function and operation can be adequately covered under the Health Act of 2017
47.(2) An entity providing e-health services shall be— (d)for foreign facilities, be licenced by an equivalent regulatory authority recognized in Kenya;	Delete whole clause; To be in conformity with section 48 of the Data Protection Act of 2019 48. Conditions for transfer out of Kenya Alternative is to have: 1. Peer reviews by professional	Access to data and storage by foreigners exposes the country to data breaches even though low costs Need to protect and ensure patient safety on recourse when negligent care is delivered by persons based abroad; malpractice not easy to control on digital platforms

	bodies of foreign entities 2. Cross and reciprocal registration of local professionals in countries where the foreign professionals are registered 3. Renewal of licensures to be done annually where such services are not locally available	Need to protect labour relations of local practitioners from unfair competition by foreign registered entities abusing economies of scale
The Bill in Part VII section 49(1) 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, her or she obtains consent from a guardian; and	The use of term mentally ill depicts a person who is sick and needs medical attention. This view removes the need of all support and accommodations needed by that person to participate on an equal basis with others in healthcare system. On that backdrop we propose that deletion of mentally ill and replace it with person who cannot give consent so that the section reads "Ensure that e-health service delivery involves a person who cannot give consent, the consent of the guardian is obtained "	The use of terms that have been used to legal disfranchise persons with disabilities from participating on societal affairs on an equal basis with others ought to discourage. The presence of the term in the Act will serve to perpetuate misconception that only medical intervention is needed to enable persons with disabilities participate in healthcare processes, negating the need for psychosocial support and reasonable accommodations.
E-Waste 51. (1) The Cabinet Secretary shall— (a) in consultation with County Governments, and relevant lead agencies, develop guidelines for the safe handling and disposal of all health sector related e-waste material. (b) in consultation with relevant stakeholders, develop an e-waste management system for the health sector.	Clause mispositioned in the bill; Creates Repetition Consider alignment with EMCA of 1999 and roles of NEMA in management of e-waste; NEMA has developed guidelines on management of e-waste. Consider alignment with ICT and Telecommunications Laws on management of e-waste	There exists no particular e-waste in healthcare; all e-waste is e-waste in general; This clause function and operation can also be adequately covered under the Health Act of 2017
Health Tourism 52. (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 concept doesn't fall strictly under digital health laws; Consider to amend the Health Act of 2017 to provide for the operationalization of the different modalities of health tourism.	This clause function and operation can be adequately covered under the Health Act of 2017
57. (1) A member of the Board or staff of the Agency may not	Change the word 'may' to 'shall';	Risk of abuse of discretion

without the 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.		
Offences 59. (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. (2) Any person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence, and is liable on conviction to a fine not exceeding Kenya shillings two hundred and fifty thousand or imprisonment for a term not exceeding six months, or both	Consider alignment with the Data Protection Act where most concepts in the bill have been borrowed from. For example: 63. Administrative fines In relation to an infringement c provision of this Act, the maximum amount of the penal that may be imposed by the Da Commissioner in a penalty not is up to five million shillings, c in the case of an undertaking, u to one per centum of its annual turnover of the preceding financial year, whichever is lower. 73. General penalty (1) A person who commits a offence under this Act fo which no specific penalty provided or who otherwis contravenes this Act shal on conviction, be liable t fine not exceeding three million shillings or to an imprisonment term not exceeding ten years, or t both. (2) In addition to any penalty referred to in sub-section (1), the Court may— (a) order the forfeiture any equipment or ar	Harmonization of offences in Data Protection Act of 2019 and the penalties and offences proposed in this bill.

	article used or connected in any way with the commission of an offence; or (b) order or prohibit the doing of any act to stop a continuing contravention.	

Proposed general bill review and overhaul

We propose that the following legal frameworks be reviewed to adopt the aspirations of this bill which seems to borrow heavily and replicates aspects of already legislated upon matters which can be operationalized by publication of specific regulations on a case-by-case basis. The review and linkage of the other legal and policy framework will establish enabling environment for the seamless implementation of the existing laws and future regulations to be created.

1. Data protection Act 2019.
2. Health Act of 2017
3. EMCA of 1999
4. National ICT Policy 2019

SUBMITTED BY

DR. DAVJI BHIMJI ATELLAH
SECRETARY GENERAL
KENYA MEDICAL PRACTITIONERS PHAMARCTISTS AND DENTITISTS' UNION

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

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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: (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.
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;		
	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, CONTRACTING 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-MISCELLANEOUS 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

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 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

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Transform Health

22nd September 2023.

Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842- 00100,
NAIROBI.

RE: Memorandum on the Digital Health Bill, 2023

Transform Health Kenya is a coalition of organizations and institutions in Kenya working on health and human rights, working with key and affected populations, youth, women, and on digital health technologies, all of whom are committed to achieving Universal Health Coverage through the use of digital technologies and data.

In addition, part of our key objectives is to advocate for people-centred laws and regulation on digital health standards and for the standardisation of digital health services and applications. As a consortium we have an interest in working with parliament and government at large, to assist in the adoption of digital health technologies at the national and county governments to improve access to equitable, affordable and quality healthcare.

We have reviewed the Digital Health Bill (The Bill) and the following submission on the Digital Health Bill (2023) is made in collaboration of the **TRANSFOM HEALTH KENYA COALITION** to address various concerns and areas that need further clarification and improvement:

1. **Complex Technical Language:**

The first point highlights the challenge of using complex technical language in the Bill, which makes it difficult for the average person to understand. This is a valid concern, as legislation related to digital health should be accessible to the public to ensure transparency and citizen engagement. It suggests the need for simplified language and possibly the creation of explanatory materials to aid public comprehension.

2. **Data Handling and Misuse:**

The second point emphasizes the importance of providing more information on data handling, particularly addressing concerns related to data misuse. It's crucial to have

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clear provisions and guidelines within the Bill to prevent unauthorized access, sharing, or misuse of health data, and to outline the consequences for such actions.

3. **Customer Care Response Line:**

The third point raises a practical concern about whether there will be a customer care response line to address people's concerns or issues related to the Superhighway that is proposed by the Digital Health Bill. This is an essential aspect of ensuring efficient service provision, as it allows individuals to seek assistance or report problems they encounter.

4. **Privacy and Confidentiality (Section 30):**

The fourth point questions the clarity of Section 30 (1) and (3) of the Bill, which pertains to the Cabinet Secretary's mandate to ensure privacy and confidentiality. There is need for more explicit language and guidelines on how this responsibility will be fulfilled, as vague provisions can lead to uncertainty in enforcement.

5. **Composition of the Board:**

The fifth point raises concerns about the composition of the Board responsible for overseeing the proposed agency. It underscores the importance of appointing qualified individuals with minimal political influence to ensure the effective governance of health data.

6. **Appointment Criteria for Private Representatives:**

The sixth point highlights a lack of set criteria for the appointment of the private individual, as specified in the Bill, onto the agency's board. Defining clear criteria for selecting the private individual can help ensure that individuals with the relevant expertise and experience are chosen.

7. **Appointment of Non-Public Officers (Section 8 (1)(g & h):**

The seventh point still on the composition of the Board, calls for further elaboration on the appointment of the two individuals who are not public officers but are chosen based on their knowledge and experience. Clarification on selection criteria is needed to ensure transparency.

8. **Role of County Government:**

The eighth point expresses concern about the absence of information regarding the role of county governments and the potential impact of the Bill on counties. It's crucial to clearly define the responsibilities and roles of county governments in the implementation of the Bill.

9. **Governance Principles for Health Data:**

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The ninth point suggests the need to expound on the governance principles governing the management of health data. The Bill lists general blanket principles without contextualizing then to health data. Clear guidelines on how health data should be collected, stored, shared, and protected are essential to maintain trust and security.

10. **Ambiguity in Breach of Sensitive Data (Section 41):**

The Tenth point addresses the ambiguity in Section 41 (1) of the Bill, specifically regarding what constitutes a "breach," "tampering," "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 further highlight the consequences to these actions.

11. **Data Retention and Disposal Guidelines**

The eleventh point of submission concerning the Digital Health Bill in Kenya relates to the specification of a minimum retention period for health data and the importance of defining clear guidelines for data disposal after this retention period. While specifying a minimum retention period is a critical step in ensuring that health data is available for legitimate purposes, it is equally important to address the proper disposal of data once it is no longer needed.

Challenges with Ambiguity: The submission highlights the potential challenge of ambiguity in the Bill regarding data disposal. If the legislation does not provide explicit and well-defined guidelines on how data should be disposed of after the retention period, it could lead to inadvertent data retention. This situation poses significant risks to individual privacy and data security, as data that should no longer be stored may continue to exist in digital archives.

Privacy Breaches: Inadvertent data retention can have severe consequences, as it increases the risk of privacy breaches. Unauthorized access to retained data can result in the exposure of sensitive health information, which can be exploited for malicious purposes, including identity theft, fraud, or harassment. Clear guidelines for data disposal are essential to mitigate these risks and ensure that individuals' health data is adequately protected.

Regulations for Data Disposal: To address this issue, the submission suggests that the Bill should pave the way for the introduction of regulations that provide specific, actionable guidelines for the secure disposal of health data. These regulations should outline the methods and technologies to be used for data erasure, ensuring that data is irreversibly destroyed or anonymized when it reaches the end of its retention

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period. We hope that this will come out clearly in the Health Data Governance framework.

12. **Enhancing Security Measures**

The twelfth point of submission relates to the Bill's mention of security measures in the context of digital health data. While the Bill acknowledges the importance of security, there is a need for more comprehensive guidance on implementing modern technological safeguards to protect health data effectively.

Modern Technological Safeguards: In the digital age, health data is vulnerable to a wide range of threats, including cyberattacks, data breaches, and unauthorized access. To safeguard this sensitive information, it is crucial to adopt modern technological safeguards. These include encryption to protect data both in transit and at rest, intrusion detection systems to identify and respond to security breaches, and regular security audits to assess vulnerabilities and ensure compliance with best practices.

Importance of Comprehensive Guidance: The submission suggests that the Bill could play a more proactive role in enhancing data security by providing detailed guidance on how these modern technological safeguards should be implemented. For example, it could specify encryption standards, recommend the use of specific intrusion detection tools, and outline the frequency and scope of security audits that healthcare providers and organizations should undertake.

RECOMMENDATIONS AND RATIONALE

1. **DEFINITIONS**:

Replace 'e-waste' with - 'e-health waste'
Also replace e-waste with e-health waste
Rationale: Let's keep the Bill focused on health

2. **REPRESENTATION** under Section 8:

Recommendation: Insert after

One person representing civil society organizations appointed from amongst indigenous organizations registered and recognized by the government of Kenya with knowledge on digital health.

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One person representing the developers, manufacturers, digital health service providers.

One person representing professional pharma and medical associations.

Rationale: 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.

3. **DATA GOVERNANCE DURING PUBLIC HEALTH EMERGENCIES**:

The Covid-19 exposed the ad hoc responses to governance of data during public health emergencies in most parts of the world and Kenya was not an exception. There should be a framework that governs the collection, processing, sharing and disposal of data during and after public health emergencies. The provisions should strike a balance between public health and respect for human and people's rights. They should prescribe limitations and standards regarding the amount of data, involvement of development of development and private sector partners, liability of the different stakeholders.

Recommendation: Clause 27(2)(a) insert "collectors" after health data

Rationale: controllers and processors do not include collectors, yet they ought to be captured under this phrase.

Recommendation: Insert **Clause 27(2)(h)** establish standards for governance for governance of [digital] health data during health emergencies

4. **LEGALITY**

There should be proper legislative drafting of offences prescribed under **Clause 41**

Recommendation: Replace Clause 41(1)(c) with – **fails to disclose inauthentic access to the data governed by this Act.**

Rationale: Disclosure of inauthentic access to data cannot purposively be an offence.

Recommendation: Replace Clause 41(1)(d) with - **improperly disposes sensitive data.**

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Rationale: the offense uses the words unnecessary but sensitive data; which is confusing, ambiguous thus causing uncertainty in prescribing the offence which offends the principle of legality

Recommendation: Replace Clause 41(1)(g) with - **Shares health data under this Act to unauthorized party**

Rationale: This offence is ironic and ambiguous. It creates a feeling that "Intentional" sharing of sensitive data and other types of data to unauthorized is lawful which is in fact, wrong.

Recommendation: Insert a clause on aiding and abetting as a catch all phrase

Recommendation: Insert a clause on attempts to addressed incomplete offences.

We hope that our proposals will be considered during deliberations of the bill.

Submitted by: Kenya Legal and Ethical Issues Network on HIV & AIDS on behalf of the Transform Health Kenya Coalition.

KENYA LEGAL & ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN) By:
ALLAN MALECHE – EXECUTIVE DIRECTOR

DocuSigned by:
3F356FC6B1CE4DA...

SIGNATURE

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PICTURE YOUTH GROUP

KELIN
Reclaiming Rights, Rebuilding Lives

DIGITTAL HEALTH BILL, 2023- KENYA FAITH-BASED HEALTH SERVICES CONSORTIUM (KCCB, CHAK, MEDS SUPKEM) PROPOSED AMENDMENTS ON 18TH SEPTEMBER 2023 BY ONLINE SUBMISSIONS METHODS

We appreciate the privilege to share our views on the proposed DIGITAL Health Care Bill 2023. FBO facilities highly support the Government objective of Universal Healthcare for all Kenyans.

No	Clause	Citation	FBO Issue/perspective	Recommendation
1	13(2)	The Chief Executive Officer shall be appointed for a period of five years renewable once.	5 year term not consistent with other proposed terms in similar parastatals.	Insert **"CEO term of 3 years renewable once"** instead of 5 years in line with other health Bills.
	13 (4)	Despite subsection (1), the Agency may through the Cabinet Secretary and in consultation with the Public Service Commission request for an officer to be seconded to serve in the Agency.	This is not a competitive process. Such an office should go through interviews like others.	Delete this section.
	28 (2) (a-c)	(2) The County Executive Committee Member shall— establish county health data banks; etc	Centralize this with National Government, with limited delegated roles to the counties. Avoid duplication of Agency roles and the county.	Amend this section to avoid duplication.

REPUBLIC OF KENYA

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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 -

clause 47(1)(d)
clause 49 Re

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.

clause (7)

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

MEMORANDUM
ON
DIGITAL HEALTH BILL, 2023

National Assembly Bill No.57 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

1. 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 Digital Health Bill, 2023.

2. BACKGROUND AND CONTEXT

1. The bill will provide framework for provision of Digital Health Services. The demand for Digital Health Services registered significant increase during the Covid-19 pandemic. Careful deployment of Healthcare technologies in large scale could assist in reaching out to marginalized groups that are under-represented and under-served in our Health care system including persons with disabilities. According to the WHO, eHealth "extends the scope, transparency and accessibility of health services and health information, widening the population base capable of accessing the available health services and offering innovation and efficiency gains in the provision of health care" (WHO, 2016 p. 1)[1], However studies indicate that these marginalized groups are most likely to be excluded from digital world through their social demographic characteristices[2].Several studies confirm that people with disabilities are underrepresented in the growth of digital health and even the design phase of the new digital health solutions often fails to pay attention to the needs of persons with disabilities[3].
2. As the Bill seek to facilitate provision of Digital Health Services and e-Health deliberate and careful consideration should be taken to ensure that deployment of the digital Health care systems offer equitable access and do not result to increased negative Health care Outcomes and exacerbate barriers experienced by persons

with disabilities in accessing digital healthcare services. . Persons with disabilities and other vulnerable groups must be placed at the center of digital health development. The realization of equitable access to digital healthcare would significantly improve the health and well-being of all the population.

3. The bill as constituted does not offer avenue for participation of non-state actors in implementing the bill provisions. Involvement of all actors operating in the health sector is key to harness new ideas and inputs to address the existing healthcare gaps and scale up working ideas. Reports emanating from the bill need to contain data that is disaggregated by various dimensions including by disability

1:http://www.euro.who.int/ data/assets/pdf_file/0012/302331/From-Innovation-to-Implementation-eHealth-Report-EU.pdf
2:https://www.iriss.org.uk/resources/esss-outlines/digital-inclusion-exclusion-and-participation
3:https://doi.org/10.2196/33819

Guiding Principles

In section 4 of the bill on guiding principle we proposed inclusion of

e. **Inclusivity** – Digital HealthCare approaches , solutions , applications ,systems and deployments should be inclusive to a wider range of population including to persons with disabilities
f. **Accessibility** - Digital Healthcare services should be provided in formats and platforms that are accessible to wide range of persons including persons with disabilities
g. **Non-discrimination** - The bill to be implemented in a way that does not discriminate against anyone on any basis including on basis of disability

3. PROPOSALS AND RATIONALE

Proposed Amendment No. 1: Part 1 – Preliminary, Section 2: Interpretation.

2.1 Consent

The Bill assigns meaning of **consent** as is assigned under the Data Protection Act 2019. The definition and exceptions for consent provided for in Data Protection Act 2019 deprive a person with a disability especially persons with intellectual and/or developmental disabilities from freely exercising their choice

Proposed improvement:

Consider adopting interpretation of "**Consent**" that seeks to enhance opportunities including provision of reasonable accommodation for a person with a disability to make informed choices.

Rationale:

The current interpretation of consent centers the guardian or caregiver of the Data subject in decision making process. Data Subject regardless of their disabilities or vulnerabilities should be at the center of decision making process on issues affecting him or her. This addresses issue of data privacy and confidentiality

2.1 Data disaggregation

Proposed improvement:

We propose to add "**Data Disaggregation**" to the interpretation section of the preliminary. Data disaggregation should be interpreted as **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.**

Rationale:

Inclusion of Disaggregation of data will enhance the quality of reports and information generated by the healthcare systems and actors which will aid in development of targeted intervention, policies and strategies as well as enhance data driven decision making process.

Proposed Amendment No. 2: Part II – Establishment of Digital Health Agency, Section 5: Functions of the Agency.

5.1 Functions of the Agency

The Bill in Part II section 5 (b) provides that Digital Health Agency should establish registries in consultation with other statutory authorities ,at appropriate levels to create single source of truth in respect of clients, health facilities, health providers, health products and technologies .

Proposed improvement:

There is need to involve and consult other actors in Health space including non-state actors and OPDs. The proposed farming therefore should read "**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**"

Rationale:

Data collection exercise in Healthcare systems needs to be exhaustive and comprehensive .To achieve this, it will be vital to have involvement of state and non-state in the process. Enhancing the component of citizen generated data to compliment the official data could facilitate narrowing the heath data gap

5.1 Functions of the Agency

The Bill in Part II section 5 (e) provides that Digital Health Agency should ensure health data portability

Proposed improvement:

The need to have health data portability is key in the event of data agent need to access their health information.Howaver the portability of health data will not be effective if the issue of accessibility is not considered. We propose that the Function be amended by adding accessible, so that the new function reads "**Ensure health data accessibility and portability**"

Rationale:

Heath data should be provided in accessible formats and in accessible platforms that wide range of data subject can interact with and use effectively .This guarantees seamless access to information as guaranteed in our constitution and other legal frameworks

8.1 Board of Directors

The Bill in Part II section 8 (1) establishes board of directors of the Health and provides its membership.

Proposed improvement:

There is need to explicitly reserve one spot for persons with disabilities or their representative organization. We propose to add 8(j) which should read "**One person with a disability representing persons with disabilities"**

Rationale:

There is a close nexus between disability and health. P e r s o n s 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 ARTICLE 54

8.4 Board of Directors

The Bill in Part II section 8 (4) establishes the criterion of ceasing to the Health Agency Board Member. 4(e) states that a person shall cease to be a board member if the person "**is unable to perform the functions of his office by reason of mental or physical infirmity**"

Proposed improvement:

It is not clear what constitutes **mental or physical infirmity** .This could be applied arbitrary. We propose deletion of the whole 4(e)

Rationale:

Owing to principles of inclusiveness and non-discrimination envisioned by our constitution, this provision 4(e) borders on exclusion and discrimination. Removal from the board on account of **mental or physical infirmity** seems to target conditions associated with disabilities. The Act ought to consider advancing 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 Establishment and Administration of the Comprehensive Integrated Health Information System, Section 21(3)

21(3) Establishment of an integrated Health Information System

The Bill in Part Iv section 21 (3) provides that "**The system shall operate as a point of collection, collation, analysis, reporting, storage, usage……. ".**

Proposed improvement:

The data to be analyzed by the health information system needs to be disaggregated by various variable including by disability. Therefore we propose to add disaggregation as one on the functions on the proposed Health Information System, so that section 21(3) the reads " **The system shall operate as a point of collection, collation, disaggregation, analysis, reporting, storage, usage……. ".**

Rationale:

Data disaggregation is key component when it comes to data driven planning and resource allocation. Lack of reliable data creates barriers for marginalized groups to access digital health care. Disaggregated data will inform design and continuous improvement, scale up of the information Health care system to bridge the gap in accessing digital health care experienced by some sections of the populations including persons with disabilities.

Proposed Amendment No. 4: Part VI – Confidentiality, Privacy and Security of Data, Section 33

33. Use of sensitive personal data

The Bill in Part VI section 33 provides for the use sensitive persons data contained in the data bank. Section 33(a) to (i) provides for the reasons where sensitive personal data could be applied.

Proposed improvement:

The areas given in the section to apply sensitive personal data are comprehensive, but we propose adding section 33(j) which will read "**develop targeted healthcare service interventions and programmes"**

Rationale:

The sensitive personal data held at the data should be used to analyses certain patters of diverse groups of identities in various dimension including location, age and disability ,then use the emerging pattern to design targeted intervention to improve access to healthcare services for that identified group

42. Health Data Portability

The Bill in Part VI section 42(1) provides that "**subject to this Act, a person has a right, on request, to examine and receive a copy of his or her personal health information maintained by the data controller**". Section 42(2) provides that "**a request under subsection (1) shall be made in writing to the relevant healthy facility or health information bank"** and section 42 (3) states that" **the health data controller shall comply with provision of section 38 of Data protection Act in enabling access and portability of personal health records".**

Proposed improvement:

These provisions seem to create accessibility bottlenecks for data portability by data subject. We propose amend section 42(1) and add **accessible formats** so that it reads **subject to this Act, a person has a right, on request, to examine and receive a copy of his or her personal health information maintained by the data controller in accessible formats**

We also propose to amend Section 42(2) of the bill by adding **accommodative to the data subject** so that the section reads "**a request under subsection (1) shall be made in writing or in a manner that is accommodative to the data subject to the relevant healthy facility or health information bank"**

Lastly, we propose **delink execution** of the section 42 with provisions in the DataProtection Act 2019 by deleting section 42 (3).

Rationale:

There is overarching need to ensure that when data subject request for their personal data, the data is useful to them in making health decisions. This implies that the data has to be presented in a way the data subject can interact with. Hence the need for presentation of data in **accessible formats**

Section 42(2) limits the request to accessing personal data only through writing, there is good percentage of population who might not know how to write and others who use other forms of communication to make communicate. Limiting these requests to only writing creates access barriers excluding data subject from exercising their rights to information.

Section 38 of Data Protection Policy 2019 creates access bottleneck especially to section of population that is marginalized. The section envisions payment for accessing information, this could jeopardize accessing to vital healthcare personal information by data subject rendering him or her unable to make decisions.

44. Precaution on Release of Personal Sensitive Information

The Bill in Part VI section 44(1) provides measures to be taken by health data bank and Health Data Controller before releasing personal sensitive information. Section 44(b) sub section (ii) provides exception where the persons data could be released to another person apart from the data subject .The section states that **" where the data subject has a mental or other disability,……. "**

Proposed improvement:

The import of this provision is that persons with disabilities are not in position to consent or they don't have capacity to directly receive their personal health information. Their guardian seems to be central in the whole process. In light of this we propose deletion of **where the data subject has a mental or other disability** and **adding data subject at the end** so that the section reads "**by a person duly authorized by the data subject"**

Rationale:

Persons with disabilities have the capacity and whewithal to receive and use their person's health information without intermediaries. The implication that persons with disabilities have o always rely on other persons for activities of daily living is misplaced and disempowering. The provision as constituted serves to increase stigma among person with disabilities and undermine provisions of legal framework where independent living and equal participation of persons with disabilities is espoused

Proposed Amendment No. 5: Part VII – e-Health Service Delivery, Section 47

47. E- Health Services

The Bill in Part VII section 49(1) provides that "in provision of E-Health services to a client, healthcare service provider shall .....(h) "Ensure that when e-health service delivery involves a mentally ill person, the consent of a guardian is obtained"

Proposed improvement:

The use of term mentally ill depicts a person who is sick and needs medical attention. This view removes the need of all support and accommodations needed by that person to participate on an equal basis with others in healthcare system. On that backdrop we propose that deletion of **mentally ill** and replace it with **person who cannot give consent** so that the section reads" Ensure **that e-health service delivery involves a person who cannot give consent, the consent of the guardian is obtained"**

Rationale:

The use of terms that have been used to legal disfranchise persons with disabilities from participating on societal affairs on an equal basis with others ought to discourage. The presence of the tern in the Act will serve to perpetuate

misconception that only medical intervention is needed to enable persons with disabilities participate in healthcare processes, negating the need for psychosocial support and reasonable accommodations.

CONSEQUENTIAL AMENDMENTS

Proposed improvement:

We propose that the following legal frameworks be reviewed to align well with aspirations of this bill

1. Data protection Act 2019.
2. National ICT Policy 2019

Rationale:

The review and linkage of the other legal and policy framework will establish enabling environment for the seamless implementation of this bill.

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

MEMORANDUNON THE DIGITAL HEALTH BILL NO. 57 OF 2023

The following are our proposed amendments to in the matter in consideration by the National assembly on the Digital Health bill number 57 of 2023.

Section to be amended	Recommendations	Justification
Interpretation "e-Health' means the combined use of electronic communication and information technology in the health sector including telemedicine;	To include telepharmacy	Telepharmacy is one the critical components of Telemedicine or e-health
Interpretation Definition of telepharmacy	The term "telepharmacy" refers to 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.	To complete the interpretation
Objects of the Act (e) develop standards for the provision of m-Health, telemedicine, and e-Learning	To include telepharmacy	Telepharmacy is a critical component of telemedicine
Board of Directors 8(1) (g) one person representing the interest of the private sector;	A clear criteria needs to be provided for the person and the private sector	This is to ensure that the Board is constituted by competent persons
Board of Directors 8(1) (h) two persons nominated by health care providers	The nominating professional organizations need to be specified in this case (a) Kenya Medical Association (KMA) (b) Pharmaceutical Society of Kenya (PSK)	KMA and PSK are professional organization with integrity and can be trusted to nominate competent health care providers to the board.
Provision of e-health services 42. (1) The e- Health service shall be provided through	To include telepharmacy	Telepharmacy is a critical component of e-Health

By Dr Peter Ongwae PSK Practice Chairman

HAKI YETU ORGANISATION

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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
[illegible]	• We [illegible] promotes inclusivity • However we do insist on the need to have a maximum contribution [illegible] affordable [illegible] **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.**
[illegible] **may** [illegible] discretion whether to formulate regulations [illegible] the implementation of the emergency [illegible] and critical [illegible] fund	• [illegible] with the word **shall'** [illegible] regulations [illegible] 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
Benefits [illegible]	• [illegible] 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

Smart

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DIDC
Please receive
25/09/23

DIRECTOR
RECEIVED
25 SEP 2023
Directorate of Departmental Committees

NATIONAL ASSEMBLY
RECEIVED
22 SEP 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

Hassan Kale
to facilitate
25/9/23

21st September 2023

Mr. Samuel Njoroge,
Clerk of the National Assembly,
P.O. Box 41842-00100,
Nairobi

Dear Mr. Njoroge,

REF: RESPONSE AS PART OF PUBLIC PARTICIPATION ON FEEDBACK AND RECOMMENDATIONS ON THE E-HEALTH BILL

Greetings from Smart Applications International Ltd.

We appreciate the public pronouncement of the E-Health Bill, which represents a critical step toward modernising and standardizing our digital healthcare frameworks. However, we would like to address several concerns and propose some recommendations to enhance the bill's effectiveness and alignment with industry best practices.

Concern 1: Development of Standards and Certifications
Clause 6 (DHA)
While we acknowledge the Digital Health Agency's role in ensuring conformity to standards and integration with the Comprehensive Integrated Management Information System (CIMIS), it's crucial to emphasise collaboration. We recommend that the Digital Health Agency develops health data standards in consultation with existing health management information system providers at the onset. Additionally, regular reviews, at least every two years, should be conducted to ensure alignment with emerging global standards. This collaborative approach will foster a more inclusive and robust framework.

Concern 2: Reporting of Health Data
Clause 27 (Health Data Governance)
The requirement for all health data controllers and processors to report data to the Ministry of Health (MOH) in the prescribed format raises concerns regarding data protection. To prevent potential litigation, it is imperative to clarify that submissions to the MOH should not include personally identifiable data. This clarity will safeguard data controllers and processors from legal challenges related to the exposure of personal information.

Concern 3: Health Data Banks
Clauses 32 & 33 (Health Data Banks)
The bill mentions that health data banks may contain data that identifies individuals providing healthcare insurance. This overlap with the functions of the Insurance Regulatory Authority (IRA), specifically in registering and identifying health insurance providers, should be addressed to prevent duplication and streamline responsibilities.

Concern 4: Loss of Healthcare Data
Various Clauses
The bill categorises the loss of healthcare data as an offense. To avoid undue punishment in cases of inadvertent, accidental, or force majeure-related data loss, it is essential to establish a mechanism for assessing and analysing the circumstances surrounding data loss before deeming it an offense. This approach will ensure fairness and proportionality in addressing data loss incidents.

Smart Applications International Limited, International House, 11th Floor, Mama Ngina Street. P.O Box 57776, Nairobi 00200 Tel: 254 20 3206000 Cell: +254 733 320 600 or +254 718 222 000 Email: info@smart.co.ke

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Recommendation: Representation at the Board Level
Clause 8 (Board)
We suggest an increase in the representation of independent e-health technocrats on the Digital Health Agency Board. Specifically, the representation should be increased from 2 members to 3 members. This adjustment will provide a more balanced and knowledgeable perspective on e-health matters, ensuring effective governance and decision-making.

We believe that addressing these concerns and implementing the recommended changes will lead to a more comprehensive and balanced E-Health Bill. We appreciate your dedication to the advancement of healthcare through digitalization and look forward to further discussions to refine and strengthen the bill for the benefit of all stakeholders.

Thank you for your attention to these important matters. Please feel free to reach out to us for any further clarification or discussion.

Yours Sincerely,
For and on behalf of Smart Applications International Ltd; -

Harrison Muiru
GROUP MANAGING DIRECTOR

Smart
Secure,Fast,Access
P.O. Box 57776- 00200, NAIROBI.
Tel: 020 320 6000 / 0709 32 6000

BYON8
YOUR HEALTH MATE

DIGITAL HEALTH ACT 2023

1.1 Preamble

BYON8 is the leading telehealth/digital health application in Kenya. Our telemedicine ecosystem currently has over 300,000 downloads and 20,000 users/month in Kenya offering online consultations with doctors (GPs and specialists). BYON8 as a platform aims to provide a unique digital, public health care experience in Kenya. Below are our requested recommendations as we anticipate the signing of this momentous bill into law.

1.1.1 The Digital Health Agency

- The digital health act established a digital health agency which will be an oversight agent to determine best practices of delivering digital health services and enforce system integration and data sharing.

1.1.2 Purpose of the Digital Health Act

- Establish the Digital Health Agency
- Establish and maintain a comprehensive integrated health information system;
- 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;
- Establish a regulatory framework for the e-Health ecosystem data lifecycle;
- Provide for privacy, confidentiality, and security of health data;
- Develop standards for the provision of m-Health, telemedicine, and e-Learning;
- Establish a regulatory framework for e-waste management; and
- Provide for the safe and secure transfer of personal, identifiable health data and client's medical records to and from health facilities outside Kenya.
- Key guiding principles outlined in the act::
    - Health data is a strategic national asset;

- Safeguard of the privacy, confidentiality, and security of health data for information sharing and use;
- Digital health should facilitate data sharing and use for informed decision-making at all levels; and a digital health ecosystem which serves the health sector and facilitates in a progressive and equitable manner, the highest attainable standard of health;

1.2 Requested Recommendations

PART II— ESTABLISHMENT OF THE DIGITAL HEALTH AGENCY (Functions of the Agency) Section 6 (a) and 6 (b), Section 7(d) AND PART VII—E-HEALTH SERVICE DELIVERY Section 47

Telemedicine has been defined clearly in the Digital Health Bill. Owing to the current licensure of telemedicine providers under the respective Kenya Medical and Dentists Practitioners board will the Digital Health Agency be responsible for licensing and regulation of telehealth providers?

- ***Recommendation:*** *Citing the potential benefits of telemedicine in our setting we request that the Digital Health Agency and the relevant clinical boards collaborate in providing a licence linked to the provider licence with specific requirements tailor made for digital health providers. As of now the requirements for a telemedicine licence are based on clinical physical requirements and assets. However, our perspective is that there should be a specific set of digital requirements that would warrant such licensing. Examples of these requirements could be such that:*
  - *Digital Health Providers have data storage in HIPPA and GDPR accredited servers,*
  - *Ensuring appropriate anonymization and pseudonymization of patient data.*
  - *Ensuring user centric approaches to gaining user consent when accessing digital health services as highlighted in Part VI .*
  - *Ensuring appropriate personnel have access to patient data and internal structures to ensure personnel specific access that upholds patient anonymity.*

What will be the jurisdiction of the Digital Health Agency beyond telemedicine? Will other digital health providers such as e-pharmacies also be regulated and licensed by the digital health agency?

- ***Recommendation:*** *A collaborative approach we humbly request would be needed between the relevant clinical licensing boards to determine the appropriateness of specific digital health interventions and their respective clinical use cases. This is to ensure comprehensive medico-legal approaches when determining extent of liability from the lenses of the digital provider, clinical provider and the patient.*

PART IV—THE ESTABLISHMENT AND ADMINISTRATION OF THE COMPREHENSIVE INTEGRATED HEALTH INFORMATION SYSTEM Section 22, 23 and 24 | PART V— HEALTH DATA GOVERNANCE Section. 27 | PART VI—CONFIDENTIALITY, PRIVACY AND SECURITY OF DATA Section 32 subsection 2 and Section 42

The Comprehensive Integrated Health Information System will be maintained by the Digital Health Agency. From a data integrity and interoperability perspective the digital health agency will promote adoption of best practices in health data exchange. However, does the agency enforce well recognized standards such as FHIR and OpenEHR and if so how shall this be done from a private sector perspective? Will there be standard compliance audits provided by the Digital Health Agency? If so, how frequent will these audits be done and in what manner will they be enacted.

- ***Recommendation:*** *Noting the numerous digital health interventions in the country both in public and private sector, as the key custodian of all health data in Kenya as per Part V section 28, the Digital Health Agency would be best suited to enforce a specific interoperability standard that would be utilised to enhance data portability across several digital interventions.*

The health information / data bank will be under the jurisdiction of the Ministry of Health. What kind of data and what frequency will health data processors and controllers be required to transmit to the Ministry of Health's Health Information Bank?

- ***Recommendation:*** *The Digital Health Agency will be critical to define the standard operating procedures required for data integrity and will also be an appropriate method for data driven audits for the various digital health interventions both from a public and private sector perspective.*

There is a clear distinction between general purpose data controllers and data processors with included definitions of health data controllers and data processors. Will this mean that the mandated certification of health data controllers and processors under the ODPC will be determined differently from other data controllers and processors in different sectors?

- ***Recommendation:*** *We request that the ODPC through the Agency clearly define the protocols required for health data protection owing to the sensitivity of such data. Specific thresholds, we request, should also be defined to determine appropriate licensing of digital health providers based on the digital assets in place to ensure patient data security.*

Kenya Healthcare Federation
The Health Sector Board of KEPSA

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SUBMISSIONS ON THE DIGITAL HEALTH BILL 2023

Pursuant to requirements of public participation as stipulated by the Constitution of Kenya, 2010, Article 10 on principles and values of good governance, and following requests for submission of memoranda.

Clause	Proposed Amendment	Rationale for Amendment and Recommendations
GENERAL PROPOSALS 1.Elaboration of all forms of Teleconsulting-Telemedicine,Telehealth,Teledentistry,Teleradiology,Telecounselling 2. Elaboration of forms of E-Health 3. Elaboration of digital health components 3. Consideration of setting up and operationalizing E-Health at section 103 ,Telelehealth under the Health Act of 2017 4. Consideration of setting up Health Data Protection regulations under the DPA Act of 2019 with a special directorate to oversight Health Data Control and Management 5. Review and harmonize all aspects of existing regulations draft and gazetted-virtual health service providers, m-health, telehealth and e-health regulations 6. Amend Health Act of 2017 creation of DHA, CIHIS 7. Consideration of harmonization of penalties under the DPA and this draft digital health bill 8. Consideration of establishment and actioning of internet connectivity standards requirements for each of the level of healthcare facilities 9. Consideration that the Data protection commissioner is a technical person who is well-versed in their job and needs not to have their duties and mandates usurped in the guise that health data is too special to be handled by their office and needs to be housed under case of the CS Health which is a political office and appointment often times. 10. Harmonization of offences in Data Protection Act of 2019 and the penalties and offences proposed in this bill. 11. Health data controllers and processors to be persons with healthcare background training; makes it easier for data management and comprehension of system operations; Alternative provide for various levels of access and system controls based on users		

Chairman: Dr. Kanyenje Gakombe **Vice-Chair**: Dr. Elizabeth Wala **Treasurer**: Mr. Stephen Maina
Directors: Dr. Francis Karanja Mr. Vinod Guptan Dr. Walter Obita Dr. Linus Ndegwa Dr. Daniella Munene Mr. Isaiah Okoth Mr. Antony Jaccodul

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background training 12. Maps of existing private healthcare systems HIS to be aligned to the CIDHIS 13. Provide for qualifications of the chairperson of the DHA 14.Ensure mechanism of business continuity in case of system breaches and crashes 14. Provide within the law for continuous systems improvement and continuous training of all users of the health data systems 15. Alignment with the Science,Technology and Innovation Act of 2013(NACOSTI) and Pharmacy and Poisons Board(Cap 244) when it comes to conducting healthcare research and dealing with sensitive health research data 16. Some aspects of health data collected such as dental radiographs-Orthopantomograms my require special ways to enforce data anonymization and minimization because of risk of personal data indentification and abuse. 17. Align the meanings of consent as in Health Act of 2017 and DPA of 2019 with the consent descriptions of the proposed Digital Health Bill 18. In case IP rights in health data ; Provide elaborations in emerging health data ownership concepts 19. Provide regulations and local listings and certifications of digital health products ,softwares and pharmaceuticals made in Kenya 20. Create regulations on how to maintain and manage all health systems users registers and access rights of CIDHIS in the whole country. 21. Create regulations on e-health/digital health e-learning/digital health literacy 22. Create regulations on spread of healthcare misinformation and disinformation on social media and online spaces by unqualified and untrained persons and attachment of liability and provide recourse to any persons who rely on such forms of information 23. Provide for statutory guide and regulations on health data monetization; Meta-data mining and exploitation-AI and Machine Learning 24. Provide statutory guide and support on innovations in and around ehealth and digital health		
2)interpretation "consent" has the meaning	The Bill assigns meaning of consent as is assigned under the Data Protection Act 2019. The	The current interpretation of consent centers the guardian or caregiver of the Data subject in

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assigned to it under the Data Protection Act, 2019;	definition and exceptions for consent provided for in Data Protection Act 2019 deprive a person with a disability especially persons with intellectual and/or developmental disabilities from freely exercising their choice **Proposal:** Consider adopting interpretation of "Consent" that seeks to enhance opportunities including provision of reasonable accommodation for a person with a disability to make informed choices.	decision making process. Data Subject regardless of their disabilities or vulnerabilities should be at the center of decision making process on issues affecting him or her. This addresses issue of data privacy and confidentiality.
(2) New word addition **Data Disaggregation**	We propose to add "**Data Disaggregation**" to the interpretation section of the preliminary. Data disaggregation should be interpreted as 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.	Inclusion of Disaggregation of data will enhance the quality of reports and information generated by the healthcare systems and actors which will aid in development of targeted intervention, policies and strategies as well as enhance data driven decision making process.
"Digital health" means the field of knowledge and practice that is associated with the development and use of digital technologies to improve health;	Proposal to review definition to the most acceptable and broad meanings of the compound words, 'digital' and 'health' Example of definitions to use: **(a)Digital health** refers to the use of information and communications technologies in medicine and other health professions to manage illnesses and health risks and to promote wellness.	Current meaning has room for misinterpretation and ambiguity and may need improvement;

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	Digital health has a broad scope and includes the use of wearable devices, mobile health, telehealth, health information technology, and telemedicine. **(b)Digital health, or digital healthcare**, is a broad, multidisciplinary concept that includes concepts from an intersection between technology and healthcare. Digital health applies digital transformation to the healthcare field, incorporating software, hardware and services. Under its umbrella, digital health includes mobile health (mHealth) apps, electronic health records (EHRs), electronic medical records (EMRs), wearable devices, telehealth and telemedicine, as well as personalized medicine. Define **'Stakeholders in Digital Health'**: Stakeholders in the digital health field include patients, practitioners, researchers, application developers, and medical device manufacturers and distributors.	
E-health-means the combined use of electronic communication and information technology in the health sector including telemedicine;	Proposal: Consider to review and harmonize the definitions and relationships of the terms: Digital Health Telehealth Telemedicine E-Health Compare usage of terms in different jurisdictions, synonyms and interchangeability of definition of terms and usage Alignment with WHO guidelines and strategy to be also considered	Definitions and meanings should be wide enough to include all the meanings of the concepts of Telehealth such: Teledentistry,Teleradiology, Telepharmacy,Teleaudiology, Teleneurology, Telenursing Telepalliative care,Telepsychiatry Telenutrition,Teleneuropsychology Telerehabilitation,Teletrauma care Telecardiology,Telepathology, Teledermatology, Teleophthalmology,Telesurgery
National Health Data Dictionary	Provide definition of word and concept	Missing in the Bill

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3(g)establish a regulatory framework for e-waste management; and	Proposal: Consider alignment with EMCA Act of 1999 on Environmental protections	Matters environment and how they affect healthcare can be well addressed through the public health and environmental laws
5.(1) There is established an Agency to be known as the Digital Health Agency.	Proposal consider amendment of the Health Act of 2017 and house the Agency here for the functions listed under clause/section 6	Information organization on healthcare and systems should ideally be organized from one statutory platform rather than from multiple statutes speaking and addressing issues from different points of view.
6. The Agency shall— (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;	The Bill in Part II section 6 (b) provides that Digital Health Agency should establish registries in consultation with other statutory authorities, at appropriate levels to create single source of truth in respect of clients, health facilities, health providers, health products and technologies. Delete the word-'truth', replace therefor with the word 'reference' **Proposal:** There is need to involve and consult other actors in Health space including nonstate actors and OPDs. The proposed framing therefore should read "establish registries in consultation with other statutory authorities and non-state actors, at appropriate levels to create single source of reference in respect of clients, health facilities, health providers, health products and technologies"	Data collection exercise in Healthcare systems needs to be exhaustive and comprehensive. To achieve this, it will be vital to have involvement of state and non-state in the process. Enhancing the component of citizen generated data to compliment the official data could facilitate narrowing the heath data gap.
6. The Agency shall—	The Bill in Part II section 5 (e) provides that Digital Health	Heath data should be provided in accessible formats and in

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(d) establish a system of shareable and portable personal health records, based on best practices and standards;	Agency should ensure health data portability Proposed: The need to have health data portability is key in the event of data agent need to access their health information. However the portability of health data will not be effective if the issue of accessibility is not considered. We propose that the Function be amended by adding accessible, so that the new function reads "Ensure health data accessibility and portability"	accessible platforms that wide range of data subject can interact with and use effectively .This guarantees seamless access to information as guaranteed in our constitution and other legal frameworks
6. The Agency shall— (e) ensure health data portability	The need to have health data portability is key in the event of data agent need to access their health information. However, the portability of health data will not be effective if the issue of accessibility is not considered. We propose that the Function be amended by adding accessible, so that the new function reads "Ensure health data accessibility and portability"	Heath data should be provided in accessible formats and in accessible platforms that wide range of data subject can interact with and use effectively. This guarantees seamless access to information as guaranteed in our constitution and other legal frameworks
Clause 7 and 8	Interchange for 8 to be 7 or vice versa	Incoherency in drafting and clause flow
8.(1) There shall be a Board of Directors of the Agency which shall consist of— ..... (d) the Principal Secretary responsible for Information, Communication	The Bill in Part II section 8 (1) establishes board of directors of the Health and provides its membership. Remove Principal Secretary for ICT. Replace with the Director General for Health. There is need to explicitly reserve one spot for persons with disabilities or their representative	The objective is to improve healthcare hence the need to have a composition of members in charge of health matters. 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

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and Technology or a representative designated in writing;	organization. We propose to add 8(j) which should read "One person with a disability representing persons with disabilities"	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.
Clause8: Composition of the Board of the Digital Health Agency Part 1(f):	Proposal: Change to '*One person nominated by the Council of Governors from among the County Directors of Health.*'	Justification: 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.
Part 1(g):	Proposal: Change to '*The Director General of Health.*'	Justification: The Director General as the technical advisor to the Ministry of Health.
Part 1(h):	Proposal: Change 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 professional with knowledge and experience in digital health or healthcare related backgrounds.*'	Justification: 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 and knowledge of digital health protects health care worker interests.
8(4)d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or	Proposal delete the words: 'sentenced to imprisonment for a term exceeding six months; '	Convicted persons should not hold public office.
8 (4) A person appointed to the Board under	The Bill in Part II section 8 (4) establishes the criterion of ceasing to the Health Agency Board	Owing to principles of inclusiveness and non-discrimination envisioned

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subsection (1)(a) and (i) shall cease to be a member of the Board if he– (e) is unable to perform the functions of his office by reason of mental or physical infirmity.	Member. 4(e) states that a person shall cease to be a board member if the person "is unable to perform the functions of his office by reason of mental or physical infirmity" **Proposed improvement**: It is not clear what constitutes mental or physical infirmity. This could be applied arbitrary. We propose deletion of the whole 4(e)	by our constitution, this provision 4(e) borders on exclusion and discrimination. Removal from the board on account of mental or physical infirmity seems to target conditions associated with disabilities. The Act ought to consider advancing the principle of reasonable accommodation as espoused in the UNCRPD to ensure the said board is supported is discharging his or her mandate effectively.
8(8) The Board may co-opt any other person with necessary expertise as it necessary to assist the Board in discharging its duties and responsibilities.	Proposal for non-coption; Delete full clause; Provide for consultancy services approval by board to guide operationalization of mandates; Cooption of technical persons into board committees still serves same purpose as request for consultancy services to guide board and leadership mandates	Room for exploitation and expansion of board capacity which may bring about governance issues
12. (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	Delete Minimum of a bachelor's degree and Replace with the words, 'Has a minimum of a master's degree' Include the qualification healthcare background training professionals under 12(1)(b)	Persons with a bachelor's degree may not have adequate skills and experience in handling expected mandates Healthcare trained persons excluded from list of qualifications provided.

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experience in health information science, data science, data governance, health informatics, digital health or any other relevant field;		
13. (1) There shall be a Corporation Secretary who shall be competitively recruited and appointed by the Board on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.	Missing term limits Include period of 3 years renewable for a further 3 years.	Need to provide for service term limits for corporation secretary
21. (1) There is established a system to be known as the comprehensive integrated health information system which shall be adminstered by the Agency.	Body system can be created under Health Act of 2017	Need to have one stop reference for all healthcare related matters, laws and regulations.
21. (3) The Bill in Part Iv section 21 (3) provides that	The data to be analyzed by the health information system needs to be disaggregated by various variable including by disability. Therefore we propose to add disaggregation as one on the	Data disaggregation is key component when it comes to data driven planning and resource allocation. Lack of reliable data creates barriers for marginalized groups to

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(3) The system shall operate as a point of collection, collation, analysis, reporting, storage, usage, sharing, retrieval or archival of data related to the state of physical or mental health of the data subject and includes records regarding the past, present or future state of the health, data collected in the course of registration for, or provision of health services, or data which associates the data subject to the provision of specific health services.	functions on the proposed Health Information System, so that section 21(3) the reads " The system shall operate as a point of collection, collation, disaggregation, analysis, reporting, storage, usage……. ".	access digital health care. Disaggregated data will inform design and continuous improvement, scale up of the information Health care system to bridge the gap in accessing digital health care experienced by some sections of the populations including persons with disabilities.
25. For the purposes of this Act, health data shall be classified into the following categories— (a) sensitive personal level health data; (b) administrative data; (c)	Consider addition of new categories of data; Eg. Emerging areas-AI Health data	Need to be ready for new changes happening in the technological world

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aggregate health data; (d)medical equipment data; and (e) research for health data		
28. The Agency shall be the custodian for all health data in Kenya.	Amend to read custodian of digital health data	Information held in the data system can only be referenced as digital health data
Clause 32, the Cabinet Secretary shall establish a national health data bank and designate county health data banks.	We propose that the 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 specimens, health images, human tissues and organs) as need be. Similar qualification should apply to the data controller at county level.	
33. The Bill in Part VI section 33 provides for the use sensitive persons data contained in the data bank. Section 33(a) to (i) provides for the reasons where sensitive personal data could be applied.	The areas given in the section to apply sensitive personal data are comprehensive, but we propose adding section 33(j) which will read "develop targeted healthcare service interventions and programmes"	The sensitive personal data held at the data should be used to analyse certain patterns of diverse groups of identities in various dimension including location, age and disability ,then use the emerging patterns to design targeted intervention to improve access to healthcare services for that identified group
36. (1) A data controller may disclose sensitive personal data about a person	Delete the word, 'may' replace with 'shall'	Control for abuse of discretion by officer

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who is deceased, or is reasonably suspected to be deceased when—		
41(1)(e) loses data;	Digital health data contained in a system may not be lost by an individual but as a result of system breaches.	Align reality to aspects of system breaches, lack of maintenance and eventual data loss
The Bill in Part VI section 42(1) provides that "subject to this Act, a person has a right, on request, to examine and receive a copy of his or her personal health information maintained by the data controller". Section 42(2) provides that "a request under subsection (1) shall be made in writing to the relevant healthy facility or health information bank" and section 42 (3) states that" the health data controller shall comply with	These provisions seem to create accessibility bottlenecks for data portability by data subject. We propose amend section 42(1) and add accessible formats so that it reads subject to this Act, a person has a right, on request, to examine and receive a copy of his or her personal health information maintained by the data controller in accessible formats. We also propose to amend Section 42(2) of the bill by adding accommodative to the data subject so that the section reads "a request under subsection (1) shall be made in writing or in a manner that is accommodative to the data subject to the relevant healthy facility or health information bank". Redundacies and duplication of laws should be minimized; Where the data protection act of 2019 is adequate; this should serve all data governance issues from healthcare data, engineering data, education data, financial data; Proposal for Health Data	There is overarching need to ensure that when data subject request for their personal data, the data is useful to them in making health decisions. This implies that the data has to be presented in a way the data subject can interact with. Hence the need for presentation of data in accessible formats. Section 42(2) limits the request to accessing personal data only through writing, there is good percentage of population who might not know how to write and others who use other forms of communication to make communicate. Limiting these requests to only writing creates access barriers excluding data subject from exercising their rights to information. Most sections of the Digital Health Bill are copy paste sections of the Data Protection Law which is general enough and captures all forms of data, sensitive and personal data. There is no much uniqueness and complexity exists in healthcare care. Risk of splintering and loss of accountability and data

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provision of section 38 of Data Protection Act in enabling access and portability of personal health records".	Regulations to be formulated under the Data Protection Act of 2019 to cater for special aspects of managing and usage of health data.	governance to persons who may be less proficient in principles of data protection. Data protection commissioner is a technical person who is well-versed in their job and needs not to have their duties and mandates usurped in the guise that health data is too special to be handled by their office and needs to be housed under case of the CS Health which is a political office and appointment often times.
The Bill in Part VI clause 44. (1) A health data bank and health data controller, before releasing any personal health data to any person, shall– (b)take reasonable steps to ensure that any personal health information intended for a person is received only by that person or— (i) where the data subject is a minor, by a person who has parental authority or by a guardian; (ii) where the data subject has a mental or	The import of this provision is that persons with disabilities are not in position to consent or they don't have capacity to directly receive their personal health information. Their guardian seems to be central in the whole process. In light of this we propose deletion of where the data subject has a mental or other disability and adding data subject at the end so that the section reads "by a person duly authorized by the data subject"	Persons with disabilities have the capacity and whewithal to receive and use their person's health information without intermediaries. The implication that persons with disabilities have to always rely on other persons for activities of daily living is misplaced and disempowering. The provision as constituted serves to increase stigma among person with disabilities and undermine provisions of legal framework where independent living and equal participation of persons with disabilities is espoused

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other disability, by a person duly authorised to act as their guardian or administrator; or (iii)in any other case, by a person duly authorised by the data subject or by a court order.		
46. (1) E-Health shall be a recognized model of health service. (2) E-Health Services are complementary to existing healthcare service delivery modalities	Delete clauses 46-50; Repetitions present in the Health Act of 2007; Section 103 Regulations under the Health Act of 2017 can be made to better operationalize ehealth and telehealth	Bill creates repetition laws in already legislated upon matters; Wheel re-invention to be minimized and plan to strengthen existing laws. This clause function and operation can be adequately covered under the Health Act of 2017
47.(2) An entity providing e-health services shall be— (d)for foreign facilities, be licenced by an equivalent regulatory authority recognized in Kenya;	Delete whole clause; To be in conformity with section 48 of the Data Protection Act of 2019 48. Conditions for transfer out of Kenya Alternative is to have: 1. Peer reviews by professional bodies of foreign entities 2. Cross and reciprocal registration of local professionals in countries where the foreign professionals are registered 3. Renewal of licensures to be done annually where such services are not locally	Access to data and storage by foreigners exposes the country to data breaches even though low costs Need to protect and ensure patient safety on recourse when negligent care is delivered by persons based abroad; malpractice not easy to control on digital platforms Need to protect labour relations of local practitioners from unfair competition by foreign registered entities abusing economies of scale

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	available	
The Bill in Part VII section 49(1) 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, her or she obtains consent from a guardian; and	The use of term mentally ill depicts a person who is sick and needs medical attention. This view removes the need of all support and accommodations needed by that person to participate on an equal basis with others in healthcare system. On that backdrop we propose that deletion of mentally ill and replace it with person who cannot give consent so that the section reads "Ensure that e-health service delivery involves a person who cannot give consent, the consent of the guardian is obtained "	The use of terms that have been used to legal disfranchise persons with disabilities from participating on societal affairs on an equal basis with others ought to discourage. The presence of the term in the Act will serve to perpetuate misconception that only medical intervention is needed to enable persons with disabilities participate in healthcare processes, negating the need for psychosocial support and reasonable accommodations.
E-Waste 51. (1) The Cabinet Secretary shall— (a) in consultation with County Governments, and relevant lead agencies, develop guidelines for the safe handling and disposal of all health sector related e-waste material. (b) in consultation with relevant stakeholders,	Clause mispositioned in the bill; Creates Repetition Consider alignment with EMCA of 1999 and roles of NEMA in management of e-waste; NEMA has developed guidelines on management of e-waste. Consider alignment with ICT and Telecommunications Laws on management of e-waste	There exists no particular e-waste in healthcare; all e-waste is e-waste in general; This clause function and operation can also be adequately covered under the Health Act of 2017

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develop an e-waste management system for the health sector.		
Health Tourism 52. (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 concept doesn't fall strictly under digital health laws; Consider to amend the Health Act of 2017 to provide for the operationalization of the different modalities of health tourism.	This clause function and operation can be adequately covered under the Health Act of 2017
57. (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 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	Change the word 'may' to 'shall';	Risk of abuse of discretion

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under this Act.		
Offences 59. (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.	Consider alignment with the Data Protection Act where most concepts in the bill have been borrowed from. For example: 63. Administrative fines In relation to an infringement c a provision of this Act, the maximum amount of the penalty that may be imposed b the Data Commissioner in a penalty notice is up to five million shillings, or in the case of an undertaking, up to one pe centum of its annual turnover c the preceding financial year, whichever is lower. 73. General penalty (1) A person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding three million shillings or to an imprisonment term not exceeding ten years, or to both. (2) In addition to any penalty referred to in sub-section (1), the Court may— (a) order the forfeiture of any equipment or any article used or connected in any	Harmonization of offences in Data Protection Act of 2019 and the penalties and offences proposed in this bill.

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(2) Any person who violates or fails to comply with any provision of this Act for which no other penalty is provided, commits an offence, and is liable on conviction to a fine not exceeding Kenya shillings two hundred and fifty thousand or imprisonment for a term not exceeding six months, or both	way with the commission of an offence; or (b) order or prohibit the doing of any act to stop a continuing contravention.	

Proposed general bill review and overhaul

We propose that the following legal frameworks be reviewed to adopt the aspirations of this bill which seems to borrow heavily and replicates aspects of already legislated upon matters which can be operationalized by publication of specific regulations on a case by case basis. The review and linkage of the other legal and policy framework will establish enabling environment for the seamless implementation of the existing laws and future regulations to be created.

1. Data protection Act 2019.
2. Health Act of 2017
3. EMCA of 1999
4. National ICT Policy 2019

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ECONOMIC & SOCIAL RIGHTS CENTRE
Hakijamii

"Putting people first"

Our Ref: 22/09/23

Date: 22nd September, 2023

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

Dear Mr. Njoroge,

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

We refer to the above subject matter and the invitation to submit Memoranda dated 15th September, 2023.

The Economic and Social Rights Centre- Hakijamii is a National Human Rights Organization that supports marginalized communities to claim their economic and social rights. As such, we are committed to champion for laws and policies that ensure human rights-based approaches are met in the framework for provisioning of digital health services and social health insurance. This is to foster a society that guarantees and protects the right to the highest attainable standard of health, which includes the right to health care services for every person.

We hereby submit the legislative memorandum on the Digital Health Bill, 2023 attached herewith for your consideration. We further recommend as follows with regards to the Social Health Insurance Bill 2023:

Deletion of clause 27 (4) - the provision limits the right to health care services as

provided for in Article 43 (1) (a) of the Constitution of Kenya 2010. It further contradicts the object of the Bill which is to ensure all Kenyans have access to affordable and comprehensive quality health services.

Yours Sincerely,

for

Zipporah Muthama
Executive Director

Yaya Court, Suite 8, along Chania Avenue off Ring Road
Kilimani.
P.O. Box 11356 – 00100 Nairobi, Kenya Office. Mobile: 0726 527 876 / 0732 906 255. Email: esrc@hakijamii.com. Website: www.hakijamii.com

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The Digital Health Bill, 2023 memoranda proposals 19th September,2023

Clause 2: Definition of e-health

Proposal: *Combined use of electronic communication and information technology in the health sector*

DIRECTOR RECEIVED 21 SEP 2023 Directorate of Departmental Committees

Justification: Definition should be wide enough to include areas such as tele-dentistry, tele-radiology, tele-pharmacy amongst others.

Clause 8: Composition of the Board of the Digital Health Agency

- Part 1(f):
  Proposal: Change to '*One person nominated by the Council of Governors from among the County Directors of Health.*'
  Justification: 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.
- Part 1(g):
  Proposal: Change to '*The Director General of Health.'*
  Justification: The Director General as the technical advisor to the Ministry of Health.
- Part 1(h):
  Proposal: Change 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 professional with knowledge and experience in digital health.'*
  Justification: 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 and knowledge of digital health protects health care worker interests.

Other proposals

As envisioned in Clause 32, the Cabinet Secretary shall establish a national health data bank and designate county health data banks.

We propose that the 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

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such data and therefore facilitate fast transmission of such data (biological specimens, health images, human tissues and organs) as need be. Similar qualification should apply to the data controller at county level.

By,

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