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Clerk of the senate/secretary, PSC
Date: 03/07/24

THE SENATE
THIRTEENTH PARLIAMENT | THIRD SESSION

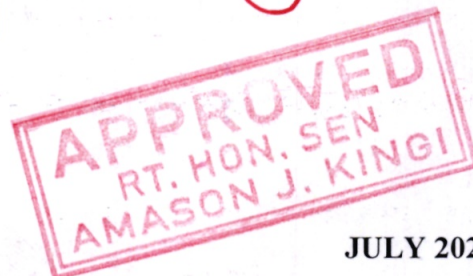
SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE SOCIAL HEALTH INSURANCE
(GENERAL) REGULATIONS, 2024
LEGAL NOTICE NUMBER 49 OF 2024
AND
THE SOCIAL HEALTH INSURANCE (TRIBUNAL PROCEDURE) RULES, 2024,
(LEGAL NOTICE NUMBER 48 OF 2024)

PAPERS LAID	
DATE	3/7/2024
TABLED BY	Majority Leader
COMMITTEE	Delegated Legislation
CLERK AT THE TABLE	Njagi

[Handwritten signature and date 03/07/24]

Clerk's Chambers,
The Senate,
Parliament Buildings
NAIROBI



JULY 2024

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ABBREVIATIONS AND ACRONYMS

CS	Cabinet Secretary
CoG	Council of Governors
KMA	Kenya Medical Association
KMPDU	Kenya Medical Practitioners, Pharmacists and Dentists Union
MoH	Ministry of Health
MDAs	Ministries, Departments and Agencies
NHIF	National Health Insurance Fund
PSC	Parliamentary Service Commission
RIA	Regulatory Impact Assessment
RMA	Regulation Making Authority
Sen	Senator
SHIF	Social Health Insurance Fund

CHAIRPERSON'S FOREWORD

Mr. Speaker,

Establishment of the Committee

The Senate Select Committee on Delegated Legislation is established under Standing Order 195 (1) of the Senate Standing Orders. The Committee is mandated to scrutinize statutory instruments to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013.

Membership of the Committee

The Select Committee on Delegated Legislation is comprised of the following members: -

- | | |
|--|---------------------------|
| 1. Sen. Mwenda Gataya Mo Fire, MP | - Chairperson |
| 2. Sen. Danson Buya Mungatana, MGH, MP | - Vice-Chairperson |
| 3. Sen. Joyce Chepkoech Korir, MP | - Member / VC, PSC |
| 4. Sen. Mohamed Mwinyihaji Faki, MP | - Member |
| 5. Sen. Agnes Kavindu Muthama, MP | - Member |
| 6. Sen. Daniel Kitonga Maanzo, MP | - Member |
| 7. Sen. Julius Murgor Recha, MP | - Member |
| 8. Sen. Betty Batuli Montet, MP | - Member |
| 9. Sen. Gloria Orwoba, MP | - Member |

Mr. Speaker,

In line with its mandate, the Committee received the Social Health Insurance (General) Regulations, 2024, (Legal Notice No. 49 of 2024) and the Social Health Insurance (Tribunal Procedure) Rules, 2024, (Legal Notice No. 48 of 2024) (“the two instruments”) for parliamentary scrutiny pursuant to Part IV of the Statutory Instruments Act, 2013.

These two instruments were both prepared by the Ministry of Health and published by the Cabinet Secretary on 8th March 2024. The regulations were forwarded to the Senate by the Cabinet Secretary, Ministry of Health, pursuant to section 11(1) of the Statutory Instruments Act, 2013. The regulations were tabled before the Senate on 20th March, 2024 and subsequently stood committed to the Senate Committee on Delegated Legislation. Pursuant to section 15(2) of the Statutory Instruments Act, the Committee was required to scrutinize the regulations up until 4th July 2024, after which the stipulated twenty-eight (28) sitting days from 20th March 2024 would have lapsed. The Regulations were drafted pursuant to Section 50 of the Social Health Insurance Act which states that—

“The Cabinet Secretary shall, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.”

Mr. Speaker,

In scrutinising the statutory instruments, the Committee was guided by the Constitution of Kenya, the Social Health Insurance Act (Act No. 16 of 2023) and the Statutory Instruments Act (Cap 2, Laws of Kenya).

Mr. Speaker,

The Committee has considered the two instruments and resolved to annul the Social Health Insurance (General) Regulations, 2024, (Legal Notice No. 49 of 2024) and the Social Health Insurance (Tribunal Procedure) Rules, 2024, (Legal Notice No. 48 of 2024). Kindly allow me to inform this Honourable House of the reasons why the Committee has reached a resolution to annul the two instruments. At the time of presentation before the Senate, the Regulation Making Authority, in this case the Cabinet Secretary for Health, provided the Committee with the

Regulatory Impact Statement, the Explanatory Memorandum, and a matrix detailing the public participation undertaken and the result of the consultations.

In the usual manner and pursuant to section 16 of the Statutory Instruments Act, the Committee invited the Cabinet Secretary for Health, the Council of Governors, the Kenya Medical Practitioners, Pharmacists and Dentists Union, alongside the Kenya Medical Association for a meeting on Thursday, 23rd May, 2024 to discuss the two regulations. Out of the invitees, only the Council of Governors and the Kenya Medical Association (KMA) attended the meeting. The Cabinet Secretary informed the Committee that she was away on official duty and therefore requested for another meeting date. The Committee agreed to meet with the Cabinet Secretary on another date but resolved to continue with the meeting with invited stakeholders.

The Committee invited the Cabinet Secretary for a second meeting on 19th June, 2024. On that date, the Cabinet Secretary did not attend the meeting but delegated the attendance to the Principal Secretary, State Department for Medical Services where various issues with regard to the Regulations were raised particularly on the lack of detailed evidence of public participation and the unavailability the tariffs. During this meeting the Principal Secretary did not satisfactorily address the issues raised by the stakeholders and the Committee.

The Committee invited the Cabinet Secretary for the third time for a meeting to be held on 25th June, 2024. The Cabinet Secretary neither attended this meeting nor issued a written response to the Committee's concerns.

Mr. Speaker,

During this meeting with the Council of Governors and the Kenya Medical Association, concerns were raised surrounding the readiness of the Ministry of Health to implement the Regulations by the commencement date i.e. 1st July, 2024.

Some of the concerns raised by the two stakeholders were that while it was a few weeks before the commencement of the Regulations—

- (i) the implementation of the Act and the Regulations required a highly digital environment. The Social Health Authority is expected to host a centralised digital platform that will on board all services and service providers. As at the date of this report, the system had not

been procured. It was the opinion of the stakeholders that operationalisation of the Digital Health Act, 2023 ought to have preceded that of the Social Health Insurance Act, 2023 in order to provide an infrastructure on which the latter would be based on;

- (ii) the Authority had not carried out means testing to determine contributions that will be paid by households whose income is not derived from salaried employment;
- (iii) Regulation 18(4) of the Social Health Insurance (General) Regulations requires the Social Health Authority in consultation with the Cabinet Secretary responsible for cooperatives, micro, small and medium enterprises development and other financing institutions to provide premium financing to non-salaried people to enable them pay the annual contributions within intervals under which their income becomes available. This provision makes an assumption that non-salaried people will get an income to pay off the loan. The Regulation Making Authority did not clarify how this provision will be implemented;
- (iv) the Authority had not conducted nationwide registration of contributors and beneficiaries;
- (v) the procedure of empanelment and accreditation of healthcare providers was not clear. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act. This body has not been established. In addition, Regulation 31 of the Social Health Insurance (General) Regulations contradicts section 33 of the Act by providing that the accreditation shall be done by the Social Health Authority;
- (vi) the Committee was concerned about the membership of the Benefits Package and Tariffs Advisory Panel. The membership of the Panel includes a chairperson nominated by the local public university, one person nominated by the Health Non-Governmental Organisations Network (HENNET) and one person nominated by development partners involved in health matters. There is a lack of clarity on the following matters—
 - the local public university to nominate the chairperson;
 - the rationale of having a public university nominating the chairperson;
 - the inclusion of development partners in a legal body to determine benefits under the Funds from Kenyan contributions raising the issues of sovereignty and conflict of interest between the development partners' mother states and Kenya;
 - the rationale of including HENNET, a non-governmental body with voluntary membership;

- the rationale of including the local public university instead of the Authority in the joint secretariat together with the Ministry of Health. There is no clarity on which public university is being referred to;

The establishment of the Benefits Package and Tariffs Advisory Panel in Regulation 41(2) of the Social Health Insurance (General) Regulations appears to make some unexpected or unusual use of powers conferred under the Act and ought to have been established in the Social Health Insurance Act and not subsidiary legislation;

- (vii) the tariffs to determine the benefits to be enjoyed by contributors and beneficiaries were not provided for in the Regulations and upon further inquiry, the Committee was informed that the tariffs had not been published;
- (viii) the stakeholders raised issue with the cross referencing in the Regulations with provisions that did not exist in the parent Act that is the Social Health Insurance, 2023. For instance, Primary Care Network is in the Regulations and not in the parent Act.
- (ix) on biometric registration, the stakeholders questioned the rationale behind registration of minors which in their opinion was unnecessary being that they are already dependants. The Social Health Authority in their opinion ought to use data already captured by the National Health Insurance Fund (NHIF).
- (x) the stakeholders further observed that the Regulations did not provide for verification of Doctor's registration details. There was need therefore to provide a portal for doctors to verify their details.

Mr. Speaker,

The Committee made further observations on the Social Health Insurance (General) Regulations as follows—

1) Public Participation

Public participation is the bedrock of Kenya's legislative process. Contrary to Article 10 and 118 of the Constitution of Kenya and Section 5A. (1)(d) and (e) of the Statutory Instruments Act, the Regulatory Making Authority did not submit evidence of an adequate post-drafting public participation for the Regulations that satisfactorily considered the issues from the public and stakeholders involved.

2) Inconsistency with the Social Health Act

Regulation 31 of the Social Health Insurance (General) Regulations is *ultra vires* to section 33 of the Social Health Insurance Act. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act while Regulation 31 provides that the accreditation shall be done by the Social Health Authority.

3) Scope of the Regulations

The Social Health Insurance Act, 2023 establishes a three-tier approach to funding health care that is the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund. In its explanatory memorandum, the Regulatory Making Authority explained the rationale of the three-tier approach which is a departure from the National Health Insurance Fund that was one fund financing all categories of health care. It also highlighted additional benefits to patients under the three-tier model and how the out-patient services will be covered.

Regulation 27(1) and (2) of the Social Health Insurance (General) Regulations provide for the transition from Social Health Insurance Fund to the Emergency, Chronic and Critical Illness Fund after depletion of the benefits package under the Social Health Insurance Fund.

The Regulatory Making Authority however failed to explain the benefit package of the fund, as well as elaborating the process of transiting from one fund to another upon depletion of benefits in one fund, that is, the notification, approval timelines and in instances where the approval could be declined, the appeals mechanism, and the way forward in case of an emergency where a patient has depleted benefits from one fund.

4) Means Testing

Regulation 21 of the Social Health Insurance (General) Regulations provides for means testing which is a method that uses a means testing instrument to determine whether an individual or a household has the ability to pay for their social health insurance premium. The means testing

instrument, as highlighted in the regulations, was to be used to collect data from households. The instrument shall be developed by the Cabinet Secretary for Health in collaboration with the Cabinet Secretary responsible for matters relating to social protection.

The Regulatory Making Authority however, could not elaborate on this instrument as a method of determining a households' ability to pay their premiums. The Regulatory Making Authority could neither explain the formula that was used to come up with the 2.75 % annual contribution per household income, nor how the means testing instrument could be challenged.

5) Transitional Provisions

The first schedule of the Social Health Insurance Act, 2023 on Transitional Provisions envisions a seamless transition from the National Health Insurance Fund (NHIF) to the Social Health Authority.

The Regulatory Making Authority could not highlight the measures that have been put in place to ensure services are not interrupted in the transition. There was no clarity on how the issue of timely reimbursements to health facilities had been dealt with in the Regulations.

6) Data Protection

The Social Health Authority intended to migrate a lot of data from NHIF as well as link personal data from the National Registration Bureau. Healthcare data is sensitive and attractive to cyber-criminals because they contain financial, health status and personal data which can be used in blackmail and fraudulent activities. Health data is also remarkably vulnerable to penetration because of the fluid and always-evolving nature of a patient's medical care and because of the number of clinicians, facilities and transactions required to connect patient care across multiple settings. The Regulatory Making Authority could not explain the measures it would take to ensure security of its systems from cyber-attack, considering the fact that the right to privacy and data protection is a constitutional right to every Kenyan.

Mr. Speaker,

After careful consideration of the Social Health Insurance (General) Regulations, 2024 and the Social Health Insurance (Tribunal Procedure) Rules, 2024 , pursuant to section 15 (1) of the Statutory Instruments Act and Standing Order 195(4)(b), the Select Committee on Delegated Legislation recommends that the Senate resolves that the Social Health Insurance (General) Regulations, 2024 (Legal Notice Number 49 of 2024), and the Social Health Insurance (Tribunal Procedure) Rules, 2024 (Legal Notice Number 48 of 2024) be annulled for the following reasons—

- (i) Contrary to Article 10 and 118 of the Constitution of Kenya and Section 5A. (1)(d) and (e) of the Statutory Instruments Act, the Regulatory Making Authority did not submit evidence of an adequate post-drafting public participation for the Regulations that satisfactorily considered the issues from the public and stakeholders involved.
- (ii) The Social Health Insurance (General) Regulations contained a matter which ought to have been dealt with by an Act of Parliament. The membership of the Benefits Package and Tariffs Advisory Panel established under Regulation 41(2) ought to have been established under the Social Health Insurance Act.
- (iii) Regulation 31 of the Social Health Insurance (General) Regulations is *ultra vires* to section 33 of the Social Health Insurance Act. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act while Regulation 31 provides that the accreditation shall be done by the Social Health Authority.
- (iv) The Regulatory Making Authority could not clarify the issues around the means testing instrument, the annual contribution formula per household income, the scope of the Regulations as well as data protection, role of counties, and the transitional provisions, as envisaged in the Regulations.

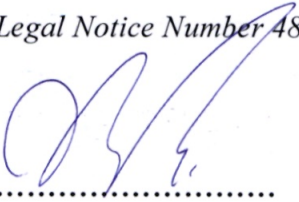
Mr. Speaker,

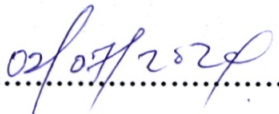
Acknowledgement

I wish to thank the members of the Committee for their unwavering commitment to scrutinizing this statutory instrument. I also wish to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat for the support extended to it in fulfilling its mandate. Additionally, I extend my appreciation to representatives from the Ministry of Health and the stakeholders who appeared before the Committee and made their submissions.

Mr. Speaker,

It is now my duty, pursuant to section 15 (1) of the Statutory Instruments Act and standing order 195 (4) (b) of the Senate Standing Orders, to present the report of the Select Committee on Delegated Legislation on the consideration of the Social Health Insurance (General) Regulations, 2024, *Legal Notice Number 49 of 2024*, and the Social Health Insurance (Tribunal Procedure) Rules, 2024, *Legal Notice Number 48 of 2024*

Signed.....

Date.....

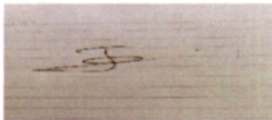
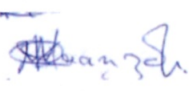
SEN. MWENDA GATAYA MO FIRE, MP

CHAIRPERSON

SELECT COMMITTEE ON DELEGATED LEGISLATION

**ADOPTION OF THE REPORT OF THE SELECT COMMITTEE ON DELEGATED
LEGISLATION ON THE CONSIDERATION OF THE SOCIAL HEALTH INSURANCE
(GENERAL) REGULATIONS, 2024, AND THE SOCIAL HEALTH INSURANCE
(TRIBUNAL PROCEDURE) RULES, 2024**

**We, the undersigned Members of the Select Committee on Delegated Legislation, do hereby
append our signatures to adopt the Report to annul the Social Health Insurance (General)
Regulations, 2024(*Legal Notice Number 49 of 2024*) and the Social Health Insurance
(Tribunal Procedure) Rules, 2024, (*Legal Notice Number 48 of 2024*)**

1. Sen. Mwenda Gataya Mo Fire, MP – Chairperson
2. Sen. Danson Buya Mungatana, MGH, MP – Vice-Chairperson
3. Sen. Joyce Chepkoech Korir, MP – Member / VC, PSC
- 
4. Sen. Mohamed Mwinyihaji Faki, MP  – Member
5. Sen. Agnes Kavindu Muthama, MP  – Member
6. Sen. Daniel Kitonga Maanzo, MP – Member
- 
7. Sen. Julius Murgor Recha, MP – Member
8. Sen. Betty Batuli Montet, MP  – Member
9. Sen. Gloria Orwoba, MP – Member

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

1. Section 2 of the Statutory Instruments Act defines a statutory instrument as follows—

“statutory instrument” means any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

2. Section 11 of the Statutory Instruments Act provides as follows-

11. Laying of statutory instruments before Parliament

- (1) Every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.*
- (2) Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of the Constitution, all regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.*
- (3) The responsible Clerk shall register or cause to be registered every statutory instrument transmitted to the respective House for tabling or laying under this Part.*
- (4) If a copy of a statutory instrument that is required to be laid before the relevant House of Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.*

3. In line with its mandate, the Committee received the Social Health Insurance (General) Regulations 2024, (Legal Notice Number 49 of 2024) and the Social Health Insurance

(Tribunal Procedures) 2024, (Legal Notice Number 48 of 2024) for parliamentary scrutiny pursuant to Part IV of the Statutory Instruments Act.

4. The Regulations were published by the Cabinet Secretary in charge of Health, pursuant to Section 50 of the Social Health Insurance Act, 2023 which empowers the Cabinet Secretary, in consultation with the Board, to make Regulations for the better carrying out of the provisions of the Act; while the Rules were published pursuant to section 44(6) of the Social Health Insurance Act which empowers the Cabinet Secretary to prescribe procedures for the operationalization of the tribunal.
5. The Social Health Insurance (General) Regulations, 2024, and the Social Health Insurance (Tribunal Procedure) Rules, 2024 were prepared by the Ministry of Health and published by the Cabinet Secretary on 8th March 2024.
6. The regulations were forwarded to the Senate pursuant to section 11(1) of the Statutory Instruments Act. The Regulations were tabled before the Senate on 20th March 2024 and subsequently stood committed to the Senate Committee on Delegated Legislation. Pursuant to section 15(2) of the Statutory Instruments Act, the Committee was required to scrutinize the regulations up until 4th July, 2024, after which the stipulated twenty-eight (28) sitting days from its referral date would have lapsed.

1.2 SCRUTINY OF THE REGULATIONS

7. In scrutinizing the statutory instruments, the Committee considered whether the instruments conforms—
 - i) to the letter and spirit of the Constitution;
 - ii) the Social Health Insurance Act (Act No. 16 of 2023)
 - iii) with the Statutory Instruments Act, 2013(Cap 2, Laws of Kenya)
8. Pursuant to section 16 of the Statutory Instruments Act, the Committee invited the Cabinet Secretary for Health, the Council of Governors, the Kenya Medical Practitioners, Pharmacists and Dentists Union, alongside the Kenya Medical Association for a meeting on 23rd May, 2024 to discuss the two regulations.

9. Out of the invitees, only the Council of Governors and the Kenya Medical Association (KMA) attended the meeting. The Cabinet Secretary informed the Committee that she was away on official duty and therefore requested for another meeting date. The Committee agreed to meet with the Cabinet Secretary on another date but resolved to continue with the meeting with invited stakeholders.
10. Some of the concerns raised by the stakeholders and observed by the Committee were that while it was a few weeks before the commencement of the Regulations—
 - (a) the implementation of the Act and the Regulations required a highly digital environment. The Social Health Authority is expected to host a centralised digital platform that will on board all services and service providers. As at the date of this report, the system had not been procured. It was the opinion of the stakeholders that operationalisation of the Digital Health Act, 2023 ought to have preceded that of the Social Health Insurance Act, 2023 in order to provide an infrastructure on which the latter would be based on;
 - (b) the Authority had not carried out means testing to determine contributions that will be paid by households whose income is not derived from salaried employment;
 - (c) Regulation 18(4) of the Social Health Insurance (General) Regulations requires the Social Health Authority in consultation with the Cabinet Secretary responsible for cooperatives, micro, small and medium enterprises development and other financing institutions to provide premium financing to non-salaried people to enable them pay the annual contributions within intervals under which their income becomes available. This provision makes an assumption that non-salaried people will get an income to pay off the loan. The Regulation Making Authority did not clarify how this provision will be implemented;
 - (d) the Authority had not conducted nationwide registration of contributors and beneficiaries;
 - (e) the procedure of empanelment and accreditation of healthcare providers was not clear. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act. This body has not been established. In addition, Regulation

- 31 of the Social Health Insurance (General) Regulations contradicts section 33 of the Act by providing that the accreditation shall be done by the Social Health Authority;
- (f) the Committee was concerned about the membership of the Benefits Package and Tariffs Advisory Panel. The membership of the Panel includes a chairperson nominated by the local public university, one person nominated by the Health Non-Governmental Organisations Network (HENNET) and one person nominated by development partners involved in health matters. There is a lack of clarity on the following matters—
- the local public university to nominate the chairperson;
 - the rationale of having a public university nominating the chairperson;
 - the inclusion of development partners in a legal body to determine benefits under the Funds from Kenyan contributions raising the issues of sovereignty and conflict of interest between the development partners' mother states and Kenya;
 - the rationale of including HENNET, a non-governmental body with voluntary membership;
 - the rationale of including the local public university instead of the Authority in the joint secretariat together with the Ministry of Health. There is no clarity on which public university is being referred to;
- (g) The establishment of the Benefits Package and Tariffs Advisory Panel in Regulation 41(2) of the Social Health Insurance (General) Regulations appears to make some unexpected or unusual use of powers conferred under the Act and ought to have been established in the Social Health Insurance Act and not subsidiary legislation;
- (h) the tariffs to determine the benefits to be enjoyed by contributors and beneficiaries were not provided for in the Regulations and upon further inquiry, the Committee was informed that the tariffs had not been published;
- (i) the stakeholders raised issue with the cross referencing in the Regulations with provisions that did not exist in the parent Act that is the Social Health Insurance, 2023. For instance, Primary Care Network is in the Regulations and not in the parent Act.
- (j) on biometric registration, the stakeholders questioned the rationale behind registration of minors which in their opinion was unnecessary being that they are already

dependants. The Social Health Authority in their opinion ought to use data already captured by the National Health Insurance Fund (NHIF).

(k) the stakeholders further observed that the Regulations did not provide for verification of Doctor's registration details. There was need therefore to provide a portal for doctors to verify their details.

11. The Committee invited the Cabinet Secretary for a second meeting on 19th June, 2024. On that date, the Cabinet Secretary did not attend the meeting but delegated the attendance to the Principal Secretary, State Department for Medical Services where various issues with regard to the Regulations were raised particularly on the lack of detailed evidence of public participation and the unavailability of the tariffs. During this meeting the Principal Secretary did not satisfactorily address the issues raised by the stakeholders and the Committee.
12. The Committee invited the Cabinet Secretary for the third time for a meeting to be held on 25th June, 2024. The Cabinet Secretary neither attended this meeting nor issued a written response to the Committee's concerns.

1.2.1 Conformity with the Constitution of Kenya, 2010

13. Article 10 of the Constitution of Kenya states that the national values and principles of governance bind all State organs, State officers, public officers and all persons whenever they enact any law or make public policy decisions. Article 10(2)(a) further lists public participation as being one of the national values and principles of governance. In the explanatory memorandum forwarded to the Committee, the Cabinet Secretary stated that the Ministry called for submissions from public, and stakeholders from private entities as well as public officers and members of the public.
14. Article 43 (1) of the Constitution of Kenya, 2010, provide for the right of every person to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; to accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security; and to education. Article 43 (2) and (3) provides that every person shall not be denied emergency medical treatment; and that State shall provide appropriate social security to persons who are unable

to support themselves and their dependants. The regulations were intended to create a framework for the implementation of the Social Health Insurance Act, to advance the realisation of social and economic rights under Article 43(1) of the Constitution of Kenya.

15. The legislative power was delegated under an Act of Parliament i.e., the Social Health Insurance Act, 2023 which delegates the regulation making power to the Cabinet Secretary dealing with matters of health in the country.
16. The Fourth Schedule of the Constitution indicates that provision of primary healthcare is a devolved function of county governments, while the national government, through the Ministry of Health, retains the role of policy making and implementation, under its mandate. The regulations are limited the implementation of the Social Health Insurance Act.
17. Based on this reason, there was need for the regulations and rules to take notice of the importance of the county government as key pillars for implementation of such regulations to the public, at the county level. The role of the counties in relation to these regulations and rules, was not clear. Moreover, the Committee could not ascertain and verify from the documentary responses submitted by the Ministry, the extent to which the input from the counties, through the Council of Governors submissions during public participation and stakeholder engagements were considered and incorporated into the final regulations.

1.2.2 Compliance with the Statutory Instruments Act, 2013.

1.2.2.1 Explanatory Memorandum

18. Sections 5 and 5A of the Act requires the regulation-making body to consult persons who are likely to be affected by an instrument. It ought to explain in detail in an explanatory memorandum that consultations were carried out, the scope, the outcome of such consultations, the changes made on the legislation after the public consultations and an explanation on the lack of public consultation if none was done.
19. The explanatory memorandum that had been provided to the Committee by the Cabinet Secretary stated that the primary cause for the proposed regulations is that the Social Health Insurance Act, 2013 requires frameworks for the implementation of the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund established in the Act. It further requires the mandatory registration of every person resident

in Kenya pursuant to section 26(1) of the Act and the mode of payment of contributions pursuant to section 27(1) and (2) of the Act.

20. The memorandum also stated that the purpose of the Social Health Insurance (Tribunal Procedures) Rules, 2024 is the need for a Dispute Resolution Tribunal as established under section 44 of the Social Health Insurance Fund Act, 2023 for the purpose of hearing and determining complaints, disputes and appeals arising from the Act.
21. The Cabinet Secretary stated that the Regulations were not amending another statutory instrument, and thus they did not require consolidation as required by the Statutory Instruments Act.
22. Contrary to Section 5A.(1)(d) and (e) of the Statutory Instruments Act, 2013 the regulatory making authority did not submit evidence of an adequate post-drafting public participation for both the Regulations and the Rules that satisfactorily considered the issues from the public and stakeholders involved.

1.2.2.2 Regulatory Impact Statement

23. Sections 6, 7 and 8 of the Statutory Instruments Act provides for the need for the regulation making authority to prepare a regulatory impact statement if a statutory instrument is likely to impose significant costs on the community or a part of the community. The regulatory impact statement should explain the objectives of the statutory rule, the effect of the proposed regulation, a statement of other practicable means of achieving those objectives, an assessment of the cost and benefits of the proposed rules and reasons why other means are not appropriate.
24. The Regulatory Impact Statement (“RIS”) was provided to accompany the regulations for parliamentary scrutiny. However, the Ministry in its submissions failed to explain the financial implication of the application of the Rules and the Regulations to the public, and why other means for achieving the objectives of the instruments were not considered.

CHAPTER TWO

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

2.1 COMMITTEE OBSERVATIONS

25. The Committee made the following observations—

(a) Public Participation

26. The Committee received the Explanatory Memorandum explaining the nature and extent of public participation undertaken. The Committee also received and considered the matrix of comments received from stakeholders that were consulted.

27. Public participation, as the bedrock of Kenya's legislative process, has been entrenched in the Constitution under Article 10 as a national value and principle of governance and is binding on all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements public policy decisions.

28. The Supreme Court in *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others* laid down the following guiding principles for public participation—

- (a) as a constitutional principle under Article 10(2) of the Constitution, public participation applies to all aspects of governance;
- (b) the public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation;
- (c) the lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means;
- (d) public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation;
- (e) public participation is not an abstract notion; it must be purposive and meaningful;
- (f) public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis;

- (g) public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process;
- (h) allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis;
- (i) components of meaningful public participation include the following:
 - (i) *clarity of the subject matter for the public to understand;*
 - (ii) *structures and processes (medium of engagement) of participation that are clear and simple;*
 - (iii) *opportunity for balanced influence from the public in general;*
 - (iv) *commitment to the process;*
 - (v) *inclusive and effective representation;*
 - (vi) *integrity and transparency of the process;*
 - (vii) *capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.*

29. Additionally, the High Court in ***Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others [2015] eKLR*** held that—

“First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter. It is the government agency or Public Official who is to craft the modalities of public participation but in so doing the government agency or Public Official must take into account both the quantity and quality of the governed to participate in their own governance...

Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness...

Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information....

Fourth, public participation does not dictate that everyone must give their views on an issue... To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme... must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.

Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme. The government agency or Public Official cannot merely be going through the motions or engaging in democratic theatre so as to tick the Constitutional box."

30. From the above judgments from the Courts, it is apparent that public participation must be real and not illusory. This is why section 5A(1)(e) provides that the explanatory memorandum should explain any changes made to the legislation as a result of the public participation.
31. From the engagement with the stakeholders and from the Committee's own observations, serious matters arose namely—

(a) the implementation of the Act and the Regulations required a highly digital environment. The Social Health Authority is expected to host a centralised digital

platform that will on board all services and service providers. As at the date of this report, the system had not been procured. It was the opinion of the stakeholders that operationalisation of the Digital Health Act, 2023 ought to have preceded that of the Social Health Insurance Act, 2023 in order to provide an infrastructure on which the latter would be based on;

- (b) the Authority had not carried out means testing to determine contributions that will be paid by households whose income is not derived from salaried employment;
- (c) Regulation 18(4) of the Social Health Insurance (General) Regulations requires the Social Health Authority in consultation with the Cabinet Secretary responsible for cooperatives, micro, small and medium enterprises development and other financing institutions to provide premium financing to non-salaried people to enable them pay the annual contributions within intervals under which their income becomes available. This provision makes an assumption that non-salaried people will get an income to pay off the loan. The Regulation Making Authority did not clarify how this provision will be implemented;
- (d) the Authority had not conducted nationwide registration of contributors and beneficiaries;
- (e) the procedure of empanelment and accreditation of healthcare providers was not clear. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act. This body has not been established. In addition, Regulation 31 of the Social Health Insurance (General) Regulations contradicts section 33 of the Act by providing that the accreditation shall be done by the Social Health Authority;
- (f) the Committee was concerned about the membership of the Benefits Package and Tariffs Advisory Panel. The membership of the Panel includes a chairperson nominated by the local public university, one person nominated by the Health Non-Governmental Organisations Network (HENNET) and one person nominated by development partners involved in health matters. There is a lack of clarity on the following matters—
 - the local public university to nominate the chairperson;
 - the rationale of having a public university nominating the chairperson;

- the inclusion of development partners in a legal body to determine benefits under the Funds from Kenyan contributions raising the issues of sovereignty and conflict of interest between the development partners' mother states and Kenya;
- the rationale of including HENNET, a non-governmental body with voluntary membership;
- the rationale of including the local public university instead of the Authority in the joint secretariat together with the Ministry of Health. There is no clarity on which public university is being referred to;

The establishment of the Benefits Package and Tariffs Advisory Panel in Regulation 41(2) of the Social Health Insurance (General) Regulations appears to make some unexpected or unusual use of powers conferred under the Act and ought to have been established in the Social Health Insurance Act and not subsidiary legislation;

- (g) the tariffs to determine the benefits to be enjoyed by contributors and beneficiaries were not provided for in the Regulations and upon further inquiry, the Committee was informed that the tariffs had not been published;
- (h) the stakeholders raised issue with the cross referencing in the Regulations with provisions that did not exist in the parent Act that is the Social Health Insurance, 2023. For instance, Primary Care Network is in the Regulations and not in the parent Act.
- (i) on biometric registration, the stakeholders questioned the rationale behind registration of minors which in their opinion was unnecessary being that they are already dependants. The Social Health Authority in their opinion ought to use data already captured by the National Health Insurance Fund (NHIF).
- (j) the stakeholders further observed that the Regulations did not provide for verification of Doctor's registration details. There was need therefore to provide a portal for doctors to verify their details.

32. The Committee observed that these issues ought to have been addressed at the public participation stage. The existence of such matters after the Regulations had been published raised the question of whether the public participation was qualitative. There was no explanation from the Regulation Making Authority on how the Regulations changed after the

public participation. As such, the Committee observed that public participation was not qualitative and was therefore contrary to Article 10 of the Constitution.

(b) Inconsistency with the Social Health Act

33. The Committee observed that Regulation 31 of the Social Health Insurance (General) Regulations is *ultra vires* to section 33 of the Social Health Insurance Act. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act while Regulation 31 provides that the accreditation shall be done by the Social Health Authority.
34. Subsidiary legislation cannot override an Act of Parliament. This is provided for in section 31(b) of the Interpretations and General Provisions Act (Cap. 2, Laws of Kenya) which states that—

“31. Where an Act confers power on an authority to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of the subsidiary legislation—

....

(b) no subsidiary legislation shall be inconsistent with the provisions of an Act”

(c) Compliance with the Statutory Instruments Act

35. Section 13 of the Statutory Instruments Act contains relevant considerations to be applied by the Committee in the scrutiny of statutory instruments.
36. The Social Health Insurance (General) Regulations appears to make some unexpected or unusual use of powers conferred under the Social Health Act. Specifically, the Benefits Package and Tariffs Advisory Panel established under Regulation 41(2) of the Social Health Insurance (General) Regulations is a significant matter which ought to have been established in the Social Health Insurance Act and not subsidiary legislation. This is contrary to section 13(c) of the Statutory Instruments Act.

37. Additionally, section 13 (q) of the Statutory Instruments Act allows the Committee to consider any other reasons discussed in the following paragraphs—

(i) Scope of the Regulations

38. The Social Health Insurance Act, 2023 establishes a three-tier approach to funding health care that is the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund. In its explanatory memorandum, the Regulatory Making Authority explained the rationale of the three-tier approach which is a departure from the National Health Insurance Fund that was one fund financing all categories of health care. It also highlighted additional benefits to patients under the three-tier model and how the out-patient services will be covered.
39. Regulation 27(1) and (2) of the Social Health Insurance (General) Regulations provide for the transition from Social Health Insurance Fund to the Emergency, Chronic and Critical Illness Fund after depletion of the benefits package under the Social Health Insurance Fund.
40. The Regulatory Making Authority however failed to explain the benefit package of the fund, as well as elaborating the process of transiting from one fund to another upon depletion of benefits in one fund, that is, the notification, approval timelines and in instances where the approval could be declined, the appeals mechanism, and the way forward in case of an emergency where a patient has depleted benefits from one fund.

(ii) Means Testing

41. Regulation 21 of the Social Health Insurance (General) Regulations provides for means testing which is a method that uses a means testing instrument to determine whether an individual or a household has the ability to pay for their social health insurance premium. The means testing instrument, as highlighted in the regulations, was to be used to collect data from households. The instrument shall be developed by the Cabinet Secretary for Health in collaboration with the Cabinet Secretary responsible for matters relating to social protection.
42. The Regulatory Making Authority however, could not elaborate on this instrument as a method of determining a households' ability to pay their premiums. The Regulatory Making Authority could neither explain the formula that was used to come up with the 2.75 % annual

contribution per household income, nor how the means testing instrument could be challenged.

(iii) Transitional Provisions

43. The first schedule of the Social Health Insurance Act, 2023 on Transitional Provisions envisions a seamless transition from the National Health Insurance Fund (NHIF) to the Social Health Authority.
44. The Regulatory Making Authority could not highlight the measures that have been put in place to ensure services are not interrupted in the transition. There was no clarity on how the issue of timely reimbursements to health facilities had been dealt with in the Regulations.

(iv) Data Protection

45. The Social Health Authority intended to migrate a lot of data from NHIF as well as link personal data from the National Registration Bureau. Healthcare data is sensitive and attractive to cyber-criminals because they contain financial, health status and personal data which can be used in blackmail and fraudulent activities. Health data is also remarkably vulnerable to penetration because of the fluid and always-evolving nature of a patient's medical care and because of the number of clinicians, facilities and transactions required to connect patient care across multiple settings. The Regulatory Making Authority could not explain the measures it would take to ensure security of its systems from cyber-attack, considering the fact that the right to privacy and data protection is a constitutional right to every Kenyan.

2.2 COMMITTEE RECOMMENDATIONS

46. Based on the observations made, the Committee therefore makes the following recommendations—

After careful consideration of the Social Health Insurance (General) Regulations, 2024 and the Social Health Insurance (Tribunal Procedure) Rules, 2024 , pursuant to section 15 (1) of the Statutory Instruments Act and Standing Order 195(4)(b), the Select Committee on Delegated Legislation recommends that the Senate resolves that the Social Health Insurance (General) Regulations, 2024 (Legal Notice Number 49 of 2024), and the Social Health

Insurance (Tribunal Procedure) Rules, 2024 (Legal Notice Number 48 of 2024) be annulled for the following reasons—

- (i) Contrary to Article 10 and 118 of the Constitution of Kenya and Section 5A. (1)(d) and (e) of the Statutory Instruments Act, the Regulatory Making Authority did not submit evidence of an adequate post-drafting public participation for the Regulations that satisfactorily considered the issues from the public and stakeholders involved.
- (ii) The Social Health Insurance (General) Regulations contained a matter which ought to have been dealt with by an Act of Parliament. The membership of the Benefits Package and Tariffs Advisory Panel established under Regulation 41(2) ought to have been established under the Social Health Insurance Act.
- (iii) Regulation 31 of the Social Health Insurance (General) Regulations is *ultra vires* to section 33 of the Social Health Insurance Act. Section 33 of the Social Health Act provides that the accreditation of healthcare providers under the Act shall be done by a body responsible for accreditation to be established under the Act while Regulation 31 provides that the accreditation shall be done by the Social Health Authority.
- (iv) The Regulatory Making Authority could not clarify the issues around the means testing instrument, the annual contribution formula per household income, the scope of the Regulations as well as data protection, role of counties, and the transitional provisions, as envisaged in the Regulations.

ANNEXURES

Annex 1	Social Health Insurance (General) Regulations, 2024, (Legal Notice Number 49 Of 2024)
Annex 2	The Social Health Insurance (Tribunal Procedure) Rules, 2024, (Legal Notice Number 48 Of 2024)
Annex 3	Minutes of the Select Committee on Delegated Legislation

SPECIAL ISSUE

Kenya Gazette Supplement No. 60

733

8th March, 2024

(Legislative Supplement No. 28)

LEGAL NOTICE NO. 49

THE SOCIAL HEALTH INSURANCE ACT

(No. 16 of 2023)

THE SOCIAL HEALTH INSURANCE REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

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THE SOCIAL HEALTH INSURANCE ACT

(No. 16 of 2023)

IN EXERCISE of the powers conferred by section 50 of the Social Health Insurance Act, 2023, the Cabinet Secretary for Health, in consultation with the Board, makes the following Regulations—

THE SOCIAL HEALTH INSURANCE REGULATIONS, 2024

PART I —PRELIMINARY

1. These Regulations may be cited as the Social Health Insurance Regulations, 2024. Citation.
2. In these Regulations, unless the context otherwise requires — Interpretation.

“Act” means the Social Health Insurance Act, 2023; No. 16 of 2023.

“ambulance” means an appropriately equipped and authorized vehicle either used on land, water or on air, that is designed or adapted to treat or convey a patient in an emergency care situation, marked in such a way as to indicate the category of medical care and transportation of the said vehicle and staffed with licensed ambulance service personnel;

“applicant” means a person who has made a request for registration by the Authority under the Act and these Regulations;

“Authority” means the Social Health Authority established under section 4 of the Act;

“base premium” means regular payments made to the Authority, in exchange for coverage, to cover the cost of healthcare coverage to enable contributors access various healthcare services and benefits in accordance with the Act and these Regulations;

“beneficiary” means a person who —

 - (a) is a contributor;
 - (b) has not attained the age of twenty-one years, has no income of his own and is living with the contributor;
 - (c) has not attained the age of twenty-five years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award;
 - (d) is a person with disability and is wholly dependent on and living with the contributor; or
 - (e) is a spouse of the contributor;

“biometric” means a physical or biological attribute including a fingerprint, hand geometry, earlobe geometry, retina or iris pattern, toe impression, voice wave or blood typing in a digital form or such other biological attributes that identifies an individual;

“biometric data” includes fingerprint, hand geometry, earlobe geometry, retina or iris patterns, toe impression, voice waves, blood typing, photograph or such other biological attributes of an individual obtained by way of biometrics;

“Board” means the Board of the Authority established under section 7 of the Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to health;

“child” means an individual who has not attained the age of eighteen years;

“chronic illness” means a condition that lasts one year or more and requires ongoing medical attention or limits activities of daily living or both;

“claim settling agent” means a person who engages in the business of settling or negotiating insurance claims under policies issued by insurers whether in Kenya or outside Kenya;

“contracting” means the entering into a formal agreement with an empanelled health care provider or healthcare facility for purposes of provision of services;

“contributor” means a person liable to contribute to the Social Health Insurance Fund as provided under section 27 of the Act;

“critical illness” means a serious and potentially life-threatening condition that demands urgent medical intervention and can have a substantial impact on a person’s health, well-being and quality of life;

“Tribunal” means the Dispute Resolution Tribunal established under section 44 of the Act;

“emergency services” includes services that provide urgent prehospital care of critically ill or injured patients prior to transportation to definitive care;

“emergency treatment” means the necessary immediate healthcare that must be administered to prevent death or worsening of a medical situation;

“empanelment” means enrolment of a health care provider into the list of health care service facilities approved by the Board;

“guardian” has the meaning assigned to it under the Children Act;

Cap. 141.

“health facility” means 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 treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;

“healthcare provider” means a person who provides healthcare services and includes a healthcare professional;

“healthcare services” means the prevention, promotion, management or alleviation of disease, illness, injury, and other physical and mental impairments in individuals, delivered by healthcare professionals through the healthcare system's routine health services, or its emergency health services;

“health technology assessment” means a multi-disciplinary process that uses explicit methods to determine the value of a health technology at different points in its life cycle to inform decision making in order to promote equitable, efficient and high quality systems;

“household” means a social unit comprising of an eligible contributor, whether contributing by self or paid for, and their beneficiaries, or who share the same social-economic needs associated with consumption and production;

“hub” means a primary health care referral facility which should be a level four facility;

“identity card” means the identity card issued under section 9 of the Registration of Persons Act;

Cap. 107.

“intervention” includes health services, medicines, vaccines or devices that have the potential to improve the health of individuals and populations;

“level 4 primary health care referral facility” means a health facility designated as a hub pursuant to the Primary Health Care Act, 2023;

No. 13 of 2023.

“*loco parentis*” means a person who is responsible for a child in place of a parent and performs functions or responsibilities of a parent;

“means testing” means a method that uses the means testing instrument to determine whether an individual or a household has the ability to pay for their social health insurance premium;

“medical insurance provider” means an intermediary, other than a broker, concerned with the placing of medical insurance business with an insurer for, or in expectation of, payment by way of a commission, fee or other remuneration;

“identification document” includes—

- (a) a Social Health Authority number;
- (b) a minor Social Health Authority number;
- (c) an identity card;
- (d) a student identity card;
- (e) a passport;
- (f) in the case of a child, a birth certificate or a birth notification;
- (g) a prison admission number;
- (h) an identification number issued to a person held in remand or police custody;

- (i) the admission number of the children's remand home, rehabilitation institution or borstal institution;
- (j) an asylum-seeker pass;
- (k) a movement pass;
- (l) a letter of recognition;
- (m) a refugee identification card; or
- (n) a conventional travel document;

"pre-authorization" means the restriction placed on a specified healthcare service under the benefits package offered by the Authority which obligates the healthcare provider or health facility to seek permission from the Authority before providing the specified healthcare service for purposes of determining whether a beneficiary's cover caters for the costs of the healthcare service sought;

"pre-hospital care" includes emergency medical care provided to patients in settings other than a health facility;

"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 levels 1, 2 and 3 of health services, to meet their health needs at every stage of the life cycle, with their full participation and at an affordable cost to the community and the county;

"Primary Health Care Network" means an administrative health region comprising of a hub and spokes established to deliver access to primary health care services for patients, as well as to coordinate with other hospitals in order to improve the overall operational efficiency of the network;

"referral" means the process by which a given health facility transfers a client service, specimen and client parameters to another facility to assume responsibility for consultation, review or further management;

"registration" means the process of collecting specified data from an individual for the purpose of access to the services under the Act and these Regulations;

"registration point" includes—

- (a) any of the branches of the Authority;
- (b) Huduma Centres; and
- (c) such other place or form as may be designated by the Authority;

"repealed Act" means the National Health Insurance Fund Act; Cap 255.

"resident" means a citizen of Kenya or a non-citizen who has been granted lawful residence in Kenya; and

"Social Health Insurance Fund" means the Fund established under section 25 of the Act.

3. The object of these Regulations is to give effect to the provisions of the Act by—
- (a) facilitating the enforcement of mandatory registration of every person resident in Kenya pursuant to section 26(1) of the Act; and
- (b) facilitating access to the highest attainable standard of health care.
4. These Regulations shall apply in respect to —
- (a) implementation of the Primary Healthcare Fund; and
- (b) implementation of the Social Health Insurance Fund;
- (c) implementation of the Emergency, Chronic and Critical Illness Fund;
- (d) empanelment and contracting of healthcare providers and health facilities;
- (e) benefits accruing to contributors and their beneficiaries;
- (f) determination of the tariffs applicable;
- (g) procedures for settlement of claims; and
- (h) processes and services under the Act.
- PART II – IMPLEMENTATION OF THE PRIMARY HEALTHCARE FUND**
5. The Primary Healthcare Fund shall be used to—
- (a) purchase primary healthcare services from primary healthcare facilities or a level 4 primary health care referral facility designated by the Authority for purposes of access to services under the Primary Healthcare Fund;
- (b) pay health facilities for the provision of quality primary healthcare services based on the tariffs prescribed pursuant to section 32 (2) of the Act; and
- (c) establish a pool for receipt and payment of funds for primary healthcare in the country.
6. (1) Every person resident in Kenya shall access primary health care services in accordance with Section 4 of the Primary Health Care Act, 2023.
- (2) A person shall register as a member of the Social Health Insurance Fund for purposes of subregulation (1).
- (3) Where a person using the social health insurance cover is referred for further review, treatment and management from a primary health facility to a level 4, 5 or 6 health facility, that person shall comply with the provisions of section 27(1) and (2) of the Act.
7. (1) A person registered as a member of the Social Health Insurance Fund shall access facility-based primary health care services as provided for in the Primary Health Care Act, 2023 purchased under the Primary Healthcare Fund.

Object of the Regulations.

Application of the Regulations.

Purpose of the Primary Healthcare Fund.

Access to primary health care services. No. 13 of 2023.

Services offered under the Primary Healthcare Fund. No. 13 of 2023.

(2) Facility-based primary health care services shall be accessed through a level 2 or level 3 health facility or a level 4 primary health care referral facility empanelled and contracted by the Authority:

Provided that the level 4 primary health care referral facility shall be designated by the Authority for purposes of access to facility-based primary health care services purchased under the Primary Healthcare Fund.

(3) The Authority shall, using monies from the Primary Healthcare Fund, purchase from a health facility the primary healthcare services specified in the benefits package set out in the Second Schedule to these Regulations.

(4) A health facility shall provide the primary healthcare services contracted under subregulation (3) in accordance with the tariffs prescribed pursuant to section 32 (2) of the Act.

8. (1) For purposes of expenditure out of the Primary Healthcare Fund as provided under section 22 of the Act, a health facility shall lodge a claim with the Claims Management Office for the payment of any facility-based primary health care service.

Payments out of
the Primary
Healthcare Fund.

(2) The Authority shall pay the claims lodged based on the tariffs prescribed pursuant to section 32 (2) of the Act.

(3) A claim lodged under this regulation shall be processed in the manner set out in Part VIII of these Regulations.

9. The Authority shall mobilize resources for the Primary Healthcare Fund for the purchase of primary healthcare services from primary health facilities for purposes of section 21 (b) and (d) of the Act.

Financing.

PART III – IMPLEMENTATION OF THE SOCIAL HEALTH INSURANCE FUND

10. The Social Health Insurance Fund established under section 25 of the Act shall be used to—

Purpose of the
Social Health
Insurance Fund.

- (a) establish a pool of all contributions made under the Act;
- (b) purchase healthcare services from empanelled and contracted healthcare providers and health facilities on referral from primary health facilities;
- (c) pay for the provision of quality healthcare services to beneficiaries under the Act offered by empanelled and contracted—
 - (i) healthcare providers; and
 - (ii) level 4, 5 and 6 health facilities;
- (d) receive funds appropriated by the National Assembly as contributions for indigents, vulnerable persons and persons under lawful custody; and

- (e) receive gifts, grants, innovative financing mechanisms or donations made into the Social Health Insurance Fund.

11. (1) Upon the coming into force of these Regulations, every person resident in Kenya shall apply to the Authority for registration as a member of the Social Health Insurance Fund pursuant to section 26(1) of the Act not later than the 30th June, 2024.

Initial registration.

(2) Payment of contributions and access to healthcare services under the Act and these Regulations shall commence on the 1st July 2024.

(3) The data of the National Health Insurance Fund under the repealed Act shall be retained until all claims have been settled.

(4) The application under subregulation (1) shall be made in Form 1 set out in the First Schedule to these Regulations and shall be accompanied by—

- (a) a copy of the identity card of the applicant; or
- (b) in the case of a person without an identity card, any other identification document as provided in regulation 2.

(5) The Authority shall ensure that the Centralized Digital Platform, established under regulation 64, provides for the taking of real-time photographs of an applicant when processing an application made under subregulation (1).

(6) Despite the provisions of subregulation (4), an application by a child with no form of identification shall be accompanied by documentation provided by the state department responsible for social protection for purposes of registration of the child.

(7) The Authority shall, upon examining the application and the information provided in the application, register the applicant as a member of the Social Health Insurance Fund and shall assign to each beneficiary a Social Health Authority number.

(8) The Authority shall, upon successful registration, notify the applicant of the registration within fourteen days from the date of the registration.

(9) A beneficiary shall provide his or her biometric data at a designated registration point.

(10) The Authority shall make special arrangements including availing mobile registration services, for the registration of persons with disability, older persons, persons under lawful custody, the marginalized communities and persons incapacitated by illness.

(11) The Authority shall comply with the provisions of the Data Protection Act and the Digital Health Act, 2023 in the processing of personal data.

Cap. 411C.
No. 15 of 2023.

12. (1) A contributor may declare beneficiaries in the application Form 1 set out in the First Schedule to these Regulations, at the time of registration to enable the beneficiaries to access the benefits under his or her cover.

Registration of
beneficiaries.

(2) A contributor seeking to include a beneficiary in his or her application shall provide particulars including —

- (a) the full name of the beneficiary;
- (b) the date of birth of the beneficiary;
- (c) the place of birth of the beneficiary;
- (d) the sex of the beneficiary;
- (e) a passport photograph of the beneficiary;
- (f) the nationality of the beneficiary, where necessary;
- (g) the contact information of the beneficiary;
- (h) the relationship with the beneficiary; and
- (i) disability of the beneficiary, if any.

(3) A contributor shall provide the following documents of identification of a beneficiary —

- (a) in the case of a spouse of the contributor, a copy of the identity document of the spouse and a copy of the document of proof of marriage;
- (b) in the case of a child of the contributor, a copy of the birth certificate of the child or a copy of a birth notification where the child is below the age of six months;
- (c) in the case of an adopted child of a contributor, a copy of the adoption order;
- (d) in the case of a child for whom the contributor stands in *loco parentis*, a will, deed, court order or any other document recognized under the Children Act;
- (e) in the case of a person with disability and who is wholly dependent on a contributor, a copy of the identification document and a certificate of registration from the National Council for Persons with Disabilities;
- (f) in the case of a non-Kenyan resident, a work permit or an alien identification card;
- (g) in the case of a person in lawful custody, the prison admission number, the remand identification number or a copy of the identification document;
- (h) in the case of a child in conflict with the law, the admission number of the children's remand home, rehabilitation institution or borstal institution or a copy of the birth certificate; or
- (i) in the case of a refugee —
 - (i) an asylum-seekers pass;

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- (ii) a movement pass;
- (iii) a letter of recognition;
- (iv) a refugee identification card; or
- (v) a conventional travel document.

(4) A contributor with more than one spouse shall pay a premium for each spouse as determined by the means testing instrument and the spouse shall be eligible to access benefits fourteen days from the date of declaration under subregulation (1) and payment of the premium.

13. (1) A person registered as a member of the National Health Insurance Fund under the repealed Act at the commencement of these Regulations shall register afresh with the Authority as a member of the Social Health Insurance Fund.

Members of the
National Health
Insurance Fund.

(2) Any monies paid in advance for contributions by a member of the National Health Insurance Fund under the repealed Act shall be transferred to the Authority.

14. (1) A contributor may amend the declaration of beneficiaries under his or her cover by submitting to the Authority a duly filled Form 1 set out in the First Schedule to these Regulations.

Amendment of
beneficiaries.

(2) A contributor who requests for an amendment of declaration of beneficiaries shall provide —

- (a) in the case of a new spouse, a copy of the identification document of the spouse, a copy of the document of proof of marriage and a court order for removal of the previously listed spouse, where applicable;
- (b) in the case of a child, a copy of the birth certificate or a copy of birth notification document of the child;
- (c) in the case of an adopted child for whom the contributor stands in *loco parentis*, a will, a deed, a court order or any other document recognized under the Children Act;
- (d) in the case of divorce, a copy of a decree absolute of divorce;
- (e) in the case of death, a copy of a death certificate or a decree declaring the presumption of the death of the beneficiary;
- (f) in the case of an annulment of a marriage, a decree of annulment; or
- (g) in the case of a divorce or an annulment in another country, a decree absolute of divorce or annulment obtained in another country and recognized in Kenya under the Marriage Act.

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(3) A beneficiary shall —

- (a) in the case of a spouse, access the benefits under the cover of the contributor within a period of fourteen days from the date of the amendment if the contributor complies with section 27(1) and (2) of the Act and these Regulations;

- (b) in the case of a child, access the benefits under the cover of the contributor from the date of the amendment if the contributions of the contributor comply with section 27(1) and (2) of the Act and these Regulations; or
- (c) cease to access the benefits under the cover of the contributor within a period of fourteen days from the date of amendment in the case of divorce, annulment of a marriage or until the expiry of the cover whichever is later.

15. (1) A parent or guardian of a child born after the commencement of these Regulations shall, within fourteen days of the birth of a child, apply to the Authority for the registration of the child.

Registration of a child.

(2) The application under subregulation (1) shall be accompanied by a birth notification document.

(3) An applicant seeking the registration of a child whose birth occurred outside Kenya shall provide a notification of birth or a birth certificate issued by the appropriate authority from the country in which the birth occurred.

(4) The Authority, shall upon receipt and examination of the application, register the child into the Social Health Insurance Fund and assign the child a minor Social Health Authority number.

(5) The Authority shall update the information of the child captured at birth on a continuous basis.

(6) A parent or guardian of a child shall, within thirty days of change in circumstances or on becoming aware of an error, notify the Authority of such change or error in the information in relation to the child.

(7) Upon the child attaining the age of seven years, a parent or a guardian shall present the child at a designated registration point for the purposes of obtaining the child's biometric data in accordance with the provisions of the Data Protection Act.

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(8) Every parent or guardian and the Cabinet Secretary responsible for matters relating to social protection in the case of vulnerable children shall, pursuant to section 16(6) and 31(2)(a)(v) of the Children Act, ensure that every child has a social health insurance cover for purposes of receiving healthcare services under the Act and these Regulations.

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(9) Within ninety days upon attaining the age of eighteen years, an individual shall make an application using Form 1 set out in the First Schedule to these Regulations for updating of their registration details as a contributor and as a household separate from the parent or guardian's household:

Provided that a person who has attained the age of eighteen years and who has not attained the age of—

- (a) twenty-one years, has no income of their own and is living with the contributor; or
- (b) twenty five years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award

shall continue to access healthcare services as a beneficiary under the cover of the contributor.

(10) On receipt of the application made under subregulation (9), the Authority shall verify and update the individual's registration details and issue a new Social Health Authority number to the applicant within thirty days of the application.

(11) The Authority shall, upon the lapse of the period under subregulation (9), suspend the minor Social Health Authority number for members who were previously children but have attained the age of majority and have not updated their registration details.

16. (1) The Authority shall deregister a person as a beneficiary upon the death of the person.

Death of a beneficiary.

(2) Where a death occurs, the Principal Registrar of Births and Deaths appointed under section 3 of the Births and Deaths Registration Act shall notify the Authority of the death of the beneficiary and shall submit a copy of the certificate of death of the beneficiary to the Authority.

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(3) Despite the provisions of subregulation (2), a household shall notify the Authority of the death of any beneficiary and shall submit a copy of the certificate of death of the beneficiary to the Authority.

(4) The Authority shall, upon receipt of notification of the death of the beneficiary, retire the Social Health Authority number of the deceased beneficiary.

(5) Where a deregistered person was making contributions on behalf of the household, the other beneficiaries shall continue to access benefits until the end of the period for which the contributions have been paid.

17. (1) A household whose income is derived from salaried employment shall pay a monthly statutory deduction contribution to the Social Health Insurance Fund at a rate of 2.75% of the gross salary or wage of the household by the ninth day of each month.

Household with income from salaried employment.

(2) The amount payable every month under subregulation (1) shall not, in any case, be less than Kenya shillings three hundred (Kshs. 300) per month.

(3) The Cabinet Secretary responsible for matters relating to the National Treasury shall deduct and remit the contributions of employees in the public service in the National Government and in a public office in the National government to the Authority on behalf of National Government by the ninth day of each month.

(4) The County Executive Committee member responsible for matters relating to the County Treasury shall deduct and remit the contributions of employees in the county public service to the Authority on behalf of county public offices by the ninth day of each month.

18. (1) A household whose income is not derived from salaried employment shall pay an annual contribution to the Social Health Insurance Fund at a rate of 2.75% of the household income as determined by the means testing instrument in the manner prescribed under regulation 21.

Household whose income is not derived from salaried employment.

(2) The amount payable every month under subregulation (1) shall not, in any case, be less than Kenya shillings three hundred (Kshs. 300) per month.

(3) The amount payable under subregulation (1) shall be paid fourteen days before the lapse of the annual contribution of the beneficiary.

(4) The Authority, in collaboration with the Cabinet Secretary responsible for matters relating to cooperatives and micro, small and medium enterprises development and other financing institutions, shall provide premium financing to non-salaried persons to enable them pay their annual contributions within the intervals under which their income becomes available.

(5) Money paid on behalf of a contributor through premium financing shall be remitted directly to the Authority.

(6) The Authority shall inform its members on the available premium financing products.

19. (1) The Authority shall use the means testing instrument in the manner provided in regulation 21 to identify the indigent households that require financial assistance and for whom the National Government or the County Government is liable to pay contributions pursuant to section 27(2)(c) of the Act.

Household in need of financial assistance.

(2) The Cabinet Secretary responsible for matters relating to social protection shall be liable as a contributor under subregulation (1) in the case of the national government.

(3) The County Executive Committee member responsible for matters relating to social protection shall be liable as a contributor under subregulation (1) in the case of the county government.

(4) The amount payable every month for households under subregulation (1) shall be the base premium calculated using statistical data and actuarial models and guided by the benefits packages set out

in the Second, Third and Fourth Schedules to these Regulations and shall be payable on an annual basis.

(5) The Cabinet Secretary responsible for matters relating to the National Treasury shall deduct and remit the contribution to the Authority on behalf of the Cabinet Secretary responsible for matters relating to social protection for the national government within nine days from the date when the annual contribution of the beneficiaries is due.

(6) The County Executive Committee member responsible for matters relating to the County Treasury shall deduct and remit the contribution to the Authority on behalf of the county government within nine days from the date when the annual contribution of the beneficiaries is due.

20. (1) The Cabinet Secretary responsible for matters relating to correctional services shall be liable as a contributor for persons in lawful custody including children in conflict with the law and persons under police custody pursuant to section 27(2)(d) of the Act.

Contributions for persons under lawful custody.

(2) The amount payable every month for persons under lawful custody under subregulation (1) shall be the base premium calculated using statistical data and actuarial models and guided by the benefits packages set out in the Second, Third and Fourth Schedules to these Regulations and shall be payable on an annual basis.

(3) The Cabinet Secretary responsible for matters relating to the National Treasury shall deduct and remit the contribution to the Authority on behalf of Cabinet Secretary responsible for matters relating to correctional services within nine days from the date when the annual contribution of the beneficiaries is due.

21. (1) The Authority shall collect data from households for the purposes of conducting means testing.

Means testing.

(2) In collecting data pursuant to subregulation (1), the Authority shall use the means testing instrument developed by the Cabinet Secretary in collaboration with the Cabinet Secretary responsible for matters relating to social protection.

(3) The data collected from households shall be based on various socio-economic aspects including—

- (a) housing characteristics;
- (b) access to basic services; and
- (c) household composition and characteristics.

(4) The data collected shall be used to determine and estimate the household income for the purposes of the payment of the premiums set out in regulations 18 and 19.

(5) The Authority shall from time to time conduct means testing reviews on households whose income is not derived from salaried employment and on households in need of financial assistance pursuant to section 27 (2)(b) and (c).

(6) The Authority shall conduct means testing using the formula set out in the Fifth Schedule to these Regulations.

22. (1) An employer shall deduct the contribution of a salaried contributor and submit the contribution to the Authority on behalf of the employee at the rate provided in regulation 17 by the ninth day of each month.

Obligations of an employer.

(2) An employer shall inform the Authority of any changes in the employment status of its employees.

(3) Where an employer terminates the employment of a salaried contributor, the employer shall notify the Authority within thirty days of the termination and remit the final contribution of the employee.

(4) The obligations of an employer in relation to a salaried contributor whose services have been terminated shall cease immediately the Authority receives the notification under subregulation (3).

(5) For purposes of this Regulation, an employer shall register with the Authority using Form 5 set out in the First Schedule to these Regulations.

(6) The application for registration under subregulation (5) shall be accompanied by documents including—

- (a) a copy of the certificate of registration or incorporation from the relevant authorized body; and
- (b) a copy of the PIN Certificate of the employer issued by the Kenya Revenue Authority.

23. The Authority shall notify a contributor of any penalty imposed under the Act in relation to the payment of contributions and the manner of remitting such penalty to the Authority.

Payment of penalty.

24. (1) The Authority shall provide a statement of account to a contributor upon request within seven days from the date of the request.

Statement of account.

(2) The statement of account shall contain information on the contribution by a contributor including—

- (a) the list of beneficiaries under the cover of the contributor;
- (b) the benefits paid out and balance of benefits;
- (c) the status of contributions; and
- (d) penalties imposed, if any.

(3) The Authority shall ensure that the statement of account is updated on a regular basis.

25. (1) For purposes of expenditure out of the Social Health Insurance Fund, a healthcare provider or health facility shall lodge a claim with the Claims Management Office for the payment of healthcare services provided to the beneficiaries of the Social Health Insurance Fund.

Payments out of the Social Health Insurance Fund.

(2) The Authority shall pay the claims lodged based on the tariffs prescribed pursuant to section 32 (2) of the Act .

(3) The claim lodged under this regulation shall be processed in the manner set out in Part VIII of these Regulations.

PART IV – IMPLEMENTATION OF THE EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND

26. The Emergency, Chronic and Critical Illness Fund shall be used to—

Purpose of the Emergency, Chronic and Critical Illness Fund.

- (a) ensure access to quality emergency services and critical care;
- (b) ensure access to quality treatment of chronic and critical illnesses;
- (c) finance the provision of emergency, chronic and critical medical care; and
- (d) pay healthcare providers and health facilities for the provision of emergency services based on the tariffs prescribed pursuant to section 32 (2) of the Act.

27. (1) A beneficiary under the Social Health Insurance Fund shall be entitled to the benefits under the Emergency, Chronic and Critical Illness Fund.

Transition to the Emergency, Chronic and Critical Illness Fund.

(2) For purposes of benefitting under the Emergency, Chronic and Critical Illness Fund, the beneficiary referred to under subregulation (1), shall transition from the Social Health Insurance Fund to the Emergency, Chronic and Critical Illness Fund after depletion of his or her benefits in the benefits package under the Social Health Insurance Fund.

(3) A beneficiary suffering from a chronic illness shall, upon exhaustion of his or her benefits under the Social Health Insurance Fund, access treatment for the chronic illness from an empanelled and contracted healthcare provider or health facility in accordance with the benefits package set out in the Fourth Schedule to these Regulations, to be paid for under the Emergency, Chronic and Critical Illness Fund.

(4) Despite the provisions of subregulation (2), every person shall be entitled to access emergency treatment in accordance with the benefits package set out in the Fourth Schedule to these Regulations.

(5) For the purposes of this regulation, emergency medical treatment shall include—

- (a) pre-hospital care;
- (b) stabilization of the health status of the individual; or
- (c) arranging for referral in cases where the healthcare provider or health facility of first call does not have facilities or capability to stabilize the health status of the victim.

28. (1) A beneficiary shall be entitled to the benefits under the benefits package of emergency services set out in the Fourth Schedule to these Regulations.

Benefits under the Emergency, Chronic and Critical Illness Fund.

(2) Despite the provisions of subregulation (1), emergency services shall include the management of—

- (a) cardiac or pulmonary arrest;
- (b) major trauma including burns and any serious injuries that are life-changing and could result in death or serious disability including head injuries, severe wounds and multiple fractures;
- (c) shock states including trauma, haemorrhagic, septic shock, dehydration, hypotension and significant tachycardia or bradycardia;
- (d) unconscious or altered level of consciousness or confusion;
- (e) severe respiratory distress;
- (f) seizures or status epilepticus;
- (g) acute coronary syndrome or chest pain;
- (h) acute cardiovascular accidents or stroke;
- (i) pregnancy related complications; and
- (j) ambulance and evacuation services.

29. (1) For purposes of expenditure out of the Emergency, Chronic and Critical Illness Fund, a healthcare provider or health facility shall lodge a claim with the Claims Management Office for the payment —

Payments out of the Emergency, Chronic and Critical Illness Fund.

- (a) of healthcare services provided in the treatment and management of chronic and critical illnesses provided to the beneficiaries of the Social Health Insurance Fund; or
- (b) for the provision of emergency services in accordance with the benefits package.

(2) The Authority shall pay the claims lodged based on the tariffs prescribed pursuant to section 32 (2) of the Act:

Provided that the payments by the Authority for the provision of emergency services shall be made to a licensed and certified healthcare provider or health facility in accordance with the benefits package.

(3) The claim lodged under this regulation shall be processed in the manner set out in Part VIII of these Regulations.

30. The Authority shall inform the beneficiaries of the Social Health Insurance Fund of the national single short toll-free emergency medical care code developed by the Cabinet Secretary for purposes of handling medical emergencies.

Emergency medical care code.

PART V – EMPANELMENT AND CONTRACTING

31. (1) The Authority shall pay claims to empanelled and contracted healthcare providers or health facilities. Empanelment.

(2) Despite the provisions of subregulation (1), the Authority may pay claims to a healthcare provider or health facility that provides emergency treatment in accordance with the benefits package:

Provided that the healthcare provider or health facility has been licensed and certified.

(3) The Authority shall empanel all licensed and certified healthcare providers and health facilities in the list submitted to the Authority from time to time by the relevant body responsible for accreditation for quality of care.

(4) The Authority shall continuously empanel healthcare providers and health facilities.

32. (1) The Authority shall contract healthcare providers and health facilities under the Act in accordance with the provisions of the Public Procurement and Assets Disposal Act, 2015.

Contracting
healthcare
providers and
health facilities.
No. 33 of 2015.

(2) An empaneled and contracted healthcare provider or health facility shall provide the healthcare services set out in the Second, Third or Fourth Schedules to these Regulations, as applicable, within or outside Kenya.

(3) In providing the healthcare services referred to under subregulation (2), the healthcare provider or health facility shall —

- (a) provide healthcare services to beneficiaries in accordance with—
 - (i) the Act;
 - (ii) these Regulations;
 - (iii) the terms of the contract with the Authority; and
 - (iv) the quality standards set by the Ministry of health;
- (b) use and verify the data provided by the Authority in relation to beneficiaries in the provision of the healthcare services;
- (c) provide healthcare services to a beneficiary based on the benefits package applicable to the beneficiary;
- (d) administer healthcare services within the limits provided in the benefits package as may be applicable to a beneficiary;
- (e) maintain and improve the standards of healthcare services that it provides at all times;
- (f) provide healthcare services that are medically necessary and of therapeutic value to a beneficiary;
- (g) not encourage or influence a beneficiary to obtain a healthcare service that is not medically necessary in the circumstances of the beneficiary;

- (h) provide healthcare services in a timely manner, as appropriate in the circumstances;
- (i) inform the beneficiary and the Authority where the financial limit set by the Authority is close to being exceeded in any particular case provided that the healthcare provider or health facility shall not withhold the treatment of a beneficiary for financial reasons in case of accident and emergency services;
- (j) ensure that the persons employed by the healthcare provider or health facility comply with the Act, these Regulations and the laws and policies issued by the relevant regulatory authorities in relation to healthcare services;
- (k) ensure its employees or agents shall not, in the performance of the obligations of the healthcare provider or health facility under the contract with the Authority, engage in any corrupt practice or fraudulent practice;
- (l) ensure the availability of the relevant healthcare professionals and administrative officers with the relevant skills to appropriately provide quality healthcare services to beneficiaries;
- (m) where the healthcare provider or health facility does not have capacity to treat any beneficiary, refer the beneficiary to a contracted healthcare provider or health facility;
- (n) ensure that it has adequate equipment including computers and mobile phones with working internet connection at all times for purposes of verifying the details of beneficiaries and their respective account status on the Centralized Digital Platform;
- (o) maintain an adequate system for the collection, processing, maintenance, storage, retrieval and distribution of beneficiaries' records;
- (p) retain the records of beneficiaries in a readily accessible format;
- (q) provide healthcare services to all beneficiaries with the same degree of care and skill without discriminating against any beneficiary on any grounds provided under Article 27 (4) of the Constitution; and
- (r) obtain and maintain an adequate insurance cover during the contractual period with the Authority in respect of public liability, professional liability and insurance for the healthcare provider or health facility, its ambulances and all other equipment of the health facility or healthcare provider.

33. Where a healthcare provider or health facility is contracted in accordance with the Act and these Regulations, the healthcare provider or health facility shall be onboarded into the Centralized Digital Platform maintained by the Authority.

Onboarding
healthcare
providers and
health facilities.

34. (1) The Authority shall terminate the contract of a healthcare provider or health facility where the healthcare provider or health facility has failed to adhere to the criteria and standards under regulation 32(3) or has breached the terms of its contract with the Authority.

Termination of contract.

(2) The Authority may, at any time, terminate the contract with a healthcare provider or health facility where the Authority establishes that the healthcare provider or health facility—

- (a) is unable to provide the contracted service;
- (b) billed for a service that is not required by a beneficiary;
- (c) billed for a service that is not covered within the level of care of the healthcare provider or health facility;
- (d) billed for a service that is not within the scope of professional practice of the healthcare provider;
- (e) billed a patient for services or medicine not provided to the patient;
- (f) falsified or altered any information with intent to defraud the Authority; or
- (g) submitted separate claims to the Authority for the same service.

(3) Where the Authority has resolved to terminate a contract under these Regulations, the Authority shall within seven days of making that decision—

- (a) issue a notice of termination of contract to the healthcare provider or health facility before termination of the contract; and
- (b) provide a reasonable transition period to ensure continued service delivery to beneficiaries.

(4) Upon termination of the contract, the Authority shall publish on its website and in the *Gazette* the healthcare providers or health facilities whose contracts have been terminated.

(5) The Authority shall not purchase healthcare services from any healthcare provider or health facility whose contract has been terminated.

(6) A healthcare provider or health facility aggrieved by the Authority's decision to terminate its contract may lodge an appeal with the Dispute Resolution Tribunal.

35. The Authority shall from time to time conduct quality assurance surveillance in claims management to ensure compliance with the provisions of the Act and these Regulations.

Quality assurance.

36. (1) A healthcare provider or health facility outside Kenya shall be contracted by the Authority where the healthcare provider or health facility is—

Healthcare provider or health facility outside Kenya.

- (a) accredited by the relevant authority in its country of origin and recognized by the relevant authority in Kenya;
- (b) linked to an empaneled and contracted health facility in Kenya that will follow up on the treatment and management of a beneficiary upon his or her return to Kenya; and
- (c) providing a healthcare service that is not available in Kenya.

(2) The Benefits Package and Tariffs Advisory Panel shall, at the beginning of each financial year, generate a list of healthcare services to be accessed outside Kenya by the beneficiaries of the Social Health Insurance Fund.

(3) The Authority shall, guided by the list in subregulation (2), identify and contract a panel of healthcare providers and health facilities to offer the specified healthcare services outside Kenya based on the tariffs prescribed pursuant to section 32 (2) of the Act.

(4) The Authority shall maintain the necessary records on services provided by healthcare providers and health facilities outside Kenya in accordance with the Digital Health Act, 2023 and the Data Protection Act.

No. 15 of 2023.
Cap. 411C.

(5) The Authority shall, based on the records in subregulation (4), advise the Cabinet Secretary on matters relating to treatment outside Kenya.

37. An empanelled and contracted healthcare provider or health facility shall—

Obligations of a
healthcare
provider or health
facility.

- (a) provide quality and safe healthcare services;
- (b) subscribe to a quality improvement certification program;
- (c) assess and review healthcare services for purposes of improving the quality and safety of the healthcare services provided;
- (d) establish and maintain the necessary infrastructure for purposes of linking the administration of benefits and submission of claims to the Centralized Digital Platform of the Authority;
- (e) maintain accurate and orderly medical records of the beneficiaries in respect to the services provided;
- (f) prepare and avail a statement containing information in relation to claims for any healthcare services rendered; and
- (g) comply with any requests made by the Authority.

PART VI- BENEFITS

38. A beneficiary seeking to access a benefit from an empanelled and contracted healthcare provider or health facility shall provide the following documents for purposes of identification—

Identification of
beneficiaries at
the point of
access.

- (a) in the case of a contributor—

- (i) their identification document and their biometrics; or
 - (ii) where the biometric identification required under (i) is not available, the contributor's identification document and the one-time password;
- (b) in the case of a spouse—
 - (i) the identification document of the spouse, the number of the identification document of the contributor and the biometrics of the spouse; or
 - (ii) where the biometric identification required under (i) is not available, the identification document for the spouse, the number of the identification document of the contributor and the one-time password;
- (c) in the case of a child who is below seven years, the contributor's identification document and the one-time password or biometrics of the parent or guardian;
- (d) in the case of a child who is seven years and above—
 - (i) the number of the contributor's identification document and the biometrics of the child; or
 - (ii) where the biometric identification required under (i) is not available, the number of the contributor's identification document and the one-time password;
- (e) in the case of a beneficiary who has not attained the age of twenty-five years, is undergoing a full-time course at a university, college, school or other educational institution or serving under articles of an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award—
 - (i) the beneficiary's identification document and the number of the contributor's identification document and the biometrics of the beneficiary; or
 - (ii) where the biometric identification required under (i) is not available, the beneficiary's identification document and the number of the contributor's identification document and the one-time password;
- (f) in the case of a person with disability and is wholly dependent on and living with a contributor—
 - (i) the identity document of the person with disability, the number of the contributor's identification document and the biometrics of the beneficiary; or
 - (ii) where biometric identification required under (i) is not available, the identity document of the person with disability, the number of the contributor's identification document and the one-time password.

39. (1) A beneficiary may access treatment outside Kenya where the—
- Treatment outside Kenya.
- (a) contributions in favour of the beneficiary comply with section 27(1) and (2) of the Act and these Regulations;
 - (b) treatment sought is not available in Kenya; and
 - (c) treatment sought is being provided by a healthcare provider or health facility contracted by the Authority.
- (2) A beneficiary who requires treatment outside Kenya shall request the Authority to authorize the treatment by providing—
- (a) a referral for overseas treatment from the treating doctor or consultant submitted online in Form 2 set out in the First Schedule to these Regulations; and
 - (b) a duly filled referral form prescribed under the Medical Practitioners and Dentists Act.
- Cap. 253.
- (3) The referral under subregulation (2)(a) shall contain—
- (a) the name of the receiving healthcare provider or health facility;
 - (b) the diagnosis of the beneficiary including all results from the tests done by the treating doctor or consultant;
 - (c) the medical history of the beneficiary including any relevant medical conditions including allergies and recent or related diseases;
 - (d) clear and concise medical reasons for the referral; and
 - (e) the signature of the treating doctor or consultant.
- (4) The Claims Management Office shall review the request and shall confirm that—
- (a) the healthcare service for which the beneficiary is being referred is not available in Kenya;
 - (b) the referral is to a healthcare service provider or health facility that is contracted by the Authority;
 - (c) based on peer review undertaken by the Claims Management Office, the referral is medically necessary;
 - (d) the financial implication of the healthcare service sought outside Kenya is within the limits of the benefits package; and
 - (e) the treatment sought is not unproven, experimental or an unconventional therapy.
- (5) Where the Authority approves the request, the Authority shall undertake to pay for the treatment sought at the health facility outside Kenya based on the tariffs prescribed pursuant to section 32 (2) of the Act.

40. (1) A beneficiary shall be entitled to the benefits under the benefits packages under the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund set out in the Second, Third and Fourth Schedules to these Regulations.

Benefits packages under the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund.

(2) The benefits package under the Primary Healthcare Fund shall comprise of preventive, promotive, curative, rehabilitative and palliative health services provided at the level 2, 3 and 4 health facilities.

(3) The benefits package under Social Health Insurance Fund shall comprise of integrated preventive, promotive, curative, rehabilitative and palliative health services provided at the level 4, 5 and 6 health facilities under the Social Health Insurance Fund.

(4) The benefits package under the Emergency, Chronic and Critical Illness Fund shall comprise of—

- (a) emergency services that shall be provided by a licensed and certified healthcare provider or health facility in accordance with the benefits package;
- (b) critical care services upon depletion of the benefits in the benefits package of the Social Health Insurance Fund; and
- (c) treatment and management of chronic illnesses beyond the benefits in the benefits package of the Social Health Insurance Fund.

41. (1) In furtherance of section 31(1) of the Act, the benefits packages referred to under regulation 40(1) shall be reviewed every two years.

The Benefits Package and Tariffs Advisory Panel.

(2) To facilitate the review under subregulation (1), the Cabinet Secretary shall establish a Benefits Package and Tariffs Advisory Panel to advise the Cabinet Secretary and the Authority on the benefits packages under regulation 40(1).

(3) The Benefits Package and Tariffs Advisory Panel shall be based at a local public university appointed by the Cabinet Secretary.

(4) The Benefits Package and Tariffs Advisory Panel shall consist of—

- (a) a person nominated by the local public university who shall be the chairperson of the Panel;
- (b) the Director-General for Health;
- (c) a person from the National Treasury nominated by the Principal Secretary in the Ministry responsible for matters relating to finance;
- (d) one person, who is an actuary, nominated by the Authority;

- (e) two persons nominated by the Council of Governors, one of whom shall be a clinician;
- (f) one person nominated by the Health Non-Governmental Organizations' Network (HENNET) to represent civil society organizations;
- (g) one person nominated by the development partners involved in health matters;
- (h) one person nominated by the consortium of healthcare providers; and
- (i) two persons, a health economist and an epidemiologist, nominated by the Cabinet Secretary.

(5) A person shall be eligible for appointment as a Chairperson of the Benefits Package and Tariffs Advisory Panel if the person—

- (a) is a Kenyan citizen;
- (b) holds a minimum of a Master's degree from a university recognized in Kenya;
- (c) has knowledge and experience of not less than ten years in medicine, epidemiology, health economics or health financing; and
- (d) meets the requirements of Chapter Six of the Constitution.

(6) A person shall be eligible for appointment as a Member of the Benefits Package and Tariffs Advisory Panel if the person—

- (a) is a Kenyan citizen;
- (b) holds a minimum of a Master's degree from a university recognized in Kenya;
- (c) has knowledge and experience of not less than five years in medicine, epidemiology, health economics or health financing; and
- (d) meets the requirements of Chapter Six of the Constitution.

(7) The members of the Benefits Package and Tariffs Advisory Panel shall hold office for a period of three years and shall be eligible for reappointment for one further term of three years.

(8) The office of the Chairperson or Member of the Benefits Package and Tariffs Advisory Panel shall become vacant if the member—

- (a) dies;
- (b) resigns;
- (c) is unfit by reason of mental or physical infirmity to perform the duties of his office;
- (d) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;

- (e) has failed to attend at least three consecutive meetings of the Panel; or
- (f) is removed from office on grounds of—
 - (i) gross violation of the Constitution or any other written law; or
 - (ii) gross misconduct or misbehaviour.

(9) The Benefits Package and Tariffs Advisory Panel shall meet at least twice every year.

(10) Unless a unanimous decision is reached, a decision on any matter before the Benefits Package and Tariffs Advisory Panel shall be by the resolution of a majority of all the members present and voting at the meeting.

(11) The quorum for the meetings of the Benefits Package and Tariffs Advisory Panel shall be five members.

(12) The Panel may co-opt any person whose knowledge and expertise may be necessary for the effective performance of the functions of the Panel.

42. The Benefits Package and Tariffs Advisory Panel shall advise the Cabinet Secretary on the—

- (a) review and updating of the existing benefits package in accordance with the applicable health technology assessment;
- (b) review and updating of the existing tariffs in accordance with the applicable health technology assessment; and
- (c) identification and definition of the health interventions that are not available in Kenya.

Functions of the Benefits Package and Tariffs Advisory Panel.

43. (1) The Benefits Package and Tariffs Advisory Panel shall be supported by a joint secretariat with representation from the Ministry of health and the local public university.

Secretariat of the Benefits Package and Tariffs Advisory Panel.

(2) The secretariat shall provide technical assistance and secretarial support to the Benefits Package and Tariffs Advisory Panel.

(3) The secretariat constituted under subregulation (1) shall have knowledge and expertise in medicine, health economics and epidemiology.

44. (1) The process of designing and reviewing a benefits package shall be—

Designing a benefits package.

- (a) based on research;
- (b) transparent;
- (c) consultative; and
- (d) inclusive.

(2) The process shall involve—

- (a) proposal of interventions;
- (b) selection of interventions;
- (c) assessment of interventions;
- (d) appraisal of interventions; and
- (e) decision making on the intervention.

(3) The process in subregulation (2) shall be guided by considerations including—

- (a) clinical effectiveness, safety and quality of the intervention;
- (b) burden of disease;
- (c) incidence or occurrence of diseases;
- (d) the population;
- (e) equity;
- (f) cost-effectiveness;
- (g) budgetary impact and affordability;
- (h) feasibility of implementation of the intervention;
- (i) catastrophic health expenditure;
- (j) access to healthcare; and
- (k) congruence with existing priorities, policies and guidelines in the health sector.

45. (1) The relevant stakeholders including the Authority, policy makers, the academia, members of the public, health professional associations, civil society organizations involved in matters of health, the Kenya Medical Supplies Authority and the county governments may propose interventions for inclusion in the benefits packages under regulation 40(1).

Proposal of interventions.

(2) Proposals for interventions under subregulation (1) shall be made on a continuous basis to the Secretariat of the Benefits Package and Tariffs Advisory Panel using the benefit package intervention proposal Form 4 set out in the First Schedule to these Regulations.

(3) The proposals made shall be received by the secretariat of the Benefits Package and Tariffs Advisory Panel through various channels including—

- (a) direct requests by the Panel to key stakeholders;
- (b) scheduled stakeholder meetings or forums; or
- (c) digital platforms including a web-based platform and a designated email.

46. (1) A selection working group formed by the Cabinet Secretary shall select an intervention within a period of one month. Selection of interventions.
- (2) The selection working group shall using the considerations under regulation 45(3) review the interventions proposed and select the interventions that shall be subjected to assessment.
- (3) The selection working group shall meet at least twice every year.
47. (1) The selected interventions will be assessed based on the considerations under regulation 44(3). Assessment of interventions.
- (2) The Benefits Package and Tariffs Advisory Panel shall undertake scientific assessment of the selected interventions within a period of six months.
- (3) Despite the provisions of subregulation (2), the Benefits Package and Tariffs Advisory Panel may request for an extension of the assessment period.
- (4) The Benefits Package and Tariffs Advisory Panel shall assign an academic and research institution to undertake the scientific assessment of the selected interventions using a standard methodology developed by the Cabinet Secretary and adopted by the Benefits Package and Tariffs Advisory Panel.
48. (1) The Benefits Package and Tariffs Advisory Panel shall, guided by the considerations in regulation 44(3), appraise the findings of the interventions assessed under regulation 47 within a period of two months. Appraisal of interventions.
- (2) On conclusion of the appraisal, the Benefits Package and Tariffs Advisory Panel shall make a recommendation on—
- the inclusion of the proposed intervention in the benefits package; and
 - where it has recommended inclusion of an intervention, the manner in which the intervention may be included in the benefits package.
49. (1) The Benefits Package and Tariffs Advisory Panel shall submit its recommendation to the Cabinet Secretary for approval. Decision making on interventions.
- (2) In making a decision on the inclusion of the recommended intervention in a benefits package, the Cabinet Secretary shall consult the Authority.
- (3) Where an intervention is rejected by the Cabinet secretary, the intervention may be reconsidered where additional information is provided to the Benefits Package and Tariffs Advisory Panel.
- PART VII—TARIFFS**
50. All benefits payable to a healthcare provider or health facility under the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund shall be paid based on the tariffs prescribed pursuant to section 32 (2) of the Act. Rates payable.

51. (1) In furtherance of section 32(2) of the Act, the tariffs applicable to the benefits packages referred to under regulation 40(1) shall be determined by the Cabinet Secretary in consultation with the Board upon the advice of the Benefits Package and Tariffs Advisory Panel.

Applicable tariffs.

(2) The process of determining the applicable tariffs shall involve—

- (a) data collection and analysis of benefits;
- (b) proposal of a tariff;
- (c) engagement with stakeholders on the proposed tariff;
- (d) recommendation of the proposed tariff to the Cabinet Secretary; and
- (e) approval and gazettelement of the set tariff.

(3) The process in subregulation (2) shall be guided by considerations including—

- (a) evidence on the cost of intervention;
- (b) evidence on actuarial analysis; and
- (c) budgetary impact and affordability of benefits.

(4) The tariff determined may be reviewed by the Benefits Package and Tariffs Advisory Panel every two years or as may be determined by the Cabinet Secretary in consultation with the Board.

(5) The review under subregulation (4) shall be informed by considerations including—

- (a) advancement in technology providing more efficient health interventions;
- (b) economic factors significantly causing alteration in the cost of healthcare;
- (c) change in the disease burden;
- (d) changing dynamics in the market and population health risk; and
- (e) feedback from healthcare providers.

52. (1) The Benefits Package and Tariffs Advisory Panel shall undertake data collection and analysis for the purposes of determining the unit cost, population need and the total cost of the interventions in the benefits package.

Data collection and analysis.

(2) In undertaking the data collection and analysis under subregulation (1), the Benefits Package and Tariffs Advisory Panel shall—

- (a) collect data from primary data, secondary data and evidence and operational data;

- (b) analyse the collected data on the costs of interventions; and
- (c) conduct an actuarial analysis of the population health risks and financial implications of the interventions in the benefits package.

(3) The Benefits Package and Tariffs Advisory Panel may assign the data analysis to an academic and research institution.

53. (1) The Benefits Package and Tariffs Advisory Panel shall, guided by the finding of the data collection and analysis, propose a tariff. Proposal of a tariff.

(2) The tariff shall be a percentage adjustment, upwards or downwards, of the base cost.

(3) The adjustment in tariff shall be guided by—

- (a) budget impact and affordability; and
- (b) market trends.

54. The Benefits Package and Tariffs Advisory Panel shall engage stakeholders including the Authority, healthcare providers, actuaries and other relevant experts on the tariff proposed in regulation 53(1). Engagement on proposed tariff.

55. (1) The Benefits Package and Tariffs Advisory Panel shall, taking into consideration the views of the stakeholder engagement under regulation 54, and make recommendations on the tariff. Recommendation of tariff.

(2) The Benefits Package and Tariffs Advisory Panel shall submit its recommendations to the Cabinet Secretary for approval.

56. (1) On receipt of the recommendations of the Benefits Package and Tariffs Advisory Panel, the Cabinet Secretary shall either— Approval of the tariff.

- (a) approve the tariff; or
- (b) reject the tariff with reasons.

(2) Where the recommended tariff is rejected, the Benefits Package and Tariffs Advisory Panel shall consider the reasons for rejection and subject the tariff to the process provided in regulation 51(2).

PART VIII—CLAIMS SETTLEMENT

57. (1) The Authority may, in respect of a healthcare service provided under the Act, pay benefits to— Benefits payable.

- (a) an empanelled and contracted healthcare provider or health facility within or outside Kenya; and
- (b) any healthcare provider or health facility that has been licensed and certified to provide emergency services in accordance with the benefits package of the Emergency, Chronic and Critical Illness Fund.

(2) All benefits under the Act and these Regulations shall be paid where valid claims in respect of a beneficiary of the Social Health Insurance Fund are lodged and approved for payment by the Authority:

Provided that a registered member of the Social Health Insurance Fund shall receive healthcare services at a primary healthcare facility paid for under the Primary Health Care Fund.

(3) Despite the provisions of subregulation (2), the benefits under the Act shall be paid to a healthcare provider or health facility that provides emergency services to any person in accordance with the benefits package of the Emergency, Chronic and Critical Illness Fund.

(4) All claims shall be lodged, reviewed, processed, validated, appraised and paid under the Act and these Regulations through the Centralized Digital Platform.

58. (1) A healthcare provider or health facility shall, within seven days from the date of discharge of the patient, lodge a claim to the Claims Management Office or a medical insurance provider and claim settling agent, where applicable, for review and processing of the claim.

Lodging of claims.

(2) The medical insurance provider and claim settling agent referred to in subregulation (1) shall—

- (a) be registered by the Insurance Regulatory Authority as a medical insurance provider and a claim settling agent;
- (b) have a valid licence issued by the Insurance Regulatory Authority;
- (c) have at least two qualified and experienced medical doctors;
- (d) be registered with the Office of the Data Commissioner established under the Data Protection Act; and
- (e) comply with the provisions of the Data Protection Act and the Digital Health Act, 2023.

Cap. 411C.

Cap. 411C.
No. 15 of 2023.

(3) The medical insurance provider and claim settling agent referred to in subregulation (1) shall be procured in accordance with the provisions of the Public Procurement and Assets Disposal Act, 2015.

No. 33 of 2015.

(4) The claim under subregulation (1) shall be made in Form 3 set out in the First Schedule to these Regulations and shall contain information including—

- (a) the Social Health Authority number of the patient;
- (b) the hospital registration number of the patient;
- (c) the name, date of birth, gender, address and contact details of the patient;
- (d) the clinical details of the patient; and
- (e) amount claimed.

59. (1) On receipt of claims lodged, the Claims Management Office or the medical insurance provider and claim settling agent shall review the claims and where—

Processing of claims.

- (a) the claim is approved, submit the claim to the Authority for payment;
- (b) the claim is incomplete or contains errors, return the claim to the healthcare provider or health facility with reasons for amendment of the claim; or
- (c) the claim is rejected, notify the healthcare provider or health facility of the rejection and the reasons for the rejection immediately but not later than fourteen days from the date of the rejection.

(2) The Authority may review and make an adjustment if a healthcare provider or health facility received payment from the Authority with respect to a claim and the healthcare provider or health facility subsequently requests an adjustment to be made where there is an error in respect of the amount paid.

(3) In the review and processing of claims, the Claims Management Office shall—

- (a) be guided by the tariffs prescribed pursuant to section 32(2) of the Act and these Regulations; and
- (b) develop formularies to be used to inform benefits packages development, mapping diagnostics, costing and tariff development.

60. (1) A healthcare provider or health facility shall send an online pre-authorization request to the Authority for the specialized healthcare services as determined by the Authority.

Pre-authorization.

- (2) The request shall be accompanied by information including—
- (a) the details of the beneficiary;
 - (b) the details of the healthcare provider or health facility; and
 - (c) the details of healthcare service required.

(3) The Claims Management Office shall review the request and make a decision on the request immediately but not later than seventy-two hours of receipt of the request for pre-authorization and notify the beneficiary of its decision:

Provided that pre-authorization shall not apply for emergency services.

(4) The Claims Management Office may, conduct peer review, during the consideration of the pre-authorization requests.

(5) The Authority shall review the list of specialized healthcare services from time to time.

61. (1) The Claims Management Office may, in considering pre-authorization requests and any claims that it deems inappropriate, constitute an independent panel to adjudicate such pre-authorization requests and claims and check whether they are complaint.

Adjudication of claims and pre-authorization.

(2) In conducting the adjudication, the Claims Management Office shall ensure objectivity of the process by—

- (a) concealing the identity of the panel members;
- (b) anonymizing the identity of the patient;
- (c) anonymizing the identity of the doctor; and
- (d) anonymizing the identity of the healthcare facility.

(3) Where the independent panel finds that—

- (a) the pre-authorization request is not compliant, the pre-authorization request shall be rejected by the Authority;
- (b) before the Authority has effected any payment, the claim is not complaint, the healthcare provider or health facility shall not be paid for the claim; or
- (c) after the Authority has effected a payment, the claim is not complaint, the healthcare provider or health facility shall be requested to refund the monies paid to it in respect of that claim.

(4) The healthcare provider or health facility aggrieved by the decision of the Authority in this regulation may, with new evidence, request for a review of the decision by the Authority within seven working days.

62. (1) Where the Authority has contracted a medical insurance provider and claim settling agent, the medical insurance provider and claim settling agent shall manage the claims in zones. Zones.

(2) The zones shall be clustered based on the counties specified in the First Schedule to the Constitution and the cluster shall be based on—

- (a) population size;
- (b) population density and demographic trends;
- (c) administration costs;
- (d) efficiency;
- (e) caseload of claims;
- (f) disease burden;
- (g) geographical size of the county; and
- (h) the estimated claims as informed by existing health records and data.

(3) A medical insurance provider and a claim settling agent or a consortium of the medical insurance provider and a claim settling agent may not be assigned more than three zones.

(4) The Authority may terminate the contract of a medical insurance provider and claim settling agent where—

contributions, usage of their contributions and pre-authorization requests;

- (c) provide for the registration of members of the Social Health Insurance Fund under the Act and these Regulations;
- (d) assign Social Health Authority numbers to registered members of the Social Health Insurance Fund;
- (e) identify the registered members of the Social Health Insurance Fund at the point of access of services;
- (f) review and process the claims lodged under the Act and these Regulations;
- (g) process pre-authorizations;
- (h) provide for the follow up of claims lodged by healthcare providers and health facilities;
- (i) provide for the contracting of healthcare providers and health facilities; and
- (j) provide for the payment of empanelled and contracted healthcare providers and health facilities for the provision of healthcare services under the Act.

(4) The staff of the Authority or any other person who, with the authorization of the Authority, processes information under the Centralized Digital Platform shall treat the information that comes to their knowledge as confidential.

(5) The Authority shall conduct a Data Protection Impact Assessment of the Centralized Digital Platform and document the necessary mitigation measures in accordance with the provisions of the Data Protection Act.

Cap. 411C.

(6) The Centralized Digital Platform referred to under subregulation (1) shall be interoperable with the Comprehensive Integrated Health Information System established under section 15 of the Digital Health Act, 2023 and in accordance with approved standards.

No. 15 of 2023.

65. The Authority shall utilize the existing relevant government databases in the performance of its functions.

Access to national databases.

66. A person applying for registration under the Act and these Regulations shall—

Duties of a person at registration.

- (a) provide correct information to the Authority during registration;
- (b) inform the Authority of any errors in their information;
- (c) provide all particulars requested by the Authority;
- (d) permit his or her fingerprints and other biometric data to be taken; and
- (e) furnish the Authority with documents requested including such documentary proof of identification.

- (a) the medical insurance provider and claim settling agent becomes insolvent as defined in the Insolvency Act; Cap. 53.
- (b) the registration of the medical insurance provider and claim settling agent has been cancelled;
- (c) the licence of the medical insurance provider and claim settling agent has been revoked; or
- (d) the medical insurance provider and claim settling agent engages in fraudulent activities.

(5) Where the Authority has terminated the contract of a medical insurance provider and claim settling agent, the medical insurance provider and claim settling agent may appeal to the Dispute Resolution Tribunal established under section 44 of the Act.

63. The Authority shall not pay out of the Primary Healthcare Fund, the Social Health Insurance Fund and the Emergency, Chronic and Critical Illness Fund, any claims arising from— Limitations in the payment of claims.

- (a) any healthcare provider or health facility that is not empanelled and contracted except in the provision of emergency services as provided in the Act and these Regulations;
- (b) any revoked or suspended healthcare provider or health facility;
- (c) any unauthorised referrals;
- (d) healthcare services that are not included in the benefits package;
- (e) all costs by which the annual limits of a beneficiary in respect of the relevant healthcare services are exceeded, for any treatment; and
- (f) all costs related to interest charged arising out of delays in reimbursement of claims.

PART IX— GENERAL PROVISIONS

64. (1) The Authority shall implement and maintain a Centralized Digital Platform, with a minimum enterprise resource planning functionality, that shall handle all the processes and services at the Authority. Centralized Digital Platform.

(2) Any processing of data for any purpose under the Act and these Regulations shall be done through the Centralized Digital Platform.

(3) In furtherance of subregulation (2), the Platform shall perform functions including to—

- (a) provide for the digital payment of contributions in a simple, accurate and verifiable manner;
- (b) generate statement of accounts to be made available upon request to beneficiaries on the status of their membership,

67. A person registered to the Social Health Insurance Fund shall—
- Duties of members of the Social Health Insurance Fund.
- (a) provide correct information to the Authority;
 - (b) inform the Authority of any errors in their information;
 - (c) notify the Authority of the need to update their particulars whenever there is any change in any particulars or in their household;
 - (d) report any fraudulent activity that comes to his or her knowledge; and
 - (e) pay their contributions as required by the Act.
68. (1) A person registered by the Authority has a right to—
- Obligations of the Authority in processing of information.
- (a) be informed of the manner in which their personal data may be utilized;
 - (b) access their personal data;
 - (c) object to the sharing of all or part of their personal data without his or her consent;
 - (d) correction of any false or misleading data about them without delay; and
 - (e) obtain a copy of the particulars of his or her personal data held by the Authority.
- (2) Personal data collected pursuant to the Act and these Regulations shall not be—
- (a) used for unlawful purpose; or
 - (b) disclosed except with the prior consent of the individual to whom such personal data relates.
- (3) The Authority shall implement reasonable and appropriate security measures to ensure that personal data held by the Authority is protected against unauthorized access, use or disclosure.
69. The Authority shall, at least every five years, convene fora through meetings, colloquiums, webinars, workshops or such other consultative platforms for purposes of—
- Public engagement.
- (a) facilitating consultations, co-ordination and collaboration in the implementation of the Act and these Regulations;
 - (b) making recommendations aimed at improving the furtherance of the objects of the Act and these Regulations;
 - (c) creating awareness on any matter under the Act and these Regulations; and
 - (d) promoting data and information sharing including sharing of experiences, best practice or emerging issues on matters of social health insurance.

70. (1) A person travelling into Kenya shall possess a travel health insurance cover pursuant to section 26(6) of the Act. Travel health insurance cover.

(2) The travel health insurance shall—

- (a) cover the person's entire period of stay in Kenya; and
- (b) provide for benefits including—
 - (i) personal accident that may lead to death or permanent total disability;
 - (ii) emergency medical expenses;
 - (iii) emergency medical evacuation;
 - (iv) repatriation of mortal remains;
 - (v) hospital benefits; and
 - (vi) prescription medicines.

(3) A person traveling into Kenya may obtain the travel health insurance cover at the point of entry in Kenya.

(4) Despite the provisions of subregulation (3), the Authority shall not provide travel health insurance covers for Kenyans or non-Kenyans.

PART X—REVOCATION

71. The following Regulations are hereby revoked—

Revocation of LN.
No. 186/2003 and
LN. No. 188/2003.

- (a) the National Hospital Insurance Fund (Accreditation) Regulations, 2003; and
- (b) the National Hospital Insurance Fund (Claims and Benefits) Regulations, 2003.

FIRST SCHEDULE

FORM 1 ((r. 11(6), (r.12(1), (r.14(1), (r.14(9))

REPUBLIC OF KENYA

SOCIAL HEALTH INSURANCE ACT, 2023

SOCIAL HEALTH INSURANCE REGULATIONS, 2024

APPLICATION FOR REGISTRATION

SOCIAL HEALTH AUTHORITY REGISTRATION FORM	
PRINCIPAL MEMBER'S PERSONAL DETAILS	
• TITLE:	
• LAST NAME (SURNAME):	
• FIRST NAME:	
• MIDDLE NAME:	
EMPLOYMENT TYPE:	
• EMPLOYED	
• SELF-EMPLOYED	
• SPONSORED	
• ORGANISED GROUP	
• PREFERRED PRIMARY HEALTH CARE NETWORK:	
• DATE OF BIRTH:	
• PLACE OF BIRTH:	
• ID NUMBER:	
• CIVIL STATUS: Single	Separated
Married	Widow Divorced Widower
• SEX:	
• MALE	FEMALE
• CITIZENSHIP:	
• KENYAN RESIDENT	FOREIGN NATIONAL
• KRA PIN: (Required)	
II. ADDRESS and CONTACT DETAILS	

• PHYSICAL ADDRESS:
• HOME PHONE NUMBER:
• MOBILE NUMBER: (Required)
• BUSINESS PHONE NUMBER:
• E-MAIL ADDRESS:
• COUNTY:
• SUB-COUNTY:
• WARD:
• POSTAL ADDRESS:
• PROVINCE/STATE/COUNTRY: (If abroad)
• ZIP CODE:(If abroad)

III: PHOTOGRAPHS

Please attach one colored passport size photo for each of the persons named in Part I, II and III. Indicate the name of the person and contributor's I.D. Number at the back of the individual passport size photo.



Contributor's
Name:

.....
.....
.....



Spouse's
Name:

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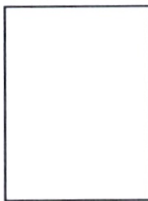
1ST CHILD:

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2ND CHILD:

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3RD CHILD:

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4TH CHILD:

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5TH CHILD:

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6TH CHILD:

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7TH CHILD:

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8TH CHILD:

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9TH CHILD:

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10TH CHILD:

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IV. DECLARATION OF BENEFICIARIES (Use additional form if necessary)

LAST NAME (SURNAME)	FIRST & MIDDLE NAME	RELATIONSHIP	DATE OF BIRTH	PREFERRED PCN

Check if with Permanent Disability

V. UPDATING/AMENDMENT

- Change/Correction of Name:
- Change of Dependents:
- Correction of Date of Birth:
- Change of Civil Status:
- Change of Facility/PCN:
If you ticked above, indicate reason for change
- Updating of Personal Information/Address/Telephone Number/Mobile Number/email Address:

VI. DECLARATION

I hereby attest that the information provided, including the attached documents, is true and accurate to the best of my knowledge. I authorise SHA for validation and verification for legitimate purposes.

• MEMBER'S SIGNATURE:
• DATE:
Please affix the right thumbmark if unable to write:
FOR OFFICIAL USE ONLY
• RECEIVED BY:
• Full Name:
• Zone/Branch:
• Date & Time:
Please affix the right thumbmark if unable to write.
INSTRUCTIONS
1. All information should be written in UPPER CASE/CAPITAL LETTERS. If not applicable, write "N/A."
2. Fields are mandatory unless indicated as optional.
3. Filled forms require a valid proof of identity for first-time registrants.
4. For updating, check the appropriate section and indicate the correct data.
5. Provide complete permanent and postal addresses and contact numbers.
6. Affix the signature or right thumbmark and date the form.
7. Declare dependents accurately.

FIRST SCHEDULE

FORM 2 (r. 39(2)(a))

REPUBLIC OF KENYA
SOCIAL HEALTH INSURANCE ACT, 2023
SOCIAL HEALTH INSURANCE REGULATIONS, 2024

SOCIAL HEALTH AUTHORITY
REFERRAL FOR OVERSEAS TREATMENT FORM

Part A: Patient Particulars (To be completed by the principal member)

Name of the Principal Member:	SHA No.:	ID No. /Passport No.:
Physical Address/Email address: P.O. Box: Town:		Tel. No.:
Employer (Where applicable)		Job Group(Where applicable)
County:		
Name of the Patient:	Age: Sex: (Male/Female)	Relationship of the Principal Member:(Self/Spouse/Dependant)

Part B: Details of the illness and planned management (To be completed by referring specialist/Physician (or equivalent))

Nature of the disease	
How long have you treated/managed the patient?	

Treatment/Procedure/Investigation for which patient is being referred:	
Is the treatment/procedure/investigation option available in Kenya?	
If yes, state why the treatment/procedure/investigation outside the country is necessary and essential to the prognosis of patient's condition.	

Part C: Undertaking by Principal Member

I hereby declare that the information given above is true to the best of my knowledge and belief. I fully understand the rules governing the medical benefits extended to the Members as provided by the Social Health Authority.

SIGNATURE OF THE PRINCIPAL MEMBER:

.....

Date:

Part D: Undertaking by Physician In-Charge.

All the above particulars furnished are true/correct. The Member has signed the undertaking before me.

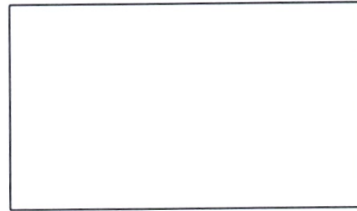
Name of the Physician/Specialist

Reg. No:

Hospital Stamp

SIGNATURE:

DATE:



FIRST SCHEDULE

FORM 3 ((r. 58(4)))

REPUBLIC OF KENYA
SOCIAL HEALTH INSURANCE ACT, 2023
SOCIAL HEALTH INSURANCE REGULATIONS, 2024
CLAIMS

IMPORTANT CLAIM FILING REMINDERS
1. PLEASE USE CAPITAL LETTERS AND TICK THE APPROPRIATE BOXES.
2. Submit this form with supporting documents within seven (7) days from the discharge date.
3. All fields in this form are mandatory. Incomplete forms will not be processed.
4. Providing false or incorrect information may result in criminal or administrative liabilities.
<i>PLEASE BE AS COMPREHENSIVE AND ACCURATE AS POSSIBLE WHEN COMPLETING THIS CLAIM FORM. ERRORS OR OMISSIONS MAY DELAY CLAIM PAYMENTS</i>
<i>CLAIM NO:</i>
PART I - HEALTH CARE PROVIDERS DETAILS
1. Health Provider Identification Number:
2. Name of Health Care Provider/Facility:
PART II - PATIENT DETAILS
Patient's Full Name:
• Last Name
• First Name
• Middle Name
3. Social Health Authority Number:
4. Residence:
5. Do you have another Health Insurance:(If Yes, State which one)
6. Relationship to the Principal:
PART III - PATIENT VISIT DETAILS
7.. Referral Information:

Was the patient referred by another Health Care Provider?		
• NO		
• If, YES		
• Name of referring Health Care Provider/Facility:		
Visit type:	Inpatient	Outpatient
		Day-care:
Visit/Admission Date:	OP/IP No.:	New/Return Visit:
Discharge Date:	Rendering Physician Name and Registration No:	
Type of Accommodation:	(Female Medical, Male Medical, Female Surgical, Male Surgical, Gynaecology, Maternity, NBU, Psychiatric Unit, Burns, ICU, HDU, NICU, Isolation)	
9. Patient Disposition upon discharge (select only 1):		
• Improved		
• Recovered		
• Leave Against/Discharged Against Medical Advice		
• Absconded		
• Died		
10. Referred (If not referred type N/A)		
• Name of Referral Institution:		
• Reason/s for referral:		
11. Admission Diagnosis/es:		
12. Discharge Diagnosis/es:		
• Diagnosis:		
• ICD-11 Code/s:		
• Related Procedure/s (if any):		

[illegible]

PATIENT'S/ AUTHORISED PERSON'S DECLARATION: I certify that I have received the above treatment, and that the above information is correct. I understand that it is an offence to falsify information to obtain any benefit under the SHI Act 2023.	
Names (Majina): _____	Signature (Sahihi): _____
Date (Tarehe): _____	
E. HOSPITAL DECLARATION: This is to certify that to the best of my knowledge, the information contained above, and any attachments provided is true, accurate, and complete and the service(s) rendered is necessary to the patient's health. I understand that it is an offence to knowingly make any false statement to obtain any benefit under the SHI Act 2023. Please arrange to pay the hospital the sum of KSh. being the approved amount for services rendered.	
<i>Signature stamp</i>	
Signature: _____ Date: _____	
F. FOR OFFICIAL USE ONLY	
<i>Signature stamp</i>	
Receiving Officer Name: _____ Date: _____	
<i>Signature</i>	
Notice: Any person/institution who/ knowingly files a statement of request or claim containing any misrepresentation or false, incomplete, or misleading information may be guilty of medical fraud punishable under law.	

FIRST SCHEDULE

FORM 4 ((r. 45(2)))

REPUBLIC OF KENYA

SOCIAL HEALTH INSURANCE ACT, 2023

SOCIAL HEALTH INSURANCE REGULATIONS, 2024

BENEFIT PACKAGE INTERVENTION PROPOSAL

1. Name	
2. Phone Number	Email address
3. Profession	
4. Organization	
5. County	
6. Name of intervention	
7. Type of intervention	☐ Health Service ☐ Vaccine ☐ Drug ☐ Medical Device Other _____
8. Proposed beneficiary for the proposed intervention <i>e.g., sickle cell patients</i>	
9. Reasons/justification for proposal of the intervention	
10. Anticipated/Expected impact if the proposed intervention is included in the benefits package	
Signature _____ Date _____	
F. FOR OFFICIAL USE ONLY	
Receiving Officer Name: _____ Date: _____	

N.B. The form has to be duly filled for an intervention to be considered for selection

FIRST SCHEDULE

FORM 5 ((r. 22(5)))

REPUBLIC OF KENYA
SOCIAL HEALTH INSURANCE ACT, 2023
SOCIAL HEALTH INSURANCE REGULATIONS, 2024

Folio No

To be completed in triplicate

APPLICATION FOR EMPLOYERS' REGISTRATION

EMPLOYER'S/ORGANIZED GROUP CODE

Tick where applicable Employer ☐ Organized groups ☐ Sponsored ☐

1. EMPLOYER'S / ORGANISED GROUP'S PARTICULARS / SPONSORED

- (a) Employer's Name / Name of Organised Group:
- (b) Postal Address:
- (c) Telephone Number / Mobile:
- (d) E-mail Address:

2. Headquarters' Registered Office

- (a) Business Location/Branch:
- (b) Road/Street:
- (c) Building/Floor/Room No.

3. Current Number of Employees/members

4. Certificate/Registration Number (Attach copy)*:

5. Company PIN Number (Attach copy):

.....
Full Name of Authorized Officer Employer's/Organized Group
Official Stamp

..... Signature
Date

FOR OFFICIAL USE ONLY

1. Checked by: Code Number issued by
(a) Full Name..... (a) Full Name.....
(b) Signature..... (b) Signature.....
(c) Date..... (c) Date.....
2. Approved by:
(a) Full Name _____ (b) Signature ____ (c) Date _____

Official Stamp

NB: The following other documents are also valid

- ^ Copy of Kenya Gazette
- ^ Copy of the Act of Parliament

SECOND SCHEDULE

((r. 7(3), (r.19(4), (r.20(2), (r.32(2), (r.40(1))

REPUBLIC OF KENYA

SOCIAL HEALTH INSURANCE ACT, 2023

SOCIAL HEALTH INSURANCE REGULATIONS, 2024

BENEFITS PACKAGE- PRIMARY HEALTHCARE FUND

(SERVICES RENDERED BY EMPANELLED AND CONTRACTED HEALTHCARE PROVIDERS)

OUT-PATIENT HEALTHCARE SERVICES	POINT OF ACCESS
Out-patient services shall include promotive, preventive, curative, rehabilitative, palliative and referrals that include: • Health education and wellness, counselling, and ongoing support as needed • Consultation, diagnosis, and treatment • Prescribed laboratory investigations • Basic radiological examinations including X-rays, ultrasounds • Prescription, drug administration and dispensing • Management of acute and chronic conditions for endemic/local cases • Management of NCDs, enteric infections; neglected tropical diseases (NTDs), and STI's • Minor surgical procedures and medical procedures • Immunization as per the KEPI schedule and recommended special vaccines • Reproductive, Maternal, Neonatal, Child, Adolescent, Health services as defined by the MOH guidelines	Level 2-4
IN-PATIENT HEALTH CARE SERVICES	POINT OF ACCESS
Inpatient services shall include management of disease/condition while admitted: • Pre-admission evaluation • Hospital accommodation charges, meals, and nursing care in a general ward bed • Bedside services including physiotherapy, occupational therapy, oxygen supply, and medical consumables • Intra-admission consultation, procedures, reviews; Laboratory investigations, medical imaging and medications • Cross matching and administration of blood and blood products • Post-discharge medication or follow-up within the treatment plan • Palliative services	Level 2-4

MATERNITY & NEWBORN HEALTH CARE SERVICES	POINT OF ACCESS
Caters for antenatal, delivery and postpartum health services for both the mother and child including: • Ante-natal care, labor, delivery by ways of normal delivery, assisted delivery and caesarean sections • Aftercare for the mother together with the newborn • Midwifery, including episiotomy care, nursing care, nutrition and lactation • Maternity ward and other treatment room charges including meals and special diets • Prescribed medicines • Diagnostic laboratory tests • Medical supplies and equipment, including oxygen • Immunization for the newborn • Administration of blood and blood products • Postnatal family planning • Management of postpartum infections and hemorrhage, birth traumas and conditions related to childbirth • Management of neonatal conditions • Referral for obstetric and neonatal complications including intra-admission postpartum infections and hemorrhage, birth traumas and conditions related to childbirth	Level 2-4
MENTAL HEALTH SERVICES	POINT OF ACCESS
Scope of cover includes the prevention and treatment of non-severe conditions: • Mental health education and counselling • Screening, management and referral for behavioral disorders, neuro-developmental disorders • Rehabilitation for substance related and addictive disorders • Affective and psychoactive disorder management	Level 2-4
DENTAL/ORAL HEALTH SERVICES	POINT OF ACCESS
Services covered include consultation and diagnosis, preventive services, restorative, and treatment services as necessary: • Oral health education and counselling • Tooth Extraction • Tooth Filling • Incision and drainage of Abscess • Management of odontogenic infections primarily of dental carries and periodontal disease • Management of odontogenic infections primarily of dental carries and periodontal disease • Management of Dry Socket Debridement (LA) • Dental surgical procedures	Level 2-4

OPHTHALMIC HEALTH SERVICES	POINT OF ACCESS
Services covered include consultation and diagnosis, preventive, restorative, and treatment services as necessary: • Eye health education and counselling • Eye tests including fundoscopy, visual acuity testing, visual field analysis • Outpatient and in-patient management of diseases of the eye • Minor surgical procedures	Level 2-4
EAR, NOSE AND THROAT HEALTH SERVICES	POINT OF ACCESS
Scope of cover includes the prevention and treatment of conditions that may lead to hearing loss through: • Ear health education and counselling • Management of ear, nose, and throat (ENT) infections and pharyngitis • Basic ear medication (including antibiotics, analgesics, antihistamines) • Ear treatments including foreign body removal, ear wax syringing	Level 2-4
SCREENING SERVICES	POINT OF ACCESS
Screening services shall include: • Screening for non-communicable diseases e.g. common cancers, sickle cell disease, hearing impairment, oral and ophthalmic conditions as per the MOH Guidelines • Screening for communicable diseases	Level 2-4
REHABILITATIVE SERVICES	POINT OF ACCESS
The cover shall include: • Comprehensive assessment for occupational, physical, and childhood developmental disorders • Treatment through physiotherapy, speech/communication therapy, psychosocial therapy, work rehabilitation for adults	Level 2-4
PALLIATIVE SERVICES	
An essential service that focusses on improving the quality of life of patients living with chronic, life limiting illnesses both of communicable and non-communicable nature. Cover shall include: • Outpatient care, Health, products and technologies including assistive devices and pain management	Level 2-4
MORTUARY SERVICES	POINT OF ACCESS
This will cater for last office and mortuary services.	Level 2-4

THIRD SCHEDULE

((r.19(4), (r.20(2), (r.32(2), (r.40(1))

REPUBLIC OF KENYA

SOCIAL HEALTH INSURANCE ACT, 2023

SOCIAL HEALTH INSURANCE REGULATIONS, 2024

BENEFITS PACKAGE- SOCIAL HEALTH INSURANCE FUND

(SERVICES RENDERED BY EMPANELLED AND CONTRACTED HEALTHCARE PROVIDERS)

OUTPATIENT HEALTHCARE SERVICES	POINT OF ACCESS
Out-patient services shall include promotive, preventive, curative, rehabilitative, palliative and referrals that include: • Health education and wellness, counselling, and ongoing support as needed • Consultation, diagnosis, and treatment • Prescribed laboratory investigations • Basic radiological examinations including X-rays, ultrasounds • Prescription, drug administration and dispensing • Management of acute and chronic conditions for endemic/local cases • Management of NCDs, enteric infections; neglected tropical diseases (NTDs), and STI's • Minor surgical procedures and medical procedures • Immunization as per the KEPI schedule and recommended special vaccines • Reproductive, Maternal, Neonatal, Child, Adolescent, Health services as defined by the MOH guidelines	Level 4 - 6
IN-PATIENT HEALTHCARE SERVICES	POINT OF ACCESS
Inpatient services shall include management of disease/condition while admitted: • Pre-admission evaluation • Hospital accommodation charges, meals and nursing care in a general ward bed • Intra-admission consultation and reviews by both general and specialist consultants, Laboratory investigations, medical imaging, procedures, and medication	Level 4 - 6

• Bedside services including physiotherapy, occupational therapy, oxygen supply, medical consumables, and therapeutic nutritional support • Screening, cross-matching and administration of blood and blood products; derivatives and components, artificial blood products, and biological serum • Post-discharge medication or follow-up within the treatment plan • Critical care services including ICU, HDU, NICU, PICU & Burns unit • Palliative services	
MATERNITY & NEONATAL HEALTHCARE SERVICES	POINT OF ACCESS
Caters for ante-natal, delivery and post-natal health services for both the mother and child including: • Ante-natal care, delivery by ways of normal delivery, assisted delivery and caesarean section as necessitated • Aftercare for the mother together with the newborn • Midwifery, including episiotomy care and nursing care • Operating, recovery, maternity ward and other treatment room charges including meals and special diets • Immunization for the newborn • Intra-admission and post-discharge medication • Diagnostic laboratory tests • Administration of blood and blood products; derivatives and components, artificial blood products, and biological serum • Medical supplies and equipment, including oxygen • Postnatal family planning • Management of postpartum infections and hemorrhage, birth traumas and conditions related to childbirth • Management of neonatal conditions • Obstetric and neonatal complications including intra-admission postpartum/postnatal infections and hemorrhage, birth traumas and conditions related to childbirth	Level 4 - 6
SURGICAL HEALTHCARE SERVICES	POINT OF ACCESS
• Pre-operative admission and care	Level 4 - 6

• Diagnostic tests and procedure, including laboratory and diagnostic radiological procedures related to the surgery • Bedside services including physiotherapy, occupational therapy, oxygen supply, therapeutic nutritional support, and psychotherapy support • Minor, major and specialized surgical procedures including transplants, implants, accessories, and specialized equipment • Screening, cross-matching and administration of blood and blood products; derivatives and components, artificial blood products, and biological serum • Management of perioperative complications • Management of perioperative medical conditions related to the primary surgery • All additional medical or surgical services required during the postoperative period • Post-operative care, medicines and clinical management • Critical care services related to the surgical procedure but within the same case definition	
DIALYSIS HEALTHCARE SERVICES	POINT OF ACCESS
Management of kidney failure due to chronic disease or acute injuries/diseases through dialysis including: • Consultation and Specialists reviews • Cost of the temporary catheter and insertion/removal • Nursing care and dialysis services • Routine laboratory investigations • Dispensation of medication and maintenance drugs, counselling, and follow-up • Continuous intermittent dialysis and other dialysis protocols	Level 4 - 6
RADIOLOGY HEALTHCARE SERVICES	POINT OF ACCESS
Prescribed specialized imaging services including: • MRI- limited to specific services: infective, oncology, neurological, degenerative conditions, specific obstetric conditions, cardiac/CVA-related cases and trauma cases • CT scans - limited to specific services: infective, urolithiasis, oncology, cardiac/CVA-related cases and trauma cases	Level 4 - 6

• PET-CT scan, PSMA PET-CT scan, SPET-CT scan, Bone scan • Fluoroscopy • Mammography • Specialized ultrasounds (Dopplers) • Echocardiograms (ECHO) • Electroencephalograms (EEGs) and • Review and interpretation of the radiological services listed above, giving the diagnostic opinion and providing the referring physician with a detailed report of the imaging findings for treatment planning	
MENTAL HEALTH SERVICES	POINT OF ACCESS
This will cater for: • Mental health education and counselling • Screening, management and referral for behavioral disorders, neuro-developmental disorders, • Rehabilitation for substance related and addictive disorders • Management of affective and psychoactive disorder management	Level 4 - 6
ONCOLOGY HEALTH CARE SERVICES	POINT OF ACCESS
Oncology services shall entail screening and treatment of cancers including breast, prostate, colorectal, cervical cancer, and childhood cancers: • Administration of Chemotherapy, Radiotherapy, Brachytherapy and Radiosurgery • Consumables, stoma appliances, premeds, and post meds • Chemotherapy pump • Routine and specialized laboratory investigations • Screening, cross-matching and administration of blood and blood products; derivatives and components, artificial blood products, and biological serum • Treatment planning • Radioiodine therapy • Radiological services where necessary as part of oncological treatment planning	Level 4 - 6

• Management through surgical interventions • Management of pre-cancer conditions	
OVERSEAS HEALTHCARE SERVICES	POINT OF ACCESS
Medical and Surgical treatment procedures that are not locally available and have been cleared for overseas treatment in accordance with these Regulations and the MOH guidelines and provisions.	Level 4 - 6
DENTAL/ ORAL HEALTH SERVICES	POINT OF ACCESS
Services covered include consultation and diagnosis, preventive, restorative, and treatment services as necessary: • Oral health education and counselling • Tooth Extraction • Tooth Filling • Incision and drainage of Abscess • Management of odontogenic infections primarily of dental carries and periodontal disease • Management of odontogenic infections primarily of dental carries and periodontal disease • Management of Dry Socket Debridement (LA) • Dental surgical procedures	Level 4 - 6
OPHTHALMIC HEALTH SERVICES	POINT OF ACCESS
Services covered include consultation and diagnosis, preventive, restorative, and treatment services as necessary: • Eye health education and counselling • Eye tests including fundoscopy, visual acuity testing, visual field analysis • Outpatient and in-patient management of diseases of the eye • Eye minor, major and specialized surgical procedures as per the surgical benefit package	Level 4 - 6
EAR, NOSE, & THROAT HEALTH SERVICES	POINT OF ACCESS
Services covered include consultation and diagnosis, preventive, restorative, and treatment services as necessary: • Health education and counselling	Level 4 - 6

• Outpatient and in-patient management of diseases of the ear, nose, and throat • ENT minor, major and specialized surgical procedures as per the surgical benefit package	
SCREENING SERVICES	POINT OF ACCESS
Screening services shall include: • Screening for non-communicable diseases e.g. common cancers, sickle cell disease, hearing loss, oral and ophthalmic conditions as per the MOH Guidelines • Screening for communicable diseases	Level 4 - 6
REHABILITATIVE SERVICES	POINT OF ACCESS
The cover shall include: • Comprehensive assessment for occupational, physical, and childhood developmental disorders • Treatment through physiotherapy, occupational therapy, speech/communication therapy, psychosocial therapy, work rehabilitation for adults	Level 4 - 6
ASSISTIVE DEVICES	POINT OF ACCESS
Provision of assistive devices to support patients with: • Physical and/or sensory disabilities • Progressive chronic conditions e.g. Parkinson's Disease, multiple sclerosis	Level 4 - 6
PALLIATIVE SERVICES	POINT OF ACCESS
An essential service that focusses on improving the quality of life of patients living with chronic, life limiting illnesses both of communicable and non-communicable nature. The cover shall include in-patient care and Health Products & Technologies including assistive devices and pain management.	Level 4 - 6
MORTUARY SERVICES	POINT OF ACCESS
This will cater for last office and mortuary services.	Level 4 - 6

FOURTH SCHEDULE

((r.19(4), (r.20(2), (r.27(3), (r.28(1), (r.32(2), (r.40(1))

REPUBLIC OF KENYA

SOCIAL HEALTH INSURANCE ACT, 2023

SOCIAL HEALTH INSURANCE REGULATIONS, 2024

BENEFITS PACKAGE-EMERGENCY, CHRONIC AND CRITICAL ILLNESS FUND
(SERVICES RENDERED BY EMPANELLED HEALTHCARE PROVIDERS)

The Emergency, Chronic disease and Critical illness Fund (ECCF) aims to improve access to quality emergency services and critical care and to reduce catastrophic expenditure experienced during management of the selected conditions.

The services covered under ECCIF shall include Emergency services, Critical care services, Oncology services beyond SHIF, Drug and Substance Abuse Rehabilitative services above the SHIF limit, Assistive Devices for chronic conditions, Chronic conditions and Immunosuppressive therapy post renal transplant.

EMERGENCY SERVICES	POINT OF ACCESS
Emergency services include: • Resuscitation and stabilization	Level 2-6
• Cardiac and pulmonary arrest • Major trauma (severe burns, head injuries, severe wounds, multiple fractures) • Shock states (Hemorrhagic, septic, dehydration) • Unconscious altered level of consciousness • Severe respiratory distress • Seizures, status epilepticus • Acute coronary syndrome • Acute cardiovascular accidents • Pregnancy complications	Level 4-6 ACCREDITED FACILITIES TO OFFER EMERGENCY SERVICES CARE FOR A MAXIMUM OF 24 HOURS
• Ambulance and Evacuation	CONTRACTED PROVIDERS
CHRONIC ILLNESS	POINT OF ACCESS
• Longitudinal management of chronic conditions and diseases beyond the SHIF limit for diabetes mellitus and its complications, dialysis, kidney transplant,	Level 4 - 6

immunosuppressive therapy post renal transplant, hypertension, cardiovascular conditions, asthma, COPD, sickle cell disease • Management of cancers beyond the SHIF limit • Management of mental, neurodevelopmental, affective, psychoactive disorders and substance addictive disorders and other mental health conditions • Palliative care for terminal cancer cases, terminal chronic conditions, and terminal pediatric conditions to include admission cases for essential palliative care, pain control measures and medicines for associated symptoms • Selected specialized surgeries	
CRITICAL ILLNESS	POINT OF ACCESS
This will cater for Critical care admissions in Intensive Care Unit (ICU), High Dependency Unit (HDU), -include NICU, PICU, Burns Unit	Level 4-6 EMPANELLED & CONTRACTED FACILITIES TO OFFER EMERGENCY SERVICES

FIFTH SCHEDULE

(r. 21(6))

REPUBLIC OF KENYA
 SOCIAL HEALTH INSURANCE ACT, 2023
 SOCIAL HEALTH INSURANCE REGULATIONS, 2024
 MEANS TESTING

$$\log(y)^u = a^u + b^u X_h^u + c^u Z_{hi}^u + \varepsilon_h^u$$

Where:

 $\log(y)^u$: log (per capita income) a^u : structural parameter $b^u X_h^u$: household-specific indicators $c^u Z_{hi}^u$: individual-specific indicators ε_h^u : estimation errors

And

 u = urban or rural X, Z = matrix of indicators/correlates of income

Made on the 6th March, 2024.

NAKHUMICHA S. WAFULA,
Cabinet Secretary for Health.

SPECIAL ISSUE

Kenya Gazette Supplement No. 59

719

8th March, 2024

(Legislative Supplement No. 27)

LEGAL NOTICE NO. 48

THE SOCIAL HEALTH INSURANCE ACT

(No. 16 of 2023)

THE SOCIAL HEALTH INSURANCE (TRIBUNAL PROCEDURE) RULES, 2024

ARRANGEMENT OF RULES

Rule

PART I— PRELIMINARY

- 1—Citation.
- 2—Interpretation.
- 3—Application.
- 4—Object and guiding principles.

PART II— ADMINISTRATION OF THE TRIBUNAL

- 5—Secretariat.
- 6—Sittings of the Tribunal.
- 7—Conduct of business.
- 8—Language of the Tribunal.

PART III— FILING AND RESPONSE TO COMPLAINTS

- 9—Filing of disputes.
- 10—Form and content of a complaint.
- 11—Service on the respondent.
- 12—Proof of service.
- 13—Response by the respondent.
- 14—Close of pleadings.
- 15—Number of copies.
- 16—Acknowledgement by the Tribunal.
- 17—Filing under certificate of urgency.

PART IV— HEARING OF DISPUTES

- 18—Conduct of parties.
- 19—Representation.
- 20—Pretrial conference.
- 21—Directions on hearing.

- 22—Notice to Appear.
- 23—Third parties.
- 24—Procedure at the hearing.
- 25—Burden and standard of proof.
- 26—Expert witnesses.
- 27—Open proceedings.
- 28—Non-appearance of complainant.
- 29—Non-appearance of the respondent.
- 30—Non-appearance of both parties.
- 31—Withdrawal of pleadings.
- 32—Judicial notice.

33—Disclosure of interest.

34—Determination timelines.

PART V—DOCUMENTARY EVIDENCE AND WITNESSES

35—Production of documents.

36—Competence of witnesses.

37—Powers of the Tribunal.

PART VI—DECISIONS OF THE TRIBUNAL

38—Decisions of the Tribunal generally.

39—Rejection of an application.

40—Conservatory or interim orders.

41—Immunity of the Tribunal.

PART VII—REVIEW AND APPEAL

42—Reviews.

43—Appeals.

PART VIII—MISCELLANEOUS PROVISIONS

44—Oath of office.

45—Registry.

46—Application for extension of time.

47—Fees.

48—Digitalization of dispute resolution.

49—Correction of errors.

50—Taxation of costs.

THE SOCIAL HEALTH INSURANCE ACT

(No. 16 of 2023)

IN EXERCISE of the powers conferred by section 44 (6) of the Social Health Insurance Act, 2023, the Cabinet Secretary for Health, makes the following Rules—

THE SOCIAL HEALTH INSURANCE (TRIBUNAL PROCEDURE)
RULES, 2024

PART I — PRELIMINARY

1. These Rules may be cited as the Social Health Insurance (Tribunal Procedure) Rules, 2024. Citation.
2. In these Rules, unless the context otherwise requires— Interpretation.
- “Act” means the Social Health Insurance Act, 2023; No. 16 of 2023.
- “Authority” means the Social Health Authority established under section 4 of the Act;
- “chairperson” means the chairperson of the Tribunal appointed in accordance with section 44 of the Act;
- “Commission” means the Judicial Service Commission established under Article 171 of the Constitution;
- “interested party” means any party with any interest or claim against a matter pending before the Tribunal;
- “party” means a party to any proceedings before the Tribunal;
- “Register” means the Register kept under rule 45;
- “Registry” means the Registry established under rule 45;
- “Secretary” means a person appointed as the Secretary of the Tribunal under rule 5; and
- “Tribunal” means the Dispute Resolution Tribunal established under section 44 of the Act.
3. These Rules shall apply in the determination of complaints, disputes and appeals arising out of the decisions made under the Act. Application.
4. (1) The object of these Rules shall be to set out the procedure to facilitate just, expeditious and impartial determination of complaints, disputes and appeals arising out of decisions made under the Act. Object and guiding principles.
- (2) In exercising its mandate, the Tribunal shall be guided by the following principles—
- (a) administration of justice to all, irrespective of status;
 - (b) justice shall not be delayed;
 - (c) promotion of alternative forms of dispute resolution including reconciliation, mediation, arbitration and other dispute resolution mechanisms; and

- (d) the national values and principles of governance in the Constitution.

PART II — ADMINISTRATION OF THE TRIBUNAL

5. (1) The Tribunal shall have a secretariat comprising of— Secretariat.

- (a) a Secretary appointed by the Commission; and
(b) such technical, administrative and support staff.

(2) The Secretary to the Tribunal shall carry out administrative duties of the Tribunal.

6. (1) The sittings of the Tribunal may be held at such place and time as the Tribunal may deem necessary for the expedient and proper exercise of its authority. Sittings of the Tribunal.

(2) In determining the sittings of the Tribunal under these Rules, the Chairperson shall give a written notice of fourteen days to all parties to appear before the Tribunal.

7. The Chairperson shall—

- (a) preside at all sittings of the Tribunal; and
(b) be responsible for ensuring the orderly and expeditious discharge of the mandate of the Tribunal. Conduct of business.

8. (1) The languages of the Tribunal shall be English, Kiswahili and Kenyan Sign Language. Language of the Tribunal.

(2) The Tribunal may, in appropriate cases provide translation of the proceedings before it.

PART III — FILING AND RESPONSE TO COMPLAINTS

9. (1) A dispute to the Tribunal, arising from a decision made under the Act, shall be commenced by filing a complaint with the Tribunal within thirty days from the date of the making of the decision complained of, if the dispute relates to— Filing of disputes.

- (a) registration of members;
(b) empanelment of healthcare providers and health facilities;
(c) contracting;
(d) preauthorization;
(e) settlement of claims;
(f) service provider payments and refunds; and
(g) any other decision made under the Act.

(2) Despite subrule (1), an omission or failure to perform any act under the Act may be lodged as a complaint.

10. (1) A complaint filed under rule 9 shall state the—

- (a) name and address of the complainant or their legal representative; Form and content of a complaint.

- (b) name and address of the respondent or their legal representative;
- (c) date when the decision or action upon which the complaint is based arose;
- (d) decision, if any, complained against; and
- (e) grounds on which the complaint is presented.

(2) A complaint shall be—

- (a) accompanied by an affidavit signed by the complainant verifying the grounds stated on the complaint;
- (b) accompanied by copies of any supporting documents and information to be relied on;
- (c) accompanied by signed witness statements, if any; and
- (d) signed by the complainant or by a person duly authorized by the complainant.

(3) A complaint filed under this rule shall include a precise relief, request or prayer being sought at the Tribunal.

(4) Where an aggrieved party makes a complaint in writing to the Tribunal other than in the prescribed form, the Tribunal may require that the complaint be reduced into the prescribed form and proceed with it in accordance with these Rules.

11. (1) A complainant shall serve the complaint on the respondent within seven days of filing the complaint with the Tribunal.

Service on the respondent.

(2) A complaint shall be served together with a Notice to Appear in the Form set out in the First Schedule to these Rules.

(3) A complaint against a healthcare provider, health facility or the Authority shall be served—

- (a) in person;
- (b) through a legal representative or guardian;
- (c) to the last known registered address;
- (d) using mobile messaging applications and technology; or
- (e) with the leave of the Tribunal, an advertisement in a newspaper of nationwide circulation.

12. A person serving a document under these Rules shall swear an affidavit of service stating the time and manner in which the document was served and the name and address of the person, if any, receiving or witnessing the delivery.

Proof of service.

13. (1) Upon being served with a complaint under rule 11, the Respondent may respond to the complaint by filing and serving a response within seven days from the date of service.

Response by the respondent.

(2) The response under subrule (1) shall be—

- (a) accompanied by a verifying affidavit;
 - (b) accompanied by witness statements signed by the witnesses;
 - (c) accompanied by copies of any supporting documents to be relied on at the hearing; and
 - (d) signed by the respondent or by a person duly authorized by the respondent.
- (3) A respondent shall respond to each claim made in the complaint.
- (4) A respondent who has not filed a response as provided under this rule may not be allowed to take part in the proceedings unless the Tribunal directs otherwise upon application.

14. (1) After the response is filed by the respondent, the complainant shall be at liberty to file a reply to the response within seven days of service or such other period as may be directed by the Tribunal.

Close of pleadings.

(2) Pleadings shall close seven days after the filing of the reply by the complainant or such other period as may be directed by the Tribunal.

15. A person filing a complaint or response at the Tribunal shall ensure that there are sufficient copies of the complaint or response for all the parties involved with the matter and the Tribunal.

Number of copies.

16. Upon receipt of the documents filed under these Rules, the Tribunal shall—

Acknowledgement by the Tribunal.

- (a) acknowledge receipt of the documents by stamping and endorsing the date on which the documents were received;
- (b) enter the name of the complainant, respondent and their advocates in a register;
- (c) assign a case file number as entered in the case register; and
- (d) advise the person of any steps required to be performed to enable the Tribunal to determine the matter.

17. (1) Where a dispute is filed under a certificate of urgency, the file shall be placed before the Chairperson for appropriate direction.

Filing under certificate of urgency.

(2) Where it appears to the Chairperson that a matter is of utmost urgency, an—

- (a) appropriate interim relief may be issued; and
- (b) inter-party hearing date may be set at a convenient date.

PART IV — HEARING OF DISPUTES

18. Parties to proceedings before the Tribunal shall cooperate with the Tribunal and exercise decorum, respect and candour at all times during and after the proceedings.

Conduct of parties.

19. A party to a dispute that has been scheduled for hearing before the Tribunal may represent themselves or be represented by a duly appointed legal representative. Representation.

20. (1) The Tribunal may schedule a conference to—
- (a) determine the possibility of alternative dispute resolution;
 - (b) determine whether there are any documents that the Tribunal may require to be produced before or during the hearing;
 - (c) consider compliance with these Rules;
 - (d) identify contested and uncontested issues;
 - (e) create a timetable for the proceedings;
 - (f) consider consolidation of complaints, disputes or appeals; and
 - (g) consider any other form of settlement.

Pre-trial conference.

(2) Where the parties reach an agreement and the Tribunal is satisfied that it is the will and intention of the parties to so agree, the Tribunal shall record a settlement on the terms agreed upon by the parties.

21. Where the parties fail to reach an agreement after the conference under rule 20 and where alternative dispute resolution is not an option, the Tribunal shall issue appropriate directions as to the conduct of hearing the complaint. Directions on hearing.

22. Notice to Appear shall be signed by the Chairperson of the Tribunal. Notice to Appear.

23. If it appears to the Tribunal, whether on its own motion or on application by a party that it is desirable that any other person be made a party to the proceedings, the Tribunal may order such a person to be joined as a respondent or interested party and may issue appropriate directions as to service. Third parties.

24. (1) For purposes of hearing a matter before it, the Tribunal shall first hear the evidence of the complainant, followed by that of their witnesses, if any, unless the Tribunal orders otherwise. Procedure at the hearing.

(2) At the close of the evidence of the complainant and each of the witnesses, the Tribunal shall accord the respondent an opportunity to cross examine the complainant and the witnesses.

(3) After the close of the complainant's case, the evidence of the respondent shall be heard and the complainant shall be given an opportunity to cross examine the respondent and each of the respondent's witnesses.

(4) The Tribunal may, at any time during the proceedings, examine either party or any witness and may, in its discretion, call any additional evidence it considers necessary.

(5) The Tribunal may at its discretion require parties to file written submissions in addition to or in lieu of taking oral evidence.

25. (1) A complainant shall have the burden of proving their case. Burden and standard of proof.
- (2) Where any party asserts any fact or claim, he or she shall prove that fact or claim.
- (3) An issue before the Tribunal shall be proved on the balance of probabilities.
26. (1) A party to a dispute may elect to rely on the evidence of an expert witness. Expert witnesses.
- (2) The Tribunal may on its own motion summon an expert witness if it deems fit in the interest of the dispensation of justice.
27. (1) The proceedings of the Tribunal shall be open to the public. Open proceedings.
- (2) The Tribunal may, upon application by a party, order that the public generally or any particular person shall not have access to the proceedings.
28. Where, on the date fixed for the hearing, the complainant fails to appear and the respondent appears, if the tribunal is satisfied that the hearing notice was duly served, ask the respondent whether he or she admits the claim and if the — Non-appearance of complainant.
- (a) respondent admits the claim or any part of the claim, the Tribunal may make a ruling against the respondent for the claim or for the part of the claim so admitted and dismiss the part not admitted;
 - (b) respondent does not admit the claim, the Tribunal may in the first instance, adjourn the matter and order that the matter be heard in the presence of the complainant; or
 - (c) complainant fails to appear a second time, after the first adjournment, dismiss the matter.
29. Where on the date fixed for the hearing, the complainant appears, but the respondent does not appear, the Tribunal may if — Non-appearance of the respondent.
- (a) satisfied that the hearing notice notifying the respondent of the place and time of the hearing was duly served, adjourn the matter and ask that the matter be set for another hearing date;
 - (b) the respondent fails to appear, on the second hearing date, proceed to receive the evidence and submissions; and
 - (c) the Tribunal is satisfied that the complainant has established a case, in whole or in part, make a decision in favour of the complainant as the case maybe.
30. (1) Where on the date fixed for the hearing both parties do not appear, the Tribunal may adjourn or dismiss the complaint. Non-appearance of both parties.
- (2) Where a complaint is dismissed under subrule (1), the Tribunal may reinstate the complaint if the complainant shows sufficient cause for non-appearance.

31. (1) A party may, at any time before or during the hearing, apply to withdraw any pleadings filed by the party. Withdrawal of pleadings.

(2) Upon receipt of an application under subrule (1), the Tribunal shall consider the application and make a determination.

(3) Where pleadings are withdrawn under subrule (1)—

- (a) the Tribunal shall, by notice, inform all the parties of such withdrawal; and
- (b) a party may request the Tribunal to order costs to be paid by the party withdrawing the pleadings.

32. The Tribunal may on its own motion or on application by a party take judicial notice of facts that are publicly known or before any court of law. Judicial notice.

33. Where a member of the Tribunal who has a conflicting interest in any matter before the Tribunal, that member shall declare the interest in the matter which shall be recorded and the member shall not participate in the hearing or decision-making process of the Tribunal in relation to that matter. Disclosure of interest.

34. Complaints filed under the Act and these Rules shall be heard and determined within six months from the date of filing of the complaint. Determination timelines.

PART V— DOCUMENTARY EVIDENCE AND WITNESSES

35. The Tribunal shall have the power to order any person to produce documents relevant to a matter before it. Production of documents.

36. (1) The Tribunal shall allow a witness to testify on any matter unless it is established that the witness is prevented from understanding the questions or is not capable of giving rational answers, due to age or infirmity, whether of body, mind or any cause. Competence of witnesses.

(2) If the Tribunal deems that a witness may not be competent, it may direct that remedial measures be undertaken or order that the party relying on that witness calls another witness.

37. (1) The Tribunal may at any stage of the proceedings—

- (a) examine any person in attendance as a witness; or
- (b) recall and re-examine any person, if the Tribunal deems their evidence essential.

Power of the Tribunal.

(2) The complainant or respondent shall have the right to cross examine any person examined under subrule (1) and the Tribunal may, upon request by a party, adjourn the hearing for such time as it considers necessary to enable the party to adequately prepare for cross examination.

(3) A witness before the Tribunal shall have the same immunities and privileges as if the person was a witness before the High Court.

PART VI—DECISIONS OF THE TRIBUNAL

38. (1) The decision of the Tribunal may be unanimous or determined by a majority verdict.

Decisions of the Tribunal generally.

(2) The decision of the Tribunal shall contain the following—

- (a) the nature of the complaint;
- (b) the number of the complaint;
- (c) the names of the parties;
- (d) a summary of all the relevant evidence produced before the Tribunal and the reasons for accepting or rejecting the evidence;
- (e) the order or decision and the reasons thereof;
- (f) the relief or remedy to which the parties are entitled; and
- (g) an order as to costs.

(3) The decision of the Tribunal shall be read out in open court or as the Chairperson may direct.

(4) The members of the Tribunal, with the exception of any dissenting member, shall sign the decision.

(5) The Chairperson or the Secretary may certify orders, directions or decisions of the Tribunal.

39. (1) The Tribunal may, at any stage in the proceedings, after giving the parties an opportunity to be heard, reject an application or a complaint in whole or in part if it considers that the application discloses no valid ground or that it is vexatious.

Rejection of an application.

(2) Where the Tribunal rejects an application or a complaint, it may make any consequential order it considers appropriate.

40. (1) Notwithstanding the provisions of these Rules, the Tribunal may hear and determine an application for conservatory or interim orders.

Conservatory or interim orders.

(2) Any such order may be discharged, varied or set aside by the Tribunal on application made thereto by any party dissatisfied with such order.

41. (1) A member of the Tribunal shall not be liable to be sued in any civil court or Tribunal for any act done or ordered to be done by the member in the discharge of judicial functions.

Immunity of the Tribunal.

(2) An officer of the Tribunal or any other person designated to execute any summons of the Tribunal shall not be liable to be sued in any civil court or Tribunal in respect of any lawful act done in the execution of the summons.

PART VII—REVIEW AND APPEAL

42. (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions or orders.

Reviews.

(2) A person aggrieved by a decision of the Tribunal may apply to the Tribunal for a review.

(3) The law applicable to reviews before the High Court in civil matters shall apply in reviews before the Tribunal.

43. (1) A person aggrieved by a decision of the Tribunal may appeal to the High Court. Appeals.

(2) The law applicable to appeals before the High Court in civil matters shall apply in appeals arising from the Tribunal.

PART VIII— MISCELLANEOUS PROVISIONS

44. Members of the Tribunal shall take the oath of office set out under the Second Schedule to these Rules. Oath of office.

45. (1) The principal registry of the Tribunal shall be located in Nairobi. Registry.

(2) The Tribunal may establish registries in other parts of the Republic as appropriate.

(3) The Secretary shall be responsible for—

- (a) the establishment and maintenance of the registry;
- (b) the acceptance, transmission, service and custody of documents; and
- (c) keeping records of proceedings of the Tribunal.

(4) There shall be a register which shall contain the following particulars—

- (a) the number of the complaint;
- (b) the date of filing of the complaint;
- (c) the name and address of the complainant, or where there is more than one complainant, the names and addresses of all the complainants;
- (d) the name of the respondent, or where there is more than one respondent, the names and addresses of all the respondents;
- (e) the nature of the complaint;
- (f) the date of hearing;
- (g) a list of documents, either produced or filed, including those requested by the Tribunal;
- (h) the decision or order of the Tribunal and the date it was made;
- (i) the date on which the remedy was executed;
- (j) the particulars and details of execution of the decision or order; and
- (k) the final decision on the complaint.

46. The Tribunal, may on application by a party, extend the time appointed by these Rules for doing any act or taking any proceedings, and may do so upon such expedient terms and conditions in the interest of justice. Application for extension of time.
47. (1) The filing fees for the Tribunal shall be as provided in the Judiciary guidelines. Fees.
- (2) Any fees payable to the Tribunal shall be assessed correctly by the registry staff.
- (3) The Registry staff shall receipt and account for any payment made and prepare a certificate of payment before decrees or orders are issued.
48. (1) The Tribunal shall leverage on information and communication technology and related technological advancements to increase accountability and efficiency in service delivery through electronic case management system. Digitalization of dispute resolution.
- (2) The electronic case management system shall entail —
- (a) e- case filing;
 - (b) e-case registration;
 - (c) maintenance of records in the Registry;
 - (d) fees assessment and payment;
 - (e) cause listing;
 - (f) central repository of Tribunal decisions;
 - (g) USSD and SMS enquiry; and
 - (h) live proceedings, audio visual recording and transcription of Tribunal proceedings.
49. A party to a dispute may apply to the Tribunal for correction of errors on any matter before the Tribunal. Correction of errors.
50. (1) The costs of any matter before the Tribunal shall be determined by the Tribunal. Taxation of costs.
- (2) The costs of any complaint shall follow the event unless the Tribunal, for good reason, otherwise orders.

FIRST SCHEDULE

(r. 11(2))

NOTICE TO APPEAR

To(name) of(address)

Take notice that a complaint has been filed in the Social Heath Insurance Dispute Resolution Tribunal at.....in Complaint Case No.of 20.....in which you are named as a respondent. Service of summons on you was ordered to be by this notice.

A copy of the summons and the complaint may be obtained from the Tribunal at (insert postal address of the registry).

Unless you enter an appearance within fifteen days, the complaint will be heard in your absence.

Dated.....

Issued by.....

SECOND SCHEDULE

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/ MEMBER OF THE
DISPUTE RESOLUTION TRIBUNAL (*r. 44*)

I..... having been appointed (the Chairperson/Member) to the Dispute Resolution Tribunal, do solemnly (swear/ declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

.....

Before me this.....day of

.....

Chief Justice.

Made on the 6th March, 2024.

NAKHUMICHA S. WAFULA,
Cabinet Secretary for Health.



THIRTEENTH PARLIAMENT |THIRD SESSION

MINUTES OF THE THIRTY EIGHTH (38TH) MEETING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 25TH JUNE, 2024 AT 12.00 P.M AT COMMITTEE ROOM 1, FIRST FLOOR, BUNGE TOWER BUILDING.

PRESENT

1. Sen. Mwenda Gataya Mo Fire, MP	- Chairperson
2. Sen. Mohammed Mwinyihaji Faki, CBS, MP	-Member
3. Sen. Daniel Kitonga Maanzo, EBS, MP	-Member
4. Sen. Agnes Kavindu Muthama, MP	-Member
5. Sen. Betty Batuli Montent, MP, MP	-Member

ABSENT WITH APOLOGY

1. Sen. Danson Buya Mungatana, MGH, MP	-Vice Chairperson
2. Sen. Joyce Chepkoech Korir, MP	-Member
3. Sen. Gloria Orwoba, MP	-Member
4. Sen. Julius Murgor Recha, MP	-Member

SECRETARIAT

1. Mr. Joseph Mwangi	-Senior Clerk Assistant
2. Mr. Malcolm Ngugi	- Legal Counsel
3. Ms. Faith Wangui	-Legal Counsel
4. Mr. Nicholas Arusei	-Audio/Hansard Officer
5. Ms. Hawa Abdi	-Serjeant-At-Arms
6. Mr. Ibrahim Oruko	-Media Relations Officer

MIN NO. CDL.194/2024 PRELIMINARIES

The meeting was called to order at 11.50p.m. followed by a word of prayer by the Chairperson.

MIN.NO.CDL. 195/2024 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. Betty Batuli Montet, MP, as follows: -

AGENDA

1. Preliminaries;
 - a) Prayer
 - b) Introduction
2. Adoption of the Agenda;
3. Meeting with the Cabinet Secretary, Ministry of Health to Consider the Social Health Insurance Statutory Instruments Legal Notice No. 48-49 of 2024 (*Committee Paper No. 74*);
4. Any Other Business; and,
5. Date of the Next Meeting and Adjournment

MIN.NO.CDL.196/2024 MEETING WITH THE CABINET SECRETARY, MINISTRY OF HEALTH, TO CONSIDER THE SOCIAL HEALTH INSURANCE(SHIF) STATUTORY INSTRUMENTS, LEGAL NOTICE NO.48-49 OF 2024(COMMITTEE PAPER NO.74)

The Members observed that the Cabinet Secretary, Ministry of Health or any officials from the Ministry, did not appear before the Committee as resolved in a meeting held on Wednesday, 19th June, 2024 with the Principal Secretary, State Department for Medical Services.

Members also took note that the Cabinet Secretary had been invited to appear before the Committee for the Scrutiny of the above mentioned, SHIF Statutory Instruments, but on all the three occasions she had not appeared. But on the second invitation, she had sent the Principal Secretary, State Department of Medical Services Mr. Harry Kimtai to represent her on Wednesday, 19th June, 2024.

The Committee also took note on the following issues raised during the scrutiny of the Social Health Insurance, Statutory Instruments, Legal Notice No. 48-49, from the previous meeting held together with the Principal Secretary on Wednesday, 19th June, 2024:

1. The process of determination of tariffs under the Fund had not been completed as the accompanying tariffs were still undergoing public participation;
2. The Regulation Making Authority had not conducted a means testing to determine contributions from households whose incomes were not derived from salaried employment;
3. The registration of contributors and beneficiaries under the Fund had not begun; and
4. The Regulation Making Authority had not conducted accreditation of hospitals and health care providers.

Owing to the above issues raised and the non-responsiveness of the Cabinet Secretary, Ministry of Health to respond to the above issues, the Committee resolved to annul the Social Health Insurance, Statutory Instruments, Legal Notice No. 48-49.

The annulment was proposed by Sen. Mohammed Mwinyihaji Faki, CBS, MP and seconded by Sen. Agnes Kavindu Muthama, MP.

MIN.NO.CDL. 197/2024 ANY OTHER BUSINESS

There was no other business.

MIN.NO.CDL.198/2024 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 12.26 p.m. The Next meeting would be held on 27th June, 2024 at 11.00 a.m.

SIGNED:



DATE:27/6/2024.....

**SEN. MWENDA GATAYA MO FIRE, MP.
CHAIRPERSON,
COMMITTEE ON DELEGATED LEGISLATION**



THIRTEENTH PARLIAMENT |THIRD SESSION

MINUTES OF THE THIRTY FOURTH (34TH) MEETING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 19TH JUNE, 2024 AT 11.00 A.M IN COMMITTEE, ROOM 6, FIRST FLOOR, BUNGE TOWER BUILDING.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member (Chairing) |
| 2. Sen. Agnes Kavindu Muthama, MP | - Member |
| 3. Sen. Betty Batuli Montent, MP, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---|--------------------|
| 1. Sen Mwenda Gataya Mo Fire | - Chairperson |
| 2. Sen. Danson Buya Mungatana, MGH, MP | - Vice Chairperson |
| 3. Sen. Joyce Chepkoech Korir, MP | - Member |
| 4. Sen. Mohammed Mwinyihaji Faki, CBS, MP | - Member |
| 5. Sen. Gloria Orwoba, MP | - Member |
| 6. Sen. Julius Murgor Recha, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---------------------------------|
| 1. Mr. Joseph Mwangi | - Senior Clerk Assistant |
| 2. Ms. Ann Kigoro | - Senior Research Officer |
| 3. Mr. Faith Wangui | - Legal Counsel II |
| 4. Ms. Rahma Abdullahi | - Clerk Assistant III |
| 5. Mr. Nicholas Arusei | - Audio/Hansard Officer |
| 6. Angelica Wachira | - Public Communications Officer |
| 7. Kelvin Ekeno | - Media Relations Officer |
| 8. Ryan Muriithi | - Attachee |

IN ATTENDANCE

- | | |
|--|---|
| 1. Hon. Harry Kimtai
for Medical Services, Ministry of Health | - Principal Secretary, State Department |
| 2. Mr. Timothy Oweny | - Chair Social Health Insurance |

3. Elijah Wachira
4. Dr Thunanira Kaugiria
5. Mr Terry Rotich
6. Mr. Joy Kuisa

-C.E.O Social Health Insurance
- Advisor, Council of Governors
-SHA,Ministry of Health
-SHA,Ministry of Health

MIN NO. CDL.173/2024 - PRELIMINARIES

The meeting was called to order at 11.29 a.m. followed by a word of prayer by Sen. Daniel Kitonga Maanzo, EBS, MP

The Chairperson invited all present to introduce themselves.

MIN.NO.CDL. 174/2024 - ADOPTION OF THE AGENDA

The agenda of the meeting was adopted unanimously as follows: -

AGENDA

1. Preliminaries;
 - a) Prayer
 - b) Introduction
2. Adoption of the Agenda;
3. Meeting with the Cabinet Secretary, Ministry of Health to Consider the Social Health Insurance Statutory Instruments Legal Notice No. 48-49 of 2024 (*Committee Paper No. 74*);
4. Any Other Business; and,
5. Date of the Next Meeting and Adjournment

**MIN.NO.CDL.175/2023 - MEETING WITH THE CABINET SECRETARY
MINISTRY OF HEALTH TO CONSIDER THE SOCIAL HEALTH INSURANCE
STATUTORY INSTRUMENTS LEGAL NOTICE NO 48-49 OF 2024**

The committee considered the Social Health Insurance Statutory Instruments Legal Notice No. 48-49 of 2024 (*Committee Paper No. 74*); with an invitation done to the Cabinet Secretary, Ministry of Health. The Principal Secretary appeared on behalf of the Cabinet Secretary and members had a chance to direct the necessary questions to the Principal Secretary, State Department for Medical Services.

Members wanted-

- I. proof of public participation
- II. the publications of the rates and other regulations such as the criteria for choosing a public university to chair the panel as stated in regulation 54 .
- III. the rationale of having Hannet
- IV. know the issue of development partner
- V. issues of means testing
- VI. why Kenya Medical Association have been left out
- VII. why there's a need for fresh data while they Ministry has existing biometrics from National Health Insurance Fund (NHIF)

Resolution

The Committee had several concerns regarding the Regulations and the Ministry were not fully prepared for the meeting. The Committee resolved to have another engagement with the Ministry of Health on Tuesday, 25 th June, 2024 deliberate further on the Regulations before the Committee makes a final decision.

MIN.NO.CDL. 176/2023 - ANY OTHER BUSINESS

There was no other business.

MIN.NO.CDL.177/2023 - ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 1.50 p.m. The Next meeting would be held on 20th June, 2024 at 9.00 a.m.

SIGNED:

DATE:20/6/2024.....

**SEN. MWENDA GATAYA MO FIRE, MP.
CHAIRPERSON,
COMMITTEE ON DELEGATED LEGISLATION**



THIRTEENTH PARLIAMENT |THIRD SESSION

MINUTES OF THE THIRTY FIRST (31ST) MEETING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 23RD MAY, 2024 AT 11.30 A.M IN COMMITTEE ROM 6, FIRST FLOOR BUNGE TOWER BUILDING.

PRESENT

- | | |
|---|-------------------|
| 1. Sen. Mwenda Gataya Mo Fire, MP | - Chairperson |
| 2. Sen. Danson Buya Mungatana, MGH, MP | -Vice Chairperson |
| 3. Sen. Julius Murgor Recha, CBS, MP | -Member |
| 4. Sen. Mohammed Mwinyihaji Faki, CBS, MP | - Member |
| 5. Sen. Agnes Kavindu Muthama, MP | - Member |
| 6. Sen. Betty Batuli Montent, MP, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Joyce Chepkoech Korir, MP | - Member |
| 2. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 3. Sen. Gloria Orwoba, MP | - Member |

SECRETARIAT

- | | |
|-----------------------------|---------------------------------|
| 1. Mr. Joseph Mwangi | - Senior Clerk Assistant |
| 2. Mr. Malcolm Ngugi | - Legal Counsel I |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Rahma Abdullahi | - Clerk Assistant III |
| 5. Ms. Angelica Ivy Wachira | - Public Communications Officer |
| 6. Mr. Nicholas Arusei | - Audio/Hansard Officer |
| 7. Ms. Hawa Abdi | - Serjeant-At-Arms |
| 8. Ms. Tracy Kinaga | - Pupil |

MIN NO. CDL.157/2024 - PRELIMINARIES

The meeting was called to order at 11.34 a.m. followed by a word of prayer by Sen Julius Murgor Recha, MP.

The Chairperson invited all present to introduce themselves.

MIN.NO.CDL. 158/2024 - ADOPTION OF THE AGENDA

The agenda of the meeting was adopted unanimously as follows: -

AGENDA

1. Preliminaries;
 - a) Prayer
 - b) Introduction
2. Adoption of the Agenda;
3. Meeting with the Cabinet Secretary, Ministry of Health and other Stakeholders to Consider the Social Health Insurance Regulations, 2024 (Committee Paper No. 70, 70A, 70 B);
4. Any Other Business; and,
5. Date of the Next Meeting and Adjournment

MIN.NO.CDL.159/2024 MEETING WITH THE CABINET SECRETARY, MINISTRY OF HEALTH AND OTHER STAKEHOLDERS TO CONSIDER THE SOCIAL HEALTH INSURANCE REGULATIONS, 2024

Members of the committee met with different health stakeholders to deliberate on the Social Health Insurance Regulations, 2024.

The stakeholders present included Council of Governors and the Kenya Medical Association. An apology was tendered on behalf of the Cabinet Secretary, Ministry of Health by the Ministry and advised that they would be available on a later date. However, the Stakeholders attended the meeting and raised several issues concerning the Social Health Insurance Regulations, 2024.

Council of Governors raised a number of issues on the regulations. Firstly, clarification was sort on the use of the means testing system as set out in the regulations. They noted that the country has more persons in the informal sector and they also needed to be incorporated in the fund to avoid over burdening the employed citizens. As a proposal the Council of Governors advised that all persons in the informal sector should start with a minimum deduction of 300/=

but with a deadline on the completion.

The Committee Members were also concerned on the issue of Multiple registration and if the Ministry had involved data protection agencies.

Resolution

The Committee resolved to invite the Cabinet Secretary for a meeting early June to discuss the issues raised by the Council of Governor's and Kenya Medical Association.

MIN.NO.CDL. 160/2023 - ANY OTHER BUSINESS

There was no other business.

MIN.NO.CDL.161/2023 - ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 13.01 p.m. The Next meeting would be held on 28th May, 2024 at 11.00 a.m.

SIGNED: 

DATE:28/5/2024.....

**SEN. MWENDA GATAYA MO FIRE, MP.
CHAIRPERSON,
COMMITTEE ON DELEGATED LEGISLATION**



THIRTEENTH PARLIAMENT | THIRD SESSION

**MINUTES OF THE FORTIETH (40TH) MEETING OF THE COMMITTEE ON
DELEGATED LEGISLATION HELD ON TUESDAY, 2ND JULY, 2024 AT 12.00
P.M AT COMMITTEE ROOM 4, FIRST FLOOR, BUNGE TOWER BUILDING.**

PRESENT

- | | |
|---|---------------|
| 1. Sen. Mwenda Gataya Mo Fire, MP | - Chairperson |
| 2. Sen. Mohammed Mwinyihaji Faki, CBS, MP | -Member |
| 3. Sen. Daniel Kitonga Maanzo, EBS, MP | -Member |
| 4. Sen. Agnes Kavindu Muthama, MP | -Member |
| 5. Sen. Betty Batuli Montent, MP, MP | -Member |
| 6. Sen. Joyce Chepkoech Korir, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-------------------|
| 1. Sen. Danson Buya Mungatana, MGH, MP | -Vice Chairperson |
| 2. Sen. Gloria Orwoba, MP | -Member |
| 3. Sen. Julius Murgor Recha, MP | -Member |

SECRETARIAT

- | | |
|------------------------|-------------------------|
| 1. Mr. Joseph Mwangi | -Senior Clerk Assistant |
| 2. Mr. Malcolm Ngugi | - Legal Counsel |
| 3. Ms. Faith Wangui | -Legal Counsel |
| 4. Mr. Erick Ososi | -Research Officer |
| 5. Mr. Peter Katana | -Research Officer |
| 6. Ms. Hawa Abdi | -Serjeant-At-Arms |
| 7. Mr. Nicholas Arusei | -Audio Officer |
| 8. Mr. Ryan Muriithi | -Attachee |

MIN NO. CDL.210/2024 PRELIMINARIES

The meeting was called to order at 12.20 p.m. followed by a word of prayer by Sen. Joyce Chepkoech Korir, MP.

MIN.NO.CDL. 211/2024 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. Betty Batuli Montet, MP, as follows: -

AGENDA

1. Preliminaries;
 - a) Prayer
 - b) Introduction
2. Adoption of the Agenda;
3. Adoption of the Annulment Report of the Social Health Insurance Statutory Instruments Legal Notice No. 48-49 of 2024);
4. Any Other Business; and,
5. Date of the Next Meeting and Adjournment

MIN.NO.CDL.212/2024 ADOPTION OF THE ANNULMENT REPORT OF THE SOCIAL HEALTH INSURANCE STATUTORY INSTRUMENTS LEGAL NOTICE NO. 48-49 OF 2024);

The Members were taken through the Annulment Report by the Secretariat.

The Report was adopted having been proposed by Sen. Agnes Kavindu Muthama, MP, and seconded by Sen. Joyce Chepkoech Korir, MP

MIN.NO.CDL. 213/2024 ANY OTHER BUSINESS

There was no other business.

MIN.NO.CDL.214/2024 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 1.15p.m. The Next meeting would begin at 1.18 p.m. the same day.

SIGNED: 

DATE: 2nd July, 2024

**SEN. MWENDA GATAYA MO FIRE, MP.
CHAIRPERSON,
COMMITTEE ON DELEGATED LEGISLATION**