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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON:

THE SOCIAL HEALTH INSURANCE BILL, 2023 (NA BILL NO. 58 OF 2023)

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

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER, 2023

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FOREWORD BY THE CHAIRPERSON

This report contains proceedings of the Departmental Committee on Health on its consideration of the Social Health Insurance Bill, 2023 (NA Bill No. 58 of 2023), by the Leader of the Majority Party, Hon. Kimani Ichung'wah which was published on 11th September 2023. The Bill was read the first time on Thursday, 14th September 2023, and was thereafter committed to the Departmental Committee on health for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has fifty-five (55) clauses and seeks to repeal the National Health Insurance Act, No. 9 of 1998 and to provide for a comprehensive legislative framework to regulate the provision of social health insurance, to establish the Social Health Authority, to promote the implementation of Universal Health Coverage and to ensure that all Kenyans have access to affordable and comprehensive quality health services.

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

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

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

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

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Social Health Insurance Bill, 2023 (NA Bill No. 58 of 2023). It is my pleasure to report that the Committee has considered the Social Health Insurance Bill, 2023 (NA Bill No. 58 of 2023) and has the honour to report back to the National Assembly with

the recommendation that the Bill be approved with amendments as reported by the Committee.

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

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order 216 of the National Assembly Standing Orders and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee include:
 - a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - c) **To study and review all legislation referred to it;**
 - d) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f) *Vet and report on all appointments where the constitution or any other law requires the national Assembly to approve, except those understanding Order 204 (Committee on appointments);*
 - g) *To examine treaties, agreements and conventions;*
 - h) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j) *To examine any questions raised by Members on a matter within its mandate.*
2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to health, medical care and health insurance including universal health coverage.
3. In executing its mandate, the Committee oversees the Ministry of Health with its two State Departments namely the State Department for Medical Services and the State Department for Public Health and Professional Standards.

1.2 COMMITTEE MEMBERSHIP

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

Chairperson

Hon. (Dr.) Robert Pukose, MP
Endebes Constituency

UDA Party

Vice-Chairperson

Hon. Ntwiga, Patrick Munene MP
Chuka/Igambang'ombe Constituency

UDA Party

Hon. Owino Martin Peters, MP
Ndhiwa Constituency

ODM Party

Hon. Muge Cynthia Jepkosgei, MP
Nandi (CWR)

UDA Party

Hon. Wanyonyi Martin Pepela, MP
Webuye East Constituency

Ford Kenya Party

Hon. Kipngok Reuben Kiborek , MP
Mogotio Constituency

UDA Party

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

ODM Party

Hon. Kibagendi Antoney, MP
Kitutu Chache South Constituency

ODM Party

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency

KANU

Hon. Maingi Mary, MP
Mwea Constituency

UDA Party

Hon. Mathenge Duncan Maina, MP
Nyeri Town Constituency

UDA Party

Hon. Lenguris Pauline, MP
Samburu (CWR)

UDA Party

Hon. Oron Joshua Odongo, MP
Kisumu Central Constituency

ODM Party

Hon. (Prof.) Jaldesa Guyo Waqo,MP
Moyale Constituency

UPIA Party

Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency

ANC Party

1.3 COMMITTEE SECRETARIAT

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

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

Ms. Gladys Jepkoech Kiprotich
Clerk Assistant III

Ms. Marlene Ayiro
Principal Legal Counsel II

Ms. Faith Chepkemoi
Legal Counsel II

Mr. Yakub Ahmed
Media Relations Officer II

Ms. Rahab Chepkilim
Audio Recording Officer II

Ms. Abigael Muinde
Research Officer III

Mr. Hiram Kimuhu
Fiscal Analyst III

Mr. Benson Kimanzi
Serjeant-At-Arms III

Mr. Salat Abdi Ali
Senior Serjeant-At-Arms

CHAPTER TWO

2.0 OVERVIEW OF THE SOCIAL HEALTH INSURANCE BILL, 2023 (NA BILL NO. 58 OF 2023)

6. The Social Health Insurance Bill, 2023 (hereinafter referred to as “the Bill”) is sponsored by the Leader of the Majority Party. The principal object of the Bill is to put in place a legislative framework to regulate the provision of social health insurance, promote the implementation of the Universal Health Coverage and to ensure that all Kenyans have access to affordable and comprehensive quality health services. The Bill further repeals the National Health Insurance Act, No. 9 of 1998.
7. **Part I (Clauses 1-3)** of the Bill provides for the preliminary provisions namely the short title and commencement, interpretation and the objects of the Bill are:
 - (a) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;
 - (b) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;
 - (c) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and
 - (d) promote strategic purchasing of healthcare services.
8. **Part II (Clauses 4-19)** of the Bill establishes the Social Health Authority and provides the Board, its functions, powers, qualification of members and appointment of the Chief Executive Officer among others. The functions of the Social Health Authority shall be to:
 - (a) register the beneficiaries in accordance with this Act;
 - (b) manage the Funds established under this Act;
 - (c) receive all contributions and other payments required by this Act to be made to the Funds;
 - (d) contract health care providers and healthcare facilities upon successful certification by the relevant body;
 - (e) consider and make payments to contracted health care providers and healthcare facilities out of the Funds in accordance to the provisions of this Act;
 - (f) develop guidelines for the operations and implementation of the Funds established under this Act;
 - (g) establish sectoral linkages for effective management and growth of the Funds;
 - (h) monitor and evaluate programs and activities under the Funds;

- (i) receive and address complaints that may arise from the implementation of this Act;
- (j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;
- (k) implement all government policies on social health insurance and related functions; and
- (l) perform any other function conferred on it by this Act or any other written law.

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

- (a) a non-executive Chairperson, appointed by the President;
 - (b) the Principal Secretary in the ministry of Health;
 - (c) the Principal Secretary in the ministry of Finance;
 - (d) the Director-General for Health;
 - (e) the Attorney-General or a designated representative;
 - (f) a representative of the Council of County Governors;
 - (g) a person, not a public officer, appointed by the Cabinet Secretary;
 - (h) 4 representatives of Kenya Medical Association, the informal sector association, health care providers and the Central Organization of Trade Unions-Kenya, appointed by the Cabinet Secretary.
 - (i) the Chief Executive Officer of the Authority, who shall be an *ex-officio* member of the Board.
9. **Part III (Clauses 20-24)** of the Bill provides for establishment of the Primary Healthcare Fund and the attendant sources of its funds. The purpose of the Primary Healthcare Fund established in clause 20 is to purchase primary health care services from health facilities. The sources of monies for this Fund include—
- (a) monies appropriated by the National Assembly;
 - (b) any grants, gifts, donations or bequests;
 - (c) monies allocated for that purposes from fees or levies administered; and
 - (d) monies accruing to or received by the Fund from any other source.
10. **Part IV (Clauses 25-27)** of the Bill provides for establishment of the Social Health Insurance Fund and the attendant sources of its funds, registration and membership to the fund and contributions. The purpose of the Social Health Insurance Fund established in clause 25 is to purchase primary health care services from health facilities. The sources of monies for the Fund include—

- (a) contributions under the Act;
- (b) monies appropriated by the National Assembly for indigent and vulnerable persons;
- (c) gifts, grants, innovative financing mechanisms or donations;
- (d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme; and
- (e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits.

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

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

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

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

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

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

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

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

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

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

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

The Board of the Social Health Authority shall competitively recruit and appoint its staff subject to the approved staff establishment and on such terms and conditions of service as may be determined by the Board. The NHIF staff of the Fund are eligible to apply for the positions advertised by the Authority and may be considered for appointment where they are suitably qualified for the positions advertised. The staff of the NHIF who are not appointed by the Authority may either retire from public service or be redeployed within the public service.

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

CHAPTER THREE

3.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

3.1 LEGAL PROVISION ON PUBLIC PARTICIPATION

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

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

Standing Order 127(3) provides that—*"The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

Standing Order 127(3A) further provides that— *"The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."*

3.2 PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATION

19. The Social Health Insurance Bill, 2023 sponsored by the Leader of the Majority Party was published on 11th September 2023, and pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bill was committed to the Departmental Committee on Health having been read the first time in the House on Thursday, 14th September 2023.
20. Following the committal of the Bill, the Committee invited memoranda from the public through the placement of advertisements in the print media on Friday, 15th September, 2023 and Saturday, 16th September 2023 and requested for memoranda from key stakeholders vide letters REF: NA/DDC/DC-H/2023/088 and REF: NA/DDC/DC-H/2023/089 dated 15th September 2023. The Committee also engaged the Ministry of Health and the Council of Governors on 17th to 20th September 2023 in Mombasa County. The Committee further engaged the Kenya Association of Private Hospitals and the National Health Insurance Fund on 22nd to 25th September 2023 in Machakos County.

3.3 SUBMISSIONS ON THE BILL

21. Following the call for memoranda, the Committee received submissions through oral presentation and written memoranda from the following institutions and individuals:
- 1) The Ministry of Health, State Department for Medical Services;
 - 2) The National Health Insurance Fund;

- 3) The Council of Governors (COG);
- 4) The Kenya Medical Practitioners and Dentists Council (KMPDC);
- 5) The Federation of Kenya Employers (FKE);
- 6) The Kiambu County Empowerment Network (KCEN);
- 7) Ten Civil Society Organizations (CSOs) comprising of Amnesty International Kenya, Transparency International Kenya, Organisation of African Youth-Kenya, ICJ Kenya, Kenya Human Rights Commission, Remusi Housing Cooperative Society Limited, People's Health Movement, Young Professionals for Development, Kenya AIDS NGOs Consortium (KANCO), Institute of Public Finance (IPF) and Scaling Up Nutrition Civil Society Alliance submitted a joint memorandum;
- 8) Confraternity of Patients Kenya (COFPAK);
- 9) The Office of Data Protection Commissioner (ODPC);
- 10) National Gender and Equality Commission;
- 11) Kenya Medical Association;
- 12) Haki Yetu Organisation;
- 13) Dr. Peter Ongwae, Pharmaceutical Society of Kenya Practice Chairman;
- 14) Mr. Rashid S Osman;
- 15) The Kenya Union of Commercial Food and Allied Workers;
- 16) The International Commission of Jurists (ICJ Kenya);
- 17) The Rural Private Hospitals Association of Kenya (RUPHA);
- 18) Moi University;
- 19) The Health NGOs Network;
- 20) The Economic and Social Rights Centre- Hakijamii;
- 21) The Social Protection Actors Forum;
- 22) The Former Parliamentarians Association (FOPA);
- 23) The Kenya Association of Private Hospitals (KAPH);
- 24) The Pharmaceutical Society of Kenya;
- 25) The International Budget Partnership Kenya;
- 26) The Kenya Health Federation (KHF);

- 27) The Kenya Medical Practitioners Pharmacists and Dentists' Union;
- 28) The Caucus on Disability Rights Advocacy (CDRA); and
- 29) The United Disabled Persons of Kenya (UDPK).

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

- (a) Deletion of the word "*National*" appearing in the definition of the words "*Board*" as Clause 4 of the Bill establishes the Social Health Authority;
- (b) Deletion of the words "*in the spirit of self-reliance and self-determination*" in the definition of "*primary health care*" as the proposed amendment best captures the term;
- (c) Deletion of the words "*who is for the time being named as such by the contributor for that financial year*" in the definition of the term "spouse" which will provide protection of a spouse against removal by contributor;
- (d) Deletion of the term "*risk spreading*" and the reference to risk spreading in clause 52 as there is no risk spreading in social insurance practice since the scheme has only one pool;
- (e) Deletion of the words "*investing*" in clause 4 (2)(c), deletion of clause 6(2)(e) and clause 38 as the Social Health Authority is not expected to have a surplus of funds for investment;
- (f) Amendment to the composition of the Board of the Social Health Authority in Clause 7 to replace the Attorney-General with a representative of the CEC health caucus and to provide for representation of health providers from the faith based and private sector that are currently not well represented;
- (g) Removal of the restriction of directors or officers of private health facilities from being appointed as the members of the Board of the Social Health Authority in Clause 8 as well as the inclusion of parliamentary reports as a means of determining that a person who has been found culpable by parliament for contravening Chapter Six of the Constitution and therefore not fit to be appointed as a member of the Board of the Social Health Authority;
- (h) That the CEO of the Social Health Authority should have a master's degree;
- (i) Deletion of the requirement that the CEO must be an Advocate of the High Court of Kenya;
- (j) Deletion of the word "may" and substitution with the word "shall" in Clause 24 and 30 so as to make it mandatory for the Cabinet Secretary to make

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

- (k) Deletion of funds for employee benefits and compulsory Public Service Employee Insurance Benefit Scheme from being part of the sources of monies of the Social Health Insurance Fund in Clause 25 since the same is a social fund and therefore there are no enhanced schemes;
- (l) Amendment of Clause 26 to require the production of proof of registration and contribution to the Social Health Insurance Fund so as to facilitate the enforcement of the mandatory requirement of complying with contributions and other requirements under the Bill;
- (m) Reduction of the ten percent for failure to pay contributions under the Bill to the five percent as the current fine is too punitive;
- (n) Deletion of Clause 35 (3) and (4) and substituting with a new subclause to the effect that the Claims Management Office may delegate the performance of its functions under subsection (2)(a) and (b) to a medical insurance provider licensed by the Insurance Regulatory Authority under the Insurance Act in a manner to be prescribed in regulations by the Cabinet Secretary. This gives the Board of the Social Health Authority discretion to make the decision on the power to delegate the functions of validation and appraisal of medical claims and to separate these functions from the function of issuing pre-authorisations;
- (o) Deletion of the requirement of allowing the incurring of expenses for the purposes of pursuance of an authorisation of the Board in clause 40 (4) to avoid any overtures by the Board;
- (p) That the Chairperson of the Dispute Resolution Committee ought to be appointed by the President and not the Cabinet Secretary so as to strengthen this Committee;
- (q) Amendment of the fines in Clause 49 to make them commensurate to the offences committed by individuals and institutions in Clause 49;
- (r) Deletion of words "which shall be within a period of one month from the date of submission of the claim; and" in Clause 50(2)(e) as validity of claims is not tied to any time frame; and
- (s) Insertion of the words "in consultation with Salaries and Remuneration Commission" immediately after the words "determined by the Board" in paragraph 6(2) of the First Schedule of the Bill as the Salaries and Remuneration Commission is mandated to advice on remuneration and other benefits for public officers.

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

- (a) The definition of the term "household" to be amended to mean a nuclear unit of a contributor, the declared spouse and children as the unit of contribution is the

household. A misinterpretation of the unit will have a significant impact on the resources allocated to or generated by the contributor;

- (b) Include the Federation of Kenya employers in the Board of the Social Health Authority as employers are a major stakeholder in the Social Health Authority with regard to the payment of statutory contributions deducted from employees;
- (c) Combination of paragraph (g) with paragraph (h) (ii) of subclause (1) to provide that "two persons, not being public officers, appointed by the Cabinet Secretary so as to remove ambiguity as the Bill does not define who the informal sector association is and there is no existence of such a body;
- (d) Set out express provisions on the nominating institutions in clause 7 (ii) and (iii);
- (e) Inclusion of the umbrella body representing all health care providers in the Board of the Social Health Authority or secondments from recognized affiliated bodies on a rotational basis in clause 7;
- (f) The requirements in clause 8 (1)(c) are restricted to specific sectors namely ICT and health which has left out a myriad of people with wide experience as such the clauses are too prescriptive thus limiting the powers of the appointing authorities;
- (g) Deletion of clause 8(2)(e) as its provisions are already provided for under clause 8(2)(a) and a breach of the provisions of Chapter six of the Constitution will be addressed by clause 8(2)(a) through criminal convictions;
- (h) Amendment of clause 14 to remove the requirement that the CEO must be an Advocate is not appropriate for the position and objective as it limits other qualified professionals and to make a Master's degree a requirement for the CEO as per the Public Service Commission guidelines for directors and above;
- (i) Insertion of the words "as per approval by the Board" in clause 22(1) and for the clause to make provision for regulations to stipulate the conditions for payment out of the Fund;
- (j) Amendment of clause 25 to include investment income including but not limited to rental income so as to exempt the Authority's income from being subject to taxes as such income received from areas such as investments and rental income will be used to pay benefits.
- (k) That the Cabinet Secretary must consult the Board of the Social Health Authority in matters of registration, making of regulations on implementation of the Emergency, Chronic and Critical Illness Fund, settlement of claims, stakeholder engagement in clause 26(4), clause 30, clause 36, clause 47(2) so as to take into account the Board's day to day operations on such matters;
- (l) Deletion of clause 26(5) as the clause may raise operational challenges in access to government services;
- (m) Amendment of clause 28 to provide guidance on who is able to access the funds under the Emergency, Chronic and Critical Illness Fund and the modalities of access to be addressed in the regulations. This will aid in preventing misuse of the funds therein as clause 28 does not provide the eligibility criteria for access to the Fund;

- (n) Deletion of clause 33(2) and 33(4) so that enrolment into the panel of providers, contracting of the services should be a function of the Board and insertion of a provision for gazettelement upon empanelment by the Board;
- (o) Insertion of a requirement that publication of termination of contracts on the Authority's website in clause 34(6) as it informs the public and flows from the provision of gazettelement upon empanelment;
- (p) Specify that the Claims Management Office works under the directions of the Authority and the functions of claims management are functions of the Authority and where any delegation is required, the same should be at the discretion of the Board. The regulations under the clause 35 must also be in place at least 6 months after commencement of the Act for ease of transition;
- (q) There is for clarification in whether the appropriate title is Committee or Tribunal. If it is an independent body, who will fund its operations and how its decisions will be enforced?
- (r) On Part VIII, make provision for the role of the Board in managing complaints internally and have the tribunal as the next recourse platform;
- (s) Deletion of clause 48(5) as digitization is an operational matter that does not require regulations;
- (t) Deletion of paragraph 2 (2) in the First Schedule in its entirety as disposal of assets shall be guided by the provisions of the Public Procurement and Assets Disposal Act, No. 33 of 2015;
- (u) Amendment of paragraph 6(1) in the First Schedule to increase transition period to two years as one year is too short to undertake the whole transition processes including the winding up of contracts;
- (v) Deletion of paragraph 6(2), (3) and (4) and substitution with new paragraphs to provide that the current NHIF staff shall be transitioned and deemed to be staff appointed by the Authority under section 17 of the Act. The Authority to within, phased transition plan and not exceeding twenty-four months, review the qualifications of these staff and may retain those found suitably competent and qualified provided that such staff may opt to remain in the service of the Authority; and on such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Authority. An employed not retained should retire from the service of the Authority under such terms and conditions that are not detrimental to the staff (such as pension benefit, loans , medical cover etc.) or undertake early separation with suitable compensation; and
- (w) Inclusion of clauses on the transition of pension scheme management and transition for the members of the Board who are eligible under the new Act until the end of their term.

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

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

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

- (b) That it is not clear which jurisdiction of similar social, economic and political environment has informed the policy and institutional proposals in the Bill;
- (c) That in Clauses 20,23 and 25, the Bill fails to state how the three Funds shall interface and provide for separation of the collection of premiums and funds vis-à-vis reimbursement and payment;
- (d) That the Bill seeks to reform the health financing framework while delicately addressing other key components albeit not comprehensively;
- (e) That the Bill should legislate on the principles that underscore it namely acceptability, affordability, accessibility, equity, transparency and accountability, effectiveness and efficiency and sustainability which are key in setting the foundation for the law and institutional framework;
- (f) A timeline for the development of regulations should be provided.
- (g) That Clause 56 should provide that the Cabinet Secretary shall in consultation with the Board and the Council of Governors to make regulations under the Act;
- (h) That Clause 26 should cover all categories of people and as such there is need to re-think the definitions of contributor, household, indigent, and vulnerable persons to allow for certain populations like children in childcare facilities and older persons in homes;
- (i) That Clause 44 of the Bill is not clear whether the Dispute Resolution Committee is executive or non-executive and whether it is established as a quasi-judicial structure;
- (j) That clarity should be provided in the First Schedule on whether the NHIF and its assets will transition to all the three Funds or one of them as such amendments should be proposed to take care of all issues including the NHIF officers, assets, liabilities and the NHIF Board and in particular to ensure that the NHIF staff are protected as especially their pension;
- (k) Amendment of the Bill to incorporate County Governments as key stakeholders in health financing; and
- (l) That the manner in which the Funds are established could be in contravention of the Public Finance Management Act, No. 18 of 2012 and may need to be relooked as the Fund established under the Social Assistance Act, 2013 could not be implemented because of the way it was established.

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

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

- (b) Amendment of Clause 7 on Board composition to provide for rotation of health professional associations since there are multiple health professional associations in the country;
- (c) Deletion of the requirement that the Chief Executive Officer of the Authority must be an Advocate of the High Court of Kenya as it is an exclusionary requirement with no justifiable basis; and
- (d) Deletion of Clause 51 on conflict of laws which gives the Bill prominence over other laws on matters related to the provision of social health insurance.

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

- (a) Deletion of Clause 5(j) so that the Cabinet Secretary will consult the Authority but will not be bound by any advice given by the Authority;
- (b) Inclusion of FKE under clause 7(1)(h) as representation in the labour sector representation is not complete when the Government and workers are represented without employers;
- (c) Deletion of "or levies" in Part III and substitution with "monies allocated for those purposes from the fees administered" to avoid double payment and increased costs to businesses;
- (d) That there is a risk of discriminating on individuals not registered under other programmes of vulnerable persons such as *Inua Jami*;
- (e) Inclusion of the terms 'social unit' and 'person' in Clause 27(1) for clarity;
- (f) Prescription of specific applicable rates in Clause 2 (a) to conform with the Bill;
- (g) Provision of clarity on whether the ten percent is one-off, monthly or annual and general clarity on penalties;
- (h) That there is need to prescribe essential healthcare benefits in Clause 31(1) so as to clearly define the essential benefits;
- (i) Provision of clear linkage between the Funds and the primary health care services in Clause 35;
- (j) That the cap of administrative expense at 5% is too high should be reduced to 2% and similar to NSSF, the same should not exceed 2% of the audited financial statement;
- (k) Insertion of the words "as amended from time to time" to conform with the provisions of the Data Protection Act, 2018 in Clause 48(4) to ensure consistency with the existing laws;
- (l) Increase of the fine in Clause 49(1) to not exceeding one million in line with other similar provisions and subclauses (b) and (c) should stand on their own as they

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

- (m) Deletion of "Despite the generality" and substitution with "Subject to Clause 50 (2) subsection (1)" in clause 50(2) so that the making of regulations does not become optional;
- (n) Addition of a new principle in clause 50(4): (e) meaningful public participation specified under Article 10(2)(a) of the Constitution to conform to the constitutional requirement of public participation in the making of regulations;
- (o) Absorption of the staff of NHIF and adherence to the due process provided for in the applicable labour laws in paragraph 6(2) of the First Schedule to provide for seamless transition and protection of job and household livelihoods; and
- (p) Inclusion of an express "saving" in Clause 6(2) that automatically moves all NHIF staff to the new Authority as asking staff members to apply afresh unfair labour practice.

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

- (a) Substitution of the word 'may' with 'shall' in Clause 24 and 30 to confer a duty to the Cabinet Secretary, to eliminate possibility of hindering effective execution of the Primary Healthcare Fund and Emergency, Chronic and Critical Illness Fund;
- (b) Separation of provisions within the Bill that specifically address youth concerns, aspirations and their unique role in the society in Clause 4;
- (c) Review of the Bill to include mechanisms for recognising and accommodating individuals with valuable skills and potential even if they do not meet the ten-year experience requirement in Clause 8 which limits the appointment of the youth;
- (d) Establishment of an Investment Committee, implementation of transparency measures, involvement of auditors or an oversight body, establishment of a code of conduct and ethics, regular audits and encouragement of public participation in Clause 38 to enhance transparency, accountability and oversight in the investment of the Authority's funds hence reducing the risk of corruption and mismanagement;
- (e) Establishment of accessible registration centers, both physical and digital, across the country and launch of comprehensive awareness campaigns and seamless integration of the Social Health Insurance Fund membership verification into government systems in Clause 26 to simplify the process of providing evidence of membership when accessing public services, enhancing efficiency and reducing delays; and
- (f) Inclusion of measures such as public access to financial reports, public consultation and feedback and citizen awareness campaigns in Clauses 42 and 43 to foster greater citizen participation in the audit process, enhance transparency and build trust among the public.

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

- (a) Provision of a nominee of CSOs by national health NGOs Network in Clause 7 as they have in-depth knowledge on community needs;
- (b) Revision of contributions to be remitted monthly for all households in Clause 27(3) as annual contribution propagates inequality;
- (c) Exemption of emergency services from the precondition in Clause 27(7) since it defeats the purpose of emergency services which is to save life;
- (d) Addition of the definition of the term 'individual' in Clause 2 as a contributor as the government for legal purposes is also a person, and should not be construed as a beneficiary as it is also listed a liable contributor in Clause 27;
- (e) Deletion of the words 'and who has been identified as such by the relevant government body' to avoid discrimination of those who may not have been registered in clause 2 and especially for persons not registered under other programmes for vulnerable persons such as *Inua Jami*;
- (f) Inclusion of the words "transport of the ill or injured" in the definition of emergency medical treatment in Clause 2;
- (g) Inclusion of two clauses in clause 11 and 41 to define the powers of the Board and the functions of the Board as the delegation clause does not make sense without express stipulation of the powers and functions of the Board;
- (h) That all staff need to be competitively and openly recruited in Clause 17 because appointments will leave room for bias and possible discrimination;
- (i) Abolition of the Primary Health Care Fund in Clause 20 to avoid duplicity;
- (j) Revision of Clause 21 to include county governments in the sources of monies in the Primary Health Care Fund;
- (k) Deletion of the precondition in Clause 26(5) which has potential to limit other fundamental rights as provided in the Constitution including access to other socio-economic rights;
- (l) Addition of a clause to include a written justification as to why the revocation will be done in Clause 33(4) so as not to open a window for abuse of power by the office holder;
- (m) Revision of Clause 35(4) to provide that regulations on claims management shall be made in consultation with the Authority and revision of the Bill to the effect that all regulations to be made under the Bill ought to be made in consultation with the Social Health Insurance Authority and subjected to public participation; and

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

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

- (a) Deletion of 'one year' and substitution of 'six months or more' in Clause 2 as illnesses like tuberculosis may take between six to twelve months of treatment and yet they are chronic. This will prevent the disadvantaging of all the eligible population;
- (b) Addition of 'and commodities' in Clause 3(b) to emphasize inclusion beyond services offered by healthcare providers;
- (c) Inclusion of an organisation that champions patient safety and wellbeing at all levels of healthcare in Clause 7(1)(h) as patient organisations are currently not represented; and
- (d) Inclusion of patients' organisation namely COFPAK in Clause 45(b) as matters about patients can be handled without involving their representatives.

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

- (a) Provision of adequate safeguards and measures through which the persons being registered understand their rights as data subjects and the Data Protection Principles are applied on collection and processing of their data in Clause 26 and 48 so as to protect the rights of data subjects;
- (b) Inclusion of a list of information that the Fund may require from its contributors, as an additional provision to promote clarity and align with the principle of data minimization as espoused in the Data Protection Act, No. 24 of 2019.
- (c) Amendment to include a new provision to the effect that "Any processing of personal and sensitive personal shall be done in accordance with the Data Protection Act, No. 24 of 2019." This addition will ensure that any processing of personal or sensitive personal data under the Bill is done in accordance with the Data Protection Act, 2019 and the Data Protection Principles which requires transparency, confidentiality, integrity and accountability.

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

- (a) Amendment of the long title by inserting the words "to establish the Primary Healthcare Fund; to establish the emergency, Chronic and Critical illness Fund," immediately after the word "Authority";
- (b) The phrase "purchase primary healthcare services from health facilities" as used in Clause 20 should be defined;
- (c) The definition of the term "Health Facility" should be defined as it is used in the Bill to mean the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designated to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventive or other health service;

- (d) Amendment of Clause 6 by substituting “section 39” with “section 38” for proper cross referencing;
- (e) Amendment of Clause 7 to reduce the number of Board members to nine by substituting “the director general for Health” with “The Principal Secretary in the State Department for the time being in charge of social protection” in clause 7(1)(d), deletion of the 7(1)(e) and (g) without replacement. This is to align with the principles in the *Mwongozo Code on Governance* on membership of Boards. Further, the State Department of Social Protection is in charge of issues and matters relating to the indigents and vulnerable persons and is in charge of the identification and enlisting to the funds while the Attorney-General can be a co-opted member;
- (f) Amendment of Clause 7 (4) by substituting the following phrase “afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalised” with “adhere to the principle of gender equality and representation of persons with disabilities” so as to align with Article 27 (8) and 54 (2) of the Constitution;
- (g) Inclusion of new clause to the effect that the Board may where it deems appropriate, co-opt any person to the Board as other persons may add value to the Board but cannot be appointed as substantive members due to limitations of memberships;
- (h) Deletion of Clause 8(2)(b), Clause 9(e) and Clause 46 (c) as the term unsound mind is derogatory, discriminatory and prejudicial to persons with mental disabilities and does not align with the provisions of the United Nations Convention on the Rights of Persons with disabilities (CRPD);
- (i) Amendment of Clause 24 and 30 by substituting the term “may” with “shall” to make it mandatory for the Cabinet Secretary to make regulations on the implementation of the Primary Healthcare Fund and Emergency, Chronic and Critical illness Fund;
- (j) Deletion of Clause 26(5) as it offends the provisions of Article 12(1) (a) of the Constitution on entitlement of citizens; and
- (k) Inclusion of a new Clause 30A on the Appointment of Fund managers as follows—
“There shall be Fund managers of the Fund who shall be competitively recruited and appointed by the Board”.

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

- (a) That the definition of the terms “beneficiary and household” ought to clarify whether beneficiaries must or must not be biological children of the contributor, whether a household is only defined by biological or nuclear family or members of the contributor or those living in the same household;
- (b) Amendment of Clause 31 and 32 since the Social Health Insurance Fund is a social insurance cover and should do away with enhanced benefits package for civil servants since the law does not deprive anyone the opportunity to engage with private insurance covers for complimentary cover. This ensures equal treatment for all Kenyans;

- (c) Inclusion of penalties for denial of emergency healthcare to Kenyans in clause 28 as this is a constitutional right;
- (d) Supported the lowering of the minimum rates for unemployed Kenyans as well as subsidies for the vulnerable in Clause 27 as it promotes inclusivity. Without such capping, the high salaried Kenyans would end up paying more than three times what they would have paid for private medical insurance;
- (e) The Board should have representation of KMA as proposed in Clause 8 (1)(h) as healthcare delivery is delivered in teams and the physician is the team leader;
- (f) Amendment of Clause 7 (h) (ii) and (iv) to explicitly provide how the representatives of the contributors in informal and formal sectors will be nominated and also include patient representation in the Board;
- (g) Inclusion of a requirement of a degree in health, health systems and expertise in ICT in Clause 13 as qualifications of the CEO's office must be clearly stipulated within the Bill for guidance and transparency;
- (a) That the Chief Executive Officer should hold a minimum of a bachelor's degree in Medicine and Surgery, Dentistry or Pharmacy or related degree with knowledge in health financing, economics and insurance in Clause 14(1)(a) as a background in healthcare provides expertise in health service delivery which is critical for the successful implementation of the Bill;
- (b) Deletion of the requirement of the CEO being an advocate of the High Court of Kenya in Clause 14 1 (b) as the legal team is represented on the Board by the Attorney General;
- (c) That the Corporation Secretary should have a bachelor's degree in business, finance, public administration, law or related fields and have sufficient knowledge in administration and should be a Certified Public Secretary in Clause 16 (2) (a) and (c). The Bachelors of Law degree only limits other professionals with sufficient knowledge in public administration;
- (d) That Part III reaffirms and supports tax funding for primary health care which is the cornerstone of healthcare and ought to provide for sufficient funding for the PHC fund based on population health needs in Clause 23 as investment is cheaper in the long run;
- (e) The period of twelve months adopted in Clause 27(1)(b) should be applied to Clause 26(2);
- (f) That the contribution rate has not been prescribed in Clause 27 (2) (a) and suggested that the rate be based on Basic Salary and not Gross Pay at a rate of 2-3% of the Basic Salary as additional benefits should not be subject to health insurance contribution as it takes away from the intended cushioning;
- (g) That Clause 27 (3) allow a more flexible payment: monthly, quarterly, biannual or annually. Annual payment locks out majority of self-employed and underemployed individuals who often struggle to pay.
- (h) That under Clause 27(6), the penalty must not exceed 5%.

- (i) That "*Sin taxes*" including taxes from alcohol, tobacco, sugar industry and other products that increase the development of chronic illnesses should be made a source of monies for the Emergency, Chronic and Critical Illness Fund.
- (j) The benefits package provided under clause 31(1) should be published before the Bill is passed as health professionals, beneficiaries and Kenyans ought to know the scope of benefits that shall be provided in the Bill;
- (k) That the tariff rates under Clause 32 (1) should be published for completeness of this Bill as health professionals and providers ought to be compensated fairly as per the prescribed rates . The tariffs must take into consideration the professional fee rates of medical services as prescribed by the Medical Practitioners and Dentists (Professional Fees) Rules, 2016 (Legal Notice No. 131).
- (l) Amendment of Clause 32 (3) to provide for specific time frame within which tariffs are reviewed as opposed to leaving it open;
- (m) That clarity is required on the constitution of the empanelling body as described in Clause 33(4) of the Bill as services under claims should not be outsourced but the department should be adequately staffed. This is the core business of the Authority and therefore claims management should be supported by doctors and health professionals to increase efficiency and reduce fraud. Outsourcing will increase costs in the current claims process as healthcare workers have faced challenges getting approval for genuine procedures for patients due to the lack of understanding from the preauthorisation team;
- (n) That Clause 38(1)(a) ought to specify that investments must be in the form of low risk, cash and cash equivalents and not fixed assets. Invested funds should be able to be liquidated within a month to meet the needs of the fund when required as the funds are social funds whose sole purpose are to ensure equitable access to healthcare and not to make alternative income;
- (o) That under Clause 49 should provide for the offences related to fraudulent activity, and ought to provide for the recovery of funds in addition to fines and imprisonment as recovery is key in ensuring justice for the contributor and the beneficiaries;
- (p) The imprisonment term for misappropriation of funds under Clause 49(2) should be increased from five to ten years as financial misconduct causes greater harm; and
- (q) That the amounts payable under Clause 50(2)(b) should be determined by Parliament similar to other taxation/contributions and not the Cabinet Secretary.

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

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

- (b) That it is a joint responsibility for the Government and *wananchi* to have a functionable and efficient social health cover by pulling resources together and spreading the risk;
 - (c) That the contributions rates and the minimum capping should be legislated so that Kenyans can be made aware of the same without having to rely on roadside declarations; and
 - (d) That Parliament exercises prudence and care while considering the Bill so as to give Kenyans efficient and more practicable healthcare solutions and to protect Kenyans from exploitation.
34. **Dr. Peter Ongwae, the PSK practice Chairman** submitted that the Pharmaceutical Society of Kenya should nominate a suitable pharmacist to fill the slot allocated to healthcare providers as medicines account for a large budget of insurance claims. The experience of a pharmacist will therefore greatly assist the Board in the rationalization of medical claims.
35. **Mr. Rashid S. Osman** made the following submissions:
- (a) Amendment of Clause 27 to provide for retired public service employees;
 - (b) Amendment of Clause 27(2)(a) to provide for two instances (i) "in case of a household whose income is derived from salaried employment by a monthly statutory deduction from the wages or salary by the employer as prescribed by under this Act and (ii) in the case of a household whose income is derived from a monthly pension through a monthly statutory deduction from the pension by the pension scheme as prescribed by this Act";
 - (c) Inclusion of pension earning retired employees in the definition of a contributor in clause 2;
 - (d) That Clause 27 provides for a health insurance scheme for public service officers (retirees) who served the country with dedication and valour as they do not enjoy a medical scheme due to the high cost of private medical insurance;
 - (e) He expressed concern that available data denotes that the former public service officers die after barely enjoying retirement for five years mainly due to lack of a medical scheme or expensive medical scheme and as such these persons should be treated as a special category within the social health scheme; and
 - (f) That the Board of the Social Health Authority should give first preference to the qualified staff of the NHIF in the transition to the Authority under paragraph 6(2) of the First Schedule to the Bill since the NHIF staff have institutional memory and a wealth of experience. The NHIF staff may also suffer mental health due because of being required to retire or to move to a new work environment.
36. The **Kenya Union of Commercial Food and Allied Workers** submitted as follows:
- (a) A nominee of the Federation of Kenya Employers ought to be included in the Board of the Authority as the FKE plays a critical role in ensuring that the deduction from employees are remitted to the Authority;

- (b) Amendment of Clause 8(b) by deleting the requirement of degree for a person to be the Chairperson or member of the Board;
 - (c) Amendment of Clause 8(1)(c) to include labour relations and human resource practice as additional areas of specialization;
 - (d) Addition of paragraph 2(1) of the First Schedule to include liabilities so that the Authority takes over the funds, assets and other property as well as the liabilities of the NHIF;
 - (e) Deletion of paragraph 2(2) of the First schedule;
 - (f) Amendment of the First Schedule to provide that upon operationalisation of the Authority, all the staff of the Fund on the appointed date be deemed to have automatically transited and become the employees of the Authority without being subjected to a fresh recruitment exercise or being forced into retirement or redeployment within the Public Service where they have no experience and expertise.
37. The **International Commission of Jurists (ICJ Kenya)**, whilst expressing its support for the Bill, made the following submissions:
- (a) Inclusion of “vulnerable groups as defined in Article 21 of the Constitution of Kenya” in the definition of the vulnerable persons as the lack of a comprehensive social health insurance scheme in Kenya has led to the exclusion of members of marginalized, vulnerable and disadvantaged groups such as women, youth and other key populations from accessing quality healthcare services. This remains a significant threat to the goal of Universal Health Coverage by 2030;
 - (b) Inclusion of “any monies from County Governments as may be appropriated by County Assemblies” in clause 21 as one of the Primary Healthcare Fund sources as the County Governments have a duty under Part 2 of the Fourth Schedule Part 2 of the Constitution to promote primary health care;
 - (c) Inclusion of a new provision in 42 (4) to the effect that “Within three months following the completion of the audit process by the Auditor General, the Board of the Authority shall cause the audited accounts of the Funds to be published in at least two daily newspapers widely circulated throughout Kenya and also on the Social Health Authority’s website.” Article 232 (1) of the Constitution provides that transparency and provision to the public of timely and accurate information among the values and principles of public service. The Social Health Authority’s functions include managing Funds established under the Act and receiving all contributions and other payments required by the Act;
 - (d) Introduction of a new provision in clause 43 to provide that “the Board will publish and publicize the Social Health Authority annual report transmitted to Parliament under subclause 43 (2). The Commission indicated that the Board must publish and publicize the Social Health Authority annual reports and financial statements on its website to enhance accountability and build the public’s confidence that healthcare-related financing is going to be handled by a trustworthy agency. Social Health Insurance will be the locus for financing health care in Kenya which requires the Authority to be transparent and accountable;

- (e) Introduction of a new provision to establish a structure for public participation and stakeholder engagement so as to give public participation the ability to influence decision making by the Authority; and
- (f) Introduction of a new provision in clause 47 to the effect that “the Authority shall keep proper records on social health insurance funding, processes and programmes”. A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records. The Bill should provide stringent provisions on access to financial and non-financial information on social health insurance funding, processes and programmes.

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

- (a) Deletion of the words “approved by the Board” and substitution therefor with the words “the accrediting body” in the definition of “empanelment” as this gives the Board of the Authority power to usurp the functions of another government agency, the accrediting body;
- (b) Make provision for the definition of the word “healthcare facility” in line with the Health Act, 2017 so as to distinguish it from a “health care provider”;
- (c) Make provision for “essential healthcare” in Clause 20 so as to properly demarcate the scope of primary healthcare;
- (d) Definition of essential health services in the context of primary healthcare and provide a clear distinction between healthcare provider and healthcare facility as the aim of the Primary Healthcare Fund is “to purchase primary healthcare services from health facilities”;
- (e) Redrafting of Clause 5(f) as guidelines are advisory and non-binding in nature whereas regulations have the force of law and are enforceable;
- (f) That Clause 7(1)(h)(iii) be redrafted specify that “private healthcare facilities” will be represented in the Bill;
- (g) Inclusion of “monies appropriated by the National Assembly for provision of Primary Health Services to indigent and vulnerable persons” in Clause 21;
- (h) Amendment of Clause 24 to require that “in consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Primary Healthcare Fund” as the implementation of the Regulations, upon publication by the Cabinet Secretary, will be carried out by the Board;
- (i) That the purpose for which the Social Health Insurance Fund is established should be explicitly stated for clarity and to limit any misappropriation of monies that will be paid into this Fund;
- (j) That Clause 26(1), (2) and (5) be amended and the word “contributor” be used since the term “member” is misleading as to the intent of clause 26;
- (k) The phrase “after depletion of the social health insurance cover” be deleted from Clause 28(a);

- (l) That Clause 30 be redrafted to state that the Board shall make regulations for the Emergency, Chronic and Critical Illness Fund so as not to weaken the Board;
 - (m) That the word “empanelment” be excluded in clause 39 as its not envisaged as a function of the Social Health Authority but rather it is a function of a separate accrediting body alluded to in Clause 33(2);
 - (n) Amendment of Clause 32 to create sector wide acceptance of any prescribed tariffs;
 - (o) Renaming of the Claims Management Office to the “Claims Management and Settlement Office” since Clause 36(1) assigns the “payment function” to the “Authority” whose only other organs are the “Board” and the “Dispute Resolution Committee”;
 - (p) Inclusion of “the settlement of valid claims on behalf of the Authority as a function of the renamed Claims Management and Settlement Office in Clause 35(2). The Bill should provide for the staffing compliment of the claim’s settlement function carried out on behalf of the Authority by the Office;
 - (q) Clause 45 which establishes the Dispute Resolution Committee to appear first as the order of precedence of the clauses appears incorrect; and
 - (r) Deletion of Clause 48(2)(d) as empanelment is a not a function of the Social Health Authority and is therefore outside the ambit of the Bill.
39. The **Moi University** submitted that enhanced benefits schemes and packages for public institutions should be retained so as to cushion the staff of the university and their dependents.
40. The **Health NGOs Network**, whilst presenting the views on behalf of 112-member health CSOs, submitted their views as follows:
- (a) That the Bill should incorporate clear control mechanisms to oversee the funding and operation of critical components such as the means testing instrument. An oversight committee should be established to conduct regular audits to ensure transparency, accountability, efficient resource allocation and utilisation.
 - (b) That CSOs be incorporated in the governance structure to ensure accountability, representation and diverse perspectives in healthcare policy formulation and implementation;
 - (c) That the Bill outlines a mechanism of actively engaging with and informing Kenyan citizens about the operationalisation of the Bill particularly on increasing contributions; and
 - (d) That sufficient time for public participation at the county level be allocated by sharing a well-defined schedule of time and dates for public consultations and feedback provided to stakeholders on how their recommendations were actioned.
41. The **Economic and Social Rights Centre-Hakijamii** noted that there is a part of the Bill that contradicts the objects of the Bill of ensure that all Kenyans have access to affordable and comprehensive quality health services.

42. The **Social Protection Actors Forum** made the following submissions:
- (a) That the Bill exhibits a progressive orientation in certain aspects of its provisions. However, it also presents notable gaps, as it delegates considerable decision-making of the Authority to the Cabinet Secretary and the same should be redrafted particularly to curb budgetary irregularities that persist within the current funding structure;
 - (b) That it is imperative to underscore the importance of achieving transparency and accountability within the implementation of the Bill; and
 - (c) That the provisions of tariffs should be designed in an equitable and reasonable manner considering the distinct economic circumstances of individuals so as to ensure that the financial burden of healthcare is distributed fairly and in accordance with the prevailing economic conditions of each citizen.
43. The **Former Parliamentarians Association (FOPA)** submitted that paragraph 5(1) of the First Schedule to the Bill to allow the Social Health Authority to provide enhanced benefits schemes and packages for retired civil and public servants as the current provision will expose retired public servant to catastrophic medical expenditures and possible impoverishment as the majority do not have a post-retirement medical scheme. The Association emphasized that if enhanced schemes are scrapped, retired presidents and other retired VIPs will no longer have affordable medical cover that does not discriminate based on age, pre-existing conditions and other restrictions.
44. The **Kenya Association of Private Hospitals (KAPH)** submitted as follows:
- (a) Amendment of Clause 2 by replacing the definition of “chronic illness” to mean “a serious and potentially life-threatening condition that demands urgent medical intervention and can have a severe adverse impact on a person’s health, well-being, and quality of life”;
 - (b) Amendment of Clause 2 to maintain the term “health care provider” and not using it interchangeably with “health care services” and the former should be adopted in line with the Health Act, 2017 and deletion of the word “health care services” where it is used to mean healthcare providers;
 - (c) Deletion of the definition of the term “spouse” and substitution with “the wife or husband of a contributor”.
 - (d) Amendment of Clause 5 (d) by adding a new provision to the effect that “a uniform contract for healthcare providers with incremental essential packages be signed as one goes up the levels in private hospitals. This will provide the minimum requirements for contracting and checklist per incremental level of health care and services as opposed to current discriminatory NHIF model that negated care up the levels for private hospitals;
 - (e) Amendment of Clause 6(2) (e) by replacing the word “healthcare provider” with “a representative of the consortium of healthcare provider associations”;
 - (f) Deletion of private health facility in Clause 8(2) (d) since they are eligible under the provision of clause 7(h)(iii);

- (g) Deletion of Clause 14(1)(b) that the CEO ought to be an Advocate of the High Court of Kenya since the CEO should have a health-related background;
- (h) Expound on “how the services shall be purchased” in clause 20 and “purpose of the fund” in clause 20 (a), (20 b), (25 a) and clause 28;
- (i) Amendment of clause 20(d) to define the deadline for settlement of claims by the Fund;
- (j) Amendment of Clause 30 to read “The Cabinet Secretary shall make regulations for the implementation of the Emergency, Chronical and Critical Illness Fund in consultation with stakeholders”;
- (k) Introduction of a new clause 31 (3) to read “The essential benefit package shall be accessible to beneficiaries in any healthcare facility of choice” as patients/beneficiaries have a right to access healthcare from any preferred healthcare provider be they public, private, faith based, community or non-governmental. This will obligate the Authority pay for a uniform benefit package of care for any service given across all levels of care;
- (l) Amendment of Clause 32 (2) to state that “The cabinet secretary shall in consultation with the board other stakeholders prescribe the tariffs applicable to the benefits package under this Act”;
- (m) Introduction of a new section under Clause 33 to explicitly provide that the three Funds are run under the Social Health Authority and to introduce clauses showing interdependencies of the Funds;
- (n) Amendment of Clause 34 (5) to state that “The authority shall terminate the contract with any health care provider where such health care provider or health care facility fails to meet the criteria prescribed by the cabinet secretary under subsection (3) , in accordance to the due process established by the cabinet secretary” so as to ensure that the parties are aware of their legal obligations under the Act and to introduce a due and fair process before contract termination;
- (o) Amendment of Clause 35 (4) to state that “The Cabinet Secretary shall make regulations for the better carrying out of the provisions of this section in consultation with other stakeholders” as all major stakeholders should be involved in the process;
- (p) Deletion of Clause 38 on Investment of funds as funds of the Authority should not be invested to avoid delays in settlement of claims;
- (q) Amendment of paragraph 6 (1) of the First Schedule to the Bill as the transition period of one year transition period may not be; and
- (r) A multidisciplinary committee comprising of all stakeholders to be established to oversee the transition so as to ensure that historical issues are satisfactorily settled before NHIF is winded up.

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

- (a) That the appointment of a non-executive chairperson should be left to Healthcare Professional bodies in Clause 7 (1) so as to ensure health ethics are always upheld and to prevent political interferences with the Board at the expense of good dispensation of healthcare;
- (b) Addition of '(v) a nomination from the Pharmaceutical Society of Kenya (PSK) in Clause 7(h) as pharmacists are healthcare providers and would play a critical role in the Board of Authority on how to rationalise medical resources for positive health outcomes;
- (c) That reimbursement approval should be done by the Public Service Commission as its independence can be compromised if their reimbursement needs the approval of the Cabinet Secretary of Health under clause 12;
- (d) That the Claims Management Office ought to be a Department or a Directorate of the Social Health Authority as it cannot be a private entity for good stewardship and governance of use of Public Funds;
- (e) Addition of the list of responsibilities in Clause 35(2) of the Pharmacist Office in the CMO to ensure that any surplus made from the Claims Management Office is expended towards the provision of healthcare;
- (f) Provide for accreditation in Clause 33(2) of providers or facilities to the Social Health Insurance Fund by their respective regulatory authorities with requiring additional empanelment as it creates a barrier and adds to the cost of healthcare provision; and
- (g) Inclusion of at least two healthcare practitioners possessing a bachelor's degree in Clause 45(2) as the dispute and resolution committee will be handling practicing healthcare professionals and healthcare matters.

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

- (a) That Clause 27 (2) (b) should consider the unsalaried Kenyans without a monthly income by stipulating at what point in the year, they make such contributions for planning purposes, as Government will likely run into challenge where most people will be default in remitting annual lumpsum amounts;
- (b) That clarification should be provided on whether Clause 27 (2) (c) both national and county governments are responsible for the payment of the premiums therein;
- (c) That Clause 20 does not shed light on issues on the making claims by public health facilities as the process is not straightforward and has deeply affected healthcare services at the county level. Based on the Fourth Schedule of the Constitution, any national level legislation that touches on delivery of healthcare in county facilities must provide for the balance of functional responsibility and the accompanying finances necessary to facilitate the fulfilment of these responsibilities. To fulfil their functions, counties should be given a chance to be innovative and to run own primary healthcare models with enough resourcing;

- (d) That the National Assembly ought to clarify whether the separation of the NHIF into the separate funds may create an additional layer of bureaucracy in management of social health insurance schemes;
- (e) That legislation governing financing insurance schemes should consider the inequality and changes in accessing healthcare in the country; and
- (f) That the Bill addresses challenges faced by the current NHIF scheme including issues around duplication and fragmentation of programmes as well as the transparency of the Fund's finances.

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

- (a) That the definition of "consent" should enhance opportunities including provision of reasonable accommodation for a person with a disability to make informed choices in Clause 2;
- (b) That the definition of "data disaggregation" be included to mean the presentation of numerical and non-numerical data broken down into detailed sub-categories and specific dimensions including age, sex and disability to illuminate underlying trends and patterns in healthcare system;
- (c) Review and harmonization of the definitions and relationships of the terms: Digital Health, Telehealth, Telemedicine, E-Health, and comparison of the usage of the terms in different jurisdictions and the World Health Organisation guidelines;
- (d) Amendment of the Health Act, 2017 to anchor the Agency in Bill such that issues of information management are not handled in separate laws;
- (e) Inclusion of nonstate actors in Clause 6(b) and amendment of Clause 6(d) to provide that the Agency shall ensure health data accessibility and portability" which will guarantee seamless access to information as guaranteed in the Constitution and other legal frameworks;
- (f) Removal of the Principal Secretary for ICT in Clause 8(1) and substitution with the Director-General for Health as the technical advisor to the Ministry of Health;
- (g) Amendment of Clause 8 (1)(f) to provide that 'One person nominated by the Council of Governors from among the County Directors of Health' as counties need representation in the Board of the Digital Health Agency;
- (h) Amendment of Clause 8(1)(h) to provide for the representation of the patients in the Board of the Digital Health Agency;
- (i) Deletion of Clause 8(8) to provide for approval of consultancy services by the Board to guide operationalisation of mandates as there may be room for exploitation and expansion of the Board's capacity which may bring about governance issues;
- (j) Amendment of clause 12 to require that the CEO ought to have a master's

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

- (k) Inclusion of term limits in Clause 13(1) so that the Corporation Secretary will serve for period of 3 years renewable for a further 3 years;
- (l) Make provision on disaggregated data in the proposed Health Information System under Clause 21(3);
- (m) Amendment of Clause 28 as the custodian of digital health data as information held in the data system can only be referenced as digital health data;
- (n) That the Data Controller in Clause 32 appointed by the Cabinet Secretary, to maintain and transmit health data at the national level ought to be a health professional who understands the vitalness of such data and facilitates fast transmission of the health data;
- (o) Deletion of Clauses 46 to 50 as they similar to the provisions of the Health Act, 2017 which under section 103 requires the making of regulations for better operationalisation of e-health and telehealth;
- (p) Alignment of Clause 51 with the Environmental Management and Coordination Act and the roles of National Environment Management Authority (NEMA) in the management of e-waste as NEMA has developed guidelines on the same;
- (q) Consideration of alignment with ICT and telecommunications laws on management of e-waste and the same can be adequately covered under the Health Act, 2017;
- (r) Amendment of Clause 52(1) as it does not strictly fall under digital health laws and may be adequately covered under the Health Act, 2017;
- (s) A special directorate may be set up to oversight health data control and management with the health data protection regulations being enacted under the Data Protection Act, No. 24 of 2019 so that the functions of the Data protection Commissioner are not infringed upon;
- (t) Harmonisation of offences in Data Protection Act, 2019 and the penalties and offences proposed in this bill;
- (u) Health data controllers and processors must have healthcare training for ease of data management and comprehension of system operations; and
- (v) That there is need for alignment with the Science, Technology and Innovation Act, 2013 and the Pharmacy and Poisons Act, Cap 244 on matters of healthcare research and dealing with sensitive health research data.

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

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

- (b) That the social health insurance schemes should consider the interests of persons with disabilities including addressing barriers to enrolment to the schemes by PWDs, provision of sufficient financial support to PWDs and ensuring that healthcare services and products meet the needs of PWDs including assistive devices and other disability related services;
- (c) Inclusion of guiding principles namely equity, non-discrimination and access in the Bill as they anchor the execution of the provisions of the Bill;
- (d) Amendment of the definition of the word “beneficiary” to state that a beneficiary is a person with disability who is not a contributor as the current provision locks out persons with disabilities who might not be able to pay for the Social Health Insurance Fund;
- (e) Amendment of the definition of “Universal Health Coverage” to state that all individuals and communities have access and receive full range of the health care services they need and to include the fact that UHC entails healthcare services for persons with disabilities which includes rehabilitative, habilitation, assistive devices, speech therapy, physiotherapy, occupational therapy and audiology” as access to services is a key indicator of the effectiveness and adequacy of health care systems;
- (f) Insertion of the definition of the word “disability” as defined in Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to provide clarity on who qualifies to be a referred to as a beneficiary in the disability category;
- (g) That there is need to provide for representation of the persons with disabilities in the Board of the Social Health Authority in clause 7(1)(j) as there is a close nexus between disability and health as persons with disabilities are likely to experience health problems and health problems can lead to disability;
- (h) Deletion of Clause 8(2) (b) as the principles non-discrimination and inclusion is clearly outlined in the Constitution. The Employment Act, 2007 further provides that no persons will be discriminated against at the workplace on the account of their disability;
- (i) Deletion of the word “be” in clause 26 (1) for grammatical correctness;
- (j) The registration process under clause 26(4) should be inclusive, accessible and equitable for all persons with necessary support for participation and as such efforts should be made to reach out to under- represented groups for enrolment.
- (k) That clause 26(5) may reframe vulnerable groups including persons with disabilities who already face a myriad of barriers in participating in processes on an equal basis with others .This is not good as the Bill has no explicit provisions on how it will facilitate enrolment of persons with disabilities and other vulnerable groups; and
- (l) Insertion of the word “inclusive” after the word “facilitate” in clause 47(1) on facilitation of public participation and stakeholder engagements as most vulnerable groups including persons with disabilities face barriers in

participating in public participation processes.

49. The **Kenya Association of Manufacturers (KAM)** in a letter dated 22nd September, 2023 acknowledged receipt of the National Assembly's letter REF:NA/DDC/DC-H/2023/(089) requesting KAM's views on the Bill and requested for extension of time to submit the same.
50. The Report contains an analysis of the above stakeholder submissions on the Bill noting the general comments in support of or against the amendments. The analysis is presented in a table annexed to this report as Annexure 5 which highlights the stakeholder comments and the Committee resolution on the various clauses of the Bill.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS


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

- (a) The Bill regulates the provision of social health insurance which will reduce the current high costs of out of pocket expenditure on healthcare by Kenyans. In doing this, the Bill ensures the fulfillment of the economic and social rights guaranteed under Article 43 of the Constitution of Kenya, 2010, in particular the right to the highest attainable standard of health and the right to social security;
- (b) The Bill provides for the coverage of costs of emergency treatment, critical illness and chronic illness through the establishment of the Emergency, Chronic and Critical Illness Fund. This Fund is premised on the Constitution of Kenya, 2010 which provides that a person shall not be denied emergency medical treatment;
- (c) The Bill promotes the attainment of Universal Health Coverage in the country as it seeks to ensure that all Kenyans have access to affordable and comprehensive quality health services. This is through the provision of a health cover for older persons, indigents and other vulnerable persons in society including persons in lawful custody. The Bill is therefore aligned to the Constitution of Kenya, 2010 which requires the government to provide appropriate social security to persons who are unable to support themselves and their dependants;
- (d) The Bill repeals the National Health Insurance Fund Act, No. 9 of 1998 and seeks to separate the functions of registration, claims management, empanelment and dispute resolution that were being performed by singular entity. This separation will enhance efficiency through reduction of administrative costs;
- (e) The Bill also makes the Social Health Authority a strategic purchaser compared to the National Health Insurance Fund which has been a passive purchaser. The Bill therefore provides for the active identification of the sets of health services to which the population is entitled, choosing of providers from whom services will be purchased, deciding how these services should be purchased, including contractual arrangements and mechanisms of paying providers. With this, the Social Health Authority will be responsive to the health needs of Kenyans as contemplated in the Kenya Universal Health Coverage Policy, 2020-2030; and
- (f) The Bill is further aligned to the Kenya Health Financing Strategy, 2020-2030 whose goal is to ensure adequacy, efficiency and fairness in the financing of health services in a manner that guarantees all Kenyans access to essential high quality health services they require. The Strategy calls for the prioritization of mechanisms to pool resources in a manner that ensures efficiency and equity through creation of several pools of funds including the social health pool to meet the costs of health services in Kenya. In furtherance of this, the Strategy recommends the establishment of a functional and autonomous Kenya Social Health Insurance Fund for the management of the mandatory-pooled health revenues needed for curative and rehabilitative essential services. The strategy further recognizes that a single social health insurance fund, governed by an independent board and supported by a competent management, is the preferred institutional mechanism for mandatory insurance, as it limits administrative expenses, which are usually high with multiple social health insurance funds.


CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

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

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

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

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

CHAPTER SIX

6.0 SCHEDULE OF AMENDMENTS

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

CLAUSE 2

THAT Clause 2 of the Bill be amended by—

- (a) deleting the word “National” appearing in the definition of the term “Board”;

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

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

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

- (c) deleting the definition of the phrase “risk spreading”;

Justification: The Social Health Insurance Fund, being a social fund with one pool, is not supposed to provide enhanced schemes and as such there is no need for risk spreading.

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

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

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

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

CLAUSE 4

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

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

CLAUSE 5

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

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

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

CLAUSE 6

THAT Clause 6 of the Bill be amended—

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

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

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

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

CLAUSE 7

THAT Clause 7 of the Bill be amended—

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

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

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

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

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

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

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

CLAUSE 8

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

- (a) deleting the words “private health facility” appearing in paragraph (d);

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

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

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

CLAUSE 9

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

Justification: To prevent misuse of this provision as it is impractical to get permission to be absent from a Board meeting from the President.

CLAUSE 14

THAT Clause 14 of the Bill be amended—

- (a) in sub-clause (1) by—

- (i) deleting the term “bachelor’s” appearing in paragraph (a) and substituting therefor the term “master’s”;

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

- (ii) deleting paragraph (b);

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

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

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

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

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

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

CLAUSE 16

THAT Clause 16 of the Bill be amended—

(a) in sub-clause (2) by—

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

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

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

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

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

CLAUSE 17

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

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

CLAUSE 22

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

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

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

CLAUSE 24

THAT Clause 24 of the Bill be amended by—

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

Justification: To make it mandatory for the Cabinet Secretary to make regulations on implementation of the Primary Healthcare Fund upon consultation with the Board.

CLAUSE 26

THAT Clause 26 of the Bill be amended by—

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

Justification: To correct a typographical error.

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

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

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

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

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

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

CLAUSE 27

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

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

CLAUSE 30

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

Justification: To make it mandatory for the Cabinet Secretary to make regulations on implementation of the Emergency, Chronic and Critical Illness Fund upon consultation with the Board.

CLAUSE 31

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

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

Justification: To make provision for enhanced benefits schemes and packages for retired civil servants and public officers who may not be covered by private medical insurance providers.

CLAUSE 34

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

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

CLAUSE 35

THAT Clause 35 of the Bill be amended—

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

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

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

Justification: This allows for proper sequencing in the clause.

CLAUSE 38

THAT the Bill be amended by deleting clause 38.

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

CLAUSE 40

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

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

CLAUSE 41

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

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

PART VIII

PART VIII be amended by deleting the word “Committee” and substituting therefor the word “Tribunal”.

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

CLAUSE 44

THAT Clause 45 of the Bill be amended by—

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

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

Justification: To establish a Tribunal to handle disputes related to social health insurance which are complex and specialized in nature. To provide for redress to the High Court.

CLAUSE 45

THAT Clause 45 of the Bill be amended by—

- (a) deleting the word “Committee” wherever it appears and substituting therefor the word “Tribunal”;
- (b) in sub-clause 2 by—
 - (i) deleting the words “Cabinet Secretary” appearing in paragraph (a) and substituting therefor the word “President”;
 - (ii) deleting the words “Cabinet Secretary” appearing immediately after the word “appointed by the” in paragraph (b) and substituting therefor the word “Judicial Service Commission”;

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

CLAUSE 46

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

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

CLAUSE 48

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

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

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

CLAUSE 49

THAT Clause 49 of the Bill be amended—

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

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

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

Recovery of sums due under this Act.

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

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

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

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

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

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

CLAUSE 50

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

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

CLAUSE 52

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

Justification: The Social Health Insurance Fund, being a social fund with one pool, is not supposed to provide enhanced schemes and as such there is no need for risk spreading.

FIRST SCHEDULE

THAT the First Schedule of the Bill be amended—

- (a) by deleting paragraph 2(2).

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

- (b) in paragraph 5 by—

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

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

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

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

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

- (a) such persons opting to remain in the service of the Authority; and
 - (b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Authority.
- (4) Any employee not retained by the Authority under sub-paragraph (3) may exercise his or her option to either—
- (a) retire from the service of the Authority; or
 - (b) be redeployed within the public service.
- (5) Where an employee enters into an agreement with the Authority under sub-paragraph (3), his or her service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his or her appointment with the Government.

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

SECOND SCHEDULE

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

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

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



THE NATIONAL ASSEMBLY
13TH PARLIAMENT – SECOND SESSION (2023)
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON HEALTH

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

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

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

