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**REPUBLIC OF KENYA**

**PARLIAMENT OF KENYA**

**THE SENATE**

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**TWELFTH PARLIAMENT**

**FIFTH SESSION**

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CAS
Recommended for approval for tabling:
EG 01/12/21

Rt. Hon Speaker
You may approve for tabling.
01/12/21

**THE STANDING COMMITTEE ON HEALTH**

# REPORT ON THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL, 2021

**(NATIONAL ASSEMBLY BILLS NO. 21 OF 2021)**

*Clerk's Chambers,*
*First Floor,*
*Parliament Buildings,*
***NAIROBI.***
**2021**

**NOVEMBER,**

DC-EG
Recommended & Forwarded
01/12/2021

## ABBREVIATIONS

NHIF - National Health Insurance Fund

## LIST OF ANNEXURES

1. ***Annex 1*** - Advertisement for public participation on the Bill
2. ***Annex 2*** - Matrix of submissions received on the NHIF (Amendment) Bill, 2021
3. ***Annex 3*** - Minutes
4. ***Annex 4*** - Schedule for stakeholder engagement on the NHIF (Amendment) Bill, 2021
5. ***Annex 5*** - NHIF presentation on reimbursements healthcare providers

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## PREFACE

**Mr. Speaker Sir,**

The Senate Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to, "*consider all matters relating to medical services, public health and sanitation.*"

**Committee Membership**

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Mbito, MP. - Chairperson
2. Sen. Mary Seneta, MP. - Vice-Chairperson
3. Sen. Beth Mugo, EGH, MP.
4. Sen. Beatrice Kwamboka, MP.
5. Sen. (Prof.) Samson Ongeri, EGH, MP.
6. Sen. (Dr.) Abdullahi Ali Ibrahim, MP.
7. Sen. Fred Outa, MP.
8. Sen. Millicent Omanga, MP.
9. Sen. Ledama Olekina, MP.

**Mr. Speaker,**

The National Hospital Insurance Fund (Amendment) Bill (National Assembly Bills No. 21 of 2021) was published *vide* Kenya Gazette Supplement No. 91 on 11th May, 2021.

The National Assembly considered and passed the said Bill with amendments on Wednesday, 29th September 2021. The Bill was then forwarded to the Senate on Wednesday 13th October, 2021.

It was read a First Time in the Senate on Thursday, 14th October, 2021, and thereafter stood committed to the Standing Committee on Health for consideration and facilitation of public participation in accordance with standing order 140(5) of the Senate Standing Orders.

**Mr. Speaker,**

The principal object of the Bill is to amend the National Hospital Insurance Fund Act, 1998, to establish the National Health Scheme and to enhance the mandate and capacity of the National Hospital Insurance Fund to facilitate and deliver Universal Health Coverage.

**Mr. Speaker,**

Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 140 (5), on Friday, 22nd October, 2021, *vide* an advertisement that was placed in two newspapers with national circulation, as well as on the Parliament website and social media platforms, the Committee invited interested members of the public and key stakeholders to submit written memoranda on the Bill.

In response to the call for the submission of memoranda, the Committee received at least **twenty-eight (28) written submissions** from various stakeholders and concerned citizens with regards to the Bill.

**Mr. Speaker,**

Further to the above, between 15th and 22nd November, 2021, the Committee held a series of **stakeholder engagement meetings** with more than **thirty-five (35) key stakeholders**, including, various government departments and agencies, health regulatory bodies, unions, private sector groups, health professional groups and associations and civil society groups.

**Mr. Speaker,**

The Committee's observations and recommendations arising from this process are contained within this report. The Committee has further proposed amendments to the Bill that have been duly annexed to this report.

**Mr. Speaker,**

The Committee thanks the Offices of the Speaker and Clerk of the Senate for their support during the process of considering this matter.

The Committee also wishes to thank the members of the public, and the various stakeholders who participated in the stakeholder meetings.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to Standing Order No. 226(2) of the Senate Standing Orders.

Signed.....

Date.....30/11/2021.....

**SEN. MBITO MICHAEL MALING'A, MP**

**CHAIRPERSON, STANDING COMMITTEE ON HEALTH**

## ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH OF THE SENATE

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

1. Sen. (Dr.) Michael Mbito, MP .....
2. Sen. Mary Seneta, MP .....
3. Sen. Beth Mugo, EGH, MP .....
4. Sen. Beatrice Kwamboka, MP .....
5. Sen. (Prof) Samson Ongeri, EGH, MP .....
6. Sen. (Dr) Abdullahi Ali Ibrahim, MP .....
7. Sen. Fred Outa, MP .....
8. Sen. Millicent Omanga, MP .....
9. Sen. Ledama Olekina, MP .....

## CHAPTER ONE

## INTRODUCTION

### 1. Mandate of the Standing Committee on Health

The Senate Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to, "*consider all matters relating to medical services, public health and sanitation.*"

### 2. Committee Membership

The membership of the Standing Committee on Health is comprised of the following:

1) Sen. (Dr.) Michael Mbito, MP - Chairperson
2) Sen. Mary Seneta, MP
3) Sen. Beth Mugo, EGH, MP
4) Sen. Beatrice Kwamboka, MP
5) Sen. (Prof.) Samson Ongeri, EGH, MP
6) Sen. (Dr.) Abdullahi Ali Ibrahim, MP
7) Sen. Ledama Olekina, MP
8) Sen. Fred Outa, MP
9) Sen. Millicent Omanga, MP

### 3. Background of the National Hospital Insurance Fund (Amendment) Bill, 2021 (National Assembly Bills No. 21 of 2021)

The National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021) was published *vide* Kenya Gazette Supplement No. 91 of 11th May, 2021.

The National Assembly considered and passed the said Bill with amendments on Wednesday, 29th September 2021. It was then forwarded to the Senate on Wednesday 13th October, 2021.

Having been read a First Time in the Senate on Thursday, 14th October, 2021, the Bill thereafter stood committed to the Standing Committee on Health for consideration and facilitation of public participation in accordance with standing order 140(5) of the Senate Standing Orders.

The principal object of the Bill is to amend the National Hospital Insurance Fund Act, 1998, to establish the National Health Scheme and to enhance the mandate and capacity of the National Hospital Insurance Fund to facilitate and deliver the Universal Health Coverage.

**4. Overview of the Bill**

The Bill contained the following provisions:

**A. Part I-Preliminary**

**Clause 1** of the Bill provided the short title as the National Health Insurance Fund (Amendment) Act, 2021.

**Clause 2** of the Bill proposed to amend the Long Title of the Act to read -

> "An Act of Parliament to provide for the establishment of the National Health Insurance Fund; to establish the National Health Insurance Fund Management Board; to provide for mechanisms of contributions to and the payment of benefits out of the Fund; and for connected purposes."

**Clause 7** of the Bill proposes to amend or delete the definitions of various terms contained in the Interpretation of the Act, including: 'Hospital', 'card', 'child', 'employer', 'Fund', 'hospital', 'Minister', ''register', 'stamp', 'inspector' etc.

**Clause 8** of the Bill proposed the following sources of funds for the Fund —

i) contributions by the contributors. That is the employees, the national and county governments, the employers, the self employed persons over the age of eighteen and the unemployed persons over the age of eighteen (Clause 19 of the Bill);

ii) such monies as may be appropriated by the National Assembly, for indigent and vulnerable persons;

iii) gifts, grants or donations;

iv) funds from the national government, county government and their respective entities, or employers for the administration of employee benefits; and

v) funds from post retirement funds for provision of medical cover to retired employees, where the contributor has elected to do so.

**Clause 9** of the Bill proposed that the Fund be managed by a Board that consisted of—

(a) a Chairperson appointed by the President by virtue of his or her knowledge and experience in matters relating to insurance, financial management, economics, health or business administration;

(b) the Principal Secretary in the Ministry for the time being responsible for matters relating to health or a representative appointed in writing;

(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or a representative appointed in writing;

(d) one person nominated by the Kenya Health Professions Oversight Authority;

(e) one person nominated by the Federation of Kenya Employers;

(f) one person nominated by the Central Organization of Trade Unions;

(g) one person, not being a Governor, nominated by the Council of County Governors;

(h) two persons, not being public officers, appointed by the Cabinet Secretary; and

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

The clause further set out the qualifications of the appointee of the Central Organization of Trade Unions and the nominee by the Council of Governors.

It further provided for the Cabinet Secretary to publish in the *Gazette* the names of the person nominated by the Kenya Health Professions Oversight Authority, the person nominated by the Federation of Kenya Employers, the person nominated by the Central Organization of Trade Unions and the nominee by the Council of Governors.

**Clause 10 paragraph (b)** of the Bill proposed to mandate the Board to set the criteria for the empanelment and contracting of health care providers in consultation with the Cabinet Secretary. In addition, under **paragraph (c)** the Bill proposed to mandate the Board to—

(g) facilitate attainment of Universal Health Coverage with respect to health insurance;

(ga) administer employee benefits as provided under the Act on behalf of employers in respect of their employees.

**Clause 12** of the Bill proposed to insert a new provision to empower the Board to determine the contributions to be made by contributors to the Fund.

**Clause 14** of the Bill provided the qualifications of the Chief Executive Officer. It proposed that a person be qualified for appointment as a Chief Executive Officer if the person—

a) has at least a Bachelor's degree from a university recognized in Kenya;

b) has at least ten years' experience at a senior management level with skills in health insurance, health financing, financial management, health economics, healthcare, administration, law or business administration; and

c) meets the requirements of Chapter Six of the Constitution.

**Clause 15** of the Bill proposed to insert a new section 10A to provide for the appointment of a Corporation Secretary to comply with the *Mwongozo* code of conduct for state corporations.

**Clause 18** of the Bill sought to require that any person who has attained the age of eighteen years and is not a beneficiary, register as a member of the Fund.

**Clause 19** of the Bill proposed that the National Government and County Governments be contributors in respect to their respective employees. It further proposed under **paragraph (d)** that the National and County Governments equally match the contribution of their employees.

In addition, it proposed under a new subsection (1B) that the National Government be a contributor to the Fund on behalf of indigent and vulnerable persons.

It also proposed that all other employers top up their employees' contributions. Further, under **paragraph (d)** in a new proposed paragraph (e), it proposed that the employer's contribution should not exceed that prescribed for the categories of self-employed contributors.

It proposed that persons who are self-employed contribute a special contribution at a rate to be determined by the Board.

In respect to unemployed persons, the Bill sought to mandate the Board to determine the rate of contribution.

**Clause 19 paragraph (h)** of the Bill proposed to make it mandatory for the employee, the self-employed person and the unemployed person to make contributions to the Scheme. I

**Clause 20** of the Bill proposed that a person liable to pay a matching contribution, shall pay such contribution in their capacity as an employer and shall not deduct such contribution from the salary or other remuneration of the employee.

**Clause 20 paragraph (f)** of the Bill proposed to increase the penalty for non-payment of contributions without lawful excuse and for making deductions other than those authorised by the Act from the current fine of fifty thousand Kenyan Shillings, to one million.

**Clause 21** of the Bill provided that delays in remittance of the standard or matching contributions shall incur a penalty equal to the Central Bank of Kenya Lending Rate of Interest. It however, sought to exempt State agencies from the penalty cases delays were as a result of late exchequer releases by the National Treasury, or delays in disbursement of funds appropriated by the National Assembly.

In addition, **Clause 21 paragraph (c)** of the Bill proposed that where an employer fails to pay the standard contribution in respect to an employee, that the employer shall be liable to pay the penalty prescribed in subsection (1) and pay any costs incurred by the employee in seeking treatment from a contracted health care provider during the period when the contribution was due.

**Clause 22** of the Bill proposed to reduce the penalty for delayed payment of special contributions from the current five times the amount of the contribution due, to fifty percent of the contribution due.

**Clause 23** of the Bill proposed that the Board make regulations in respect to voluntary contributions by the youth.

**Clause 24** of the Bill provided for the mode of identification of beneficiaries and payment of contributions. The clause further proposed to increase the penalty for making a false statement relating to remitting a standard or matching contribution or refusing to furnish information from the current fine of ten thousand shillings to one million shillings, and from the current penalty of six months imprisonment to twelve months imprisonment.

**Clause 25** of the Bill provided for the establishment of the centralised healthcare provider management system.

**Clause 26** of the Bill provided that the Board shall determine and approve the applicable tariffs payable to the Fund for enhanced benefits.

It further proposed under **Clause 19 paragraph (f)** that a person may receive the enhanced benefits subject to payment of additional voluntary contributions to the Scheme.

**Clause 29 paragraph (a)** of the Bill proposed to increase the penalty for making a false statement to obtain payment of any benefits under the Act from the current fine of five hundred thousand shillings to one million shillings, and from the current twenty four months imprisonment to sixty months imprisonment.

In addition, under **paragraph (b) (iii)** the clause also proposed to increase the penalty for impersonating a person with the intention to obtain the payment of any benefit under the Act from the current fine of five hundred thousand shillings to one million shillings.

**Clause 35** of the Bill proposed to increase the penalty related to obstruction of an inspector or refusal to furnish information to an inspector from the current fine of ten thousand shillings to one million shillings and twenty four months imprisonment.

In addition, under **paragraph (d)** the clause proposed to increase the penalty in respect to an inspector who gives false information from the current ten thousand shillings to ten

million shillings, and from the current twelve months imprisonment to sixty months imprisonment.

**Clause 43** of the Bill proposed to amend the general penalty clause to increase the fine from the current fifty thousand shillings to one million shillings.

## CHAPTER TWO

## PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT

As indicated in the previous chapter, the National Hospital Insurance Bill (National Assembly Bills No. 2 of 2019) was published *vide* Kenya Gazette Supplement No. 91 of 11th May, 2021.

The National Assembly considered and passed the said Bill with amendments on Wednesday, 29th September 2021. The Bill was then forwarded to the Senate on Wednesday 13th October, 2021, and read a First Time in the Senate on 18th February, 2020. Following this, it was committed to the Standing Committee on Health for facilitation of public participation as per standing order 140(1) and (5).

Accordingly, pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, on Friday, 22nd October, 2021, *vide* an advertisement that was placed in two newspapers with national circulation, as well as on the Parliament website and social media platforms, the Committee invited interested members of the public and key stakeholders to submit written memoranda on the Bill ***(see Annex 1)***.

In response to the call for the submission of memoranda, the Committee received at least **twenty-eight (28) written submissions** from various stakeholders and concerned citizens with regards to the Bill. A matrix with a summary of the submissions from the various stakeholders has been attached to this report as ***Annex 2.***

Further to the above, between 15th and 22nd November, 2021, the Committee held a series of **stakeholder engagement meetings** with more than **thirty-five (35) key stakeholders**, including, various government departments and agencies, health regulatory bodies, unions, private sector groups, health professional groups and associations and civil society groups as indicated below:

**a)Government Departments and Agencies**

1. Ministry of Health (MOH)
2. Ministry of Finance and National Treasury (NT)
3. Council of Governors (COG)
4. Public Service Commission (PSC)
5. National Health Insurance Fund (NHIF)
6. Kenya Revenue Authority (KRA)

**b) Regulatory Bodies**

7. Insurance Regulatory Authority (IRA)
8. Kenya Health Professionals Oversight Authority (HPOA)
9. Kenya Medical Practitioners and Dentists Council (KMPDC)
10. Pharmacy and Poisons Board (PPB)
11. Kenya Council of Clinical Officers (KCOC)
12. Nursing Council of Kenya (NCK)
13. Kenya Medical Laboratory Technicians and Technologists Board (KMLTTB)
14. Council of Kenya Nutritionists and Dietitians Institute (CKNDI)

**c) Professional Groups and Associations**

15. Kenya Medical Association (KMA)
16. Pharmaceutical Society of Kenya (PSK)
17. Kenya Pharmaceutical Association (KPA)
18. National Nursing Association of Kenya (NNAK)
19. Kenya Progressive Nurses Association (KPNA)
20. Kenya Clinical Officers Association (KCOA)
21. Kenya Health Professionals Society (KHPS)

**d) Unions**

22. Central Organisation of Trade Unions (COTU)
23. Kenya Union of Post Primary Education Teachers (KUPPET)
24. Kenya Medical Practitioners and Dentists Union (KMPDU)
25. Kenya Union of Clinical Officers (KUCO)

26. Kenya National Union of Medical Laboratory Officers (KNUMLO)
27. Kenya National Union of Pharmaceutical Technologists (KNUPT)

**e) Private Sector Groups**

28. Federation of Kenyan Employers (FKE)
29. Kenya Private Sector Alliance (KEPSA)
30. Kenya Healthcare Federation (KHF)
31. Christian Health Association of Kenya (CHAK)
32. Kenya Association of Private Hospitals (KAPH)
33. Rural Private Hospitals Association of Kenya (RUPHA)
34. Association of Kenya Insurers (AKI)

**f) Non-State Actors and Civil Society Groups**

35. The National Coalition on Universal Health Coverage, Health Financing and Budget Advocacy.

The minutes of the above meetings have been attached to this report as ***Annex 3***. In addition, a schedule of the meetings held with the aforementioned stakeholders has been attached to this report as ***Annex 4.***

Further to the above, the Committee received written memoranda from **twenty-eight (28)** institutions and members of the public as per the schedule attached in ***Annex 2.***

The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this report as ***Annex 2.***

## CHAPTER THREE

## COMMITTEE OBSERVATIONS

The Committee made the following observations:

1. ***Scope of services to be provided under the proposed UHC Scheme by NHIF:*** The Committee took note of concerns raised by some stakeholders regarding the need for NHIF to orient itself towards preventive and promotive health services in addition to facility-based curative services.

   In relation to this, the Committee observed that according to the World Health Organisation (WHO), UHC includes the full range of essential health services, including health promotion and prevention.

   In this regard, the Committee observed that preventive health services are already provided for under the definition of *'health care provider'* in clause 7 of the Bill. The Committee therefore noted that there was a need to amend the clause to include 'promotive' health services.

2. ***Recognised healthcare providers by NHIF:*** The Committee took note of concerns raised by some stakeholders that the definition of *'health care provider'* as proposed in the Bill was narrow and likely to result in the exclusion of some health facilities such as stand-alone diagnostic, therapeutic and imaging health facilities.

   However, it was the observation of the Committee that by broadly providing for *in-patient and out-patient services, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventive or other health services,* the Bill had adequately covered for the full range of service providers to be recognised by NHIF.

3. ***Constitution of the NHIF Board:*** The Committee took note of concerns raised by several stakeholders over alleged lack of representation and/or inclusion in the NHIF Board.

The Committee noted that the *Mwongozo* Code of Governance for State Corporations limits Board membership of all State Corporations to between seven and nine members. That notwithstanding, the Committee observed that there was a need to amend the Bill to provide for the reconstitution of the Board as follows:

a) Provide for the inclusion of the Director-General of Health (or his alternate) in the Board in view of his statutory mandate as *'technical advisor to the Government on all matters relating to health within the health sector'* as set out in section 17 of the Health Act, 2017;

b) Provide for increased representation of County Governments in the Board in recognition of the devolved system of governance, and in acknowledgement that the bulk of health services are provided at county level; and

c) Provide for the inclusion of an independent member(s) as stipulated under section 1.1(7) of the *Mwongozo* Code, preferably a health professional.

4. ***Governance structure of NHIF:*** The Committee took note of concerns raised by several stakeholders that the powers and functions assigned to the NHIF Board in the Bill were broad, unchecked and likely to result in conflicts of interest.

   Some of the powers and functions assigned to the Board in the Bill include: accreditation and empanelment of health facilities, setting of contributions, setting of reimbursement rates, making of payment of claims etc.

   The Committee further took note of proposals by stakeholders to provide for checks and balances through the establishment of different Boards within the Fund with separate and distinct powers and functions. It was, however, the observation of the Committee that such proposals to establish multiple Boards within the Fund were likely to result in fragmentation of the governance structure, increased bureaucracy, inefficiencies and conflicts amongst the proposed Boards thus hindering service delivery.

5. ***Strengthening transparency and accountability of the NHIF Board:*** However, having taken note of the concerns raised by several stakeholders regarding the need to increase accountability of the Board, the Committee observed that there was a need to amend the Bill to obligate the NHIF Board to provide periodic

financial and non-financial reports on its operations to Parliament through the office of the Cabinet Secretary.

In addition to the above, the Committee observed that for purposes of promoting transparency at the Fund, the Bill should be amended to ensure that the Board is obligated to make available contributors statements of their accounts.

Further, that the Bill should be amended to obligate the Board to seek the advice of Central Bank on reputable banks when seeking to invest monies of the Fund.

6. ***Stakeholder engagement and public participation in the decisions of the NHIF Board:*** Having taken note of several calls for greater stakeholder engagement and public participation in the decisions of the NHIF Board, the Committee observed that the Statutory Instruments Act, 2013, obligates all regulation-making authorities to facilitate public participation in the development of regulations.

   Further, the Committee observed that once regulations are approved and transmitted to Parliament for consideration through the Sessional Committee(s) of Delegated Legislation, the Statutory Instruments Act, 2013 mandates Parliament to satisfy itself that a regulation-making authority did in fact carry out adequate public participation. As such, the Committee observed that the requirements for stakeholder engagement and public participation were already implied in the regulation-making function of the Board.

   That notwithstanding, the Committee observed that it was necessary to obligate the Board to facilitate adequate stakeholder engagement and public participation in the carry out of its functions.

7. ***Qualifications and minimum requirements of Board Members:*** The Committee further observed that, for purposes of ensuring that only qualified, knowledgeable and experienced persons are appointed to the NHIF Board, there was a need to amend the Bill to strengthen the qualifications and minimum requirements for Board members nominated by the Central Organisation of Trade Unions, the Council of Governors and the Cabinet Secretary.

8. ***Qualifications and minimum requirements of the Chief Executive Officer:*** The Committee further observed that in view of the expanded role and mandate of NHIF in the realisation of UHC as envisaged in the Bill, there was a need to

ensure the appointment of a knowledgeable and experienced Chief Executive Officer(s). Accordingly, the Committee observed that there was a need to amend clause 10 (2) of the Bill to increase the minimum requirements for qualification as a CEO to at least a Masters' degree.

9. ***Qualifications and minimum requirements of the Corporation Secretary:*** Likewise, the Committee observed that in view of the expanded role and mandate of NHIF in the realisation of UHC as envisaged in the Bill, there was a need to ensure the appointment of a knowledgeable and experienced Corporation Secretary (s). Accordingly, the Committee observed that there was a need to amend clause 15 of the Bill to increase the minimum requirements for qualification as a Corporation Secretary to a certified public secretary with at least ten years experience.

10. ***Accreditation of healthcare service providers:*** The Committee observed that primacy over the accreditation function should be retained by the Fund for purposes of reducing bureaucracy and increasing efficiency.

11. ***Setting of the criteria for the Empanelment and Contracting of NHIF service providers:*** The Committee observed that for purposes of ensuring the maintenance of quality and standards care, as well as compliance of regulations by health care providers, the NHIF Board should conduct the function of setting the criteria for the empanelment and contracting of health care providers in consultation with the Cabinet Secretary and relevant regulatory bodies.

12. ***Application of the principles of fair administrative action in the removal of empaneled and contracted healthcare service providers:*** The Committee observed that in relation to the revocation from the register of empaneled and contracted health care providers as provided for under clause 29 of the Bill, the principles of fair administrative action must apply. Health care providers whose empanelment the Board wishes to revoke must be given adequate notification, and a fair chance to respond to the issues or reasons raised thereon.

13. ***Regulation of NHIF:*** The Committee observed that as a social health insurer, regulation of NHIF under the Insurance Act should only apply where the Fund seeks to engage in risk spreading, claims administration services and public service employees insurance benefit schemes such as Group Personal Accident,

Group Life and Disability Cover and compensation under the Work Injury Act, 2007 (WIBA).

Further to the above, the Committee observed that regulation of the Board by the Retirement Benefits Authority should only apply where the Fund seeks to engage in post-retirement medical schemes.

14. ***Compulsory Insurance Benefits Scheme for public servants:*** The Committee noted that under the Public Service Superannuation Scheme, public servants enjoy a compulsory insurance benefits scheme that includes Group Personal Accident, Group Life and Disability Cover and compensation under the Work Injury Act, 2007 (WIBA).

    Noting that NHIF is currently administering the Comprehensive Group Life, Last Expense, Enhanced Work Injury Benefits and Group Personal Accident Insurance Covers for civil servants and employees of the National Youth Service, the Committee observed that there was a need to amend clause 8 of the Bill for purposes of mandating the Fund to continue administering the same.

15. ***Matching contributions by employers:*** The Committee observed that section 34 of the Employment Act obligates employers to ensure the sufficient provision of proper medical care for their employees during illness.

    The Committee further observed that in order to attain UHC, and in order to ensure the sustainability of the Fund, it was necessary to ensure the requirement for matching contributions to employers in the national and county government is extended to employers in the private sector.

    That notwithstanding, the Committee observed that private employers should be exempted from making matching contributions to the Fund in cases where they have procured private insurance for their employees whose benefits match or exceed those being provided by NHIF.

16. ***Contributions by Unemployed Persons:*** The Committee observed that unemployed persons without any source of income should be exempted from making contributions to the Fund.

17. ***Punitive provisions of penalties:*** The Committee took note of, and supported concerns raised by several stakeholders that the penalties prescribed under the Bill for various offences were punitively high.

    Whilst the Committee acknowledged that the imposition of the penalties were aimed at deterring potential offenders, it observed that the proposed fines were out of reach for the majority of ordinary citizens, and small to medium enterprises.

18. ***Unfair exemption of National and County Government entities from penalties for delayed payment of contributions:*** The Committee observed that while the Bill seeks to make employers liable to pay penalties for failures or delays in remitting standard or matching contributions, it had sought to exempt state agencies from the imposition of such penalties provided that the delay or non-remittance was caused by delays in disbursement from the National Treasury or delays in the disbursement of any funds appropriated by the National Assembly.

    The Committee observed that such an exemption was unfair and prejudicial against other employers. Further, the Committee observed that as the largest employer of persons in the country, the Government should bear responsibility for ensuring that all its remittances due to NHIF are paid on time in order to ensure the sustainability of the Fund.

19. ***Personal liability of public officers in the non-remittance of contributions:*** The Committee observed that there was a need to hold public officers personally liable for the non-remittance of standard and matching contributions to the Fund in cases where it could be proven that they were neglectful or negligent in the carrying out of this duty.

20. ***Reverse subsidy of health services through NHIF reimbursements:*** The Committee took note that according to submissions by NHIF, the bulk of its reimbursements to health facilities go to private hospitals. For example, according to NHIF, reimbursements to healthcare providers per category in Nairobi County were distributed as follows in the last FY ***(see Annex 7):***

    i. Kenyatta National Hospital (KNH) (Public - General Ward): KShs. 1.57B (17%)

    ii. Nairobi West Hospital (Private): KShs. 1.49B (16%)

iii. Nairobi Hospital (Private): KShs. 979,476,857.00 (10%)

iv. Aga Khan Hospital (Private): KShs. 736,333,359 (8%)

v. Kenyatta National Hospital (Public - Amenity Wing): KShs. 533,766,890 (6%)

vi. S.S. League M. P. Shah Hospital Nairobi (Private): KShs. 518,784,714 (5%)

vii. St. Peter's Orthopaedics and Surgical (Private): KShs. 470,664,400 (5%)

viii. Coptic Hospital (Private): KShs. 468,319,612 (5%)

ix. Lions Sight First Eye Hospital (Private): KShs. 383,984,920 (4%)

x. Kenyatta University Teaching Referral Hospital (KUTRH) (Public): KShs. 300,520,050 (3%)

xi. Gertrudes Garden Children's Hospital (Private): KShs. 288,286,668 (3%)

xii. The Nairobi Hospital Limited (Private): KShs. 284,980,829 (3%)

xiii. Mater Misericordiae Hospital (Private): KShs. 241,510,603 (3%)

xiv. Ladnan Hospital Ltd (Private): KShs. 232,988,231 (2%)

xv. Mediheal Hospital Eastleigh (Private): KShs. 183,712,361 (2%)

xvi. Hospital Parklands (Private): KShs. 170,744,626 (2%)

xvii. Chiromo Lane Medical (Private): KShs. 152,209,248 (2)

xviii. Texas Cancer Centre Nairobi West (Private): KShs. 149,373,110 (2)

As indicated above, the Committee observed that out of a total disbursement of approximately KShs. 8.183B reimbursements to eighteen (18) major hospitals in Nairobi County, only two public hospitals (KNH and KUTRH) benefitted with a cumulative reimbursement of KShs. 2.4B (29%).

According to NHIF, a similar scenario was replicated in other counties with public hospitals in Kisumu getting only 7% of total reimbursements by NHIF, 33% in Trans Nzoia County, 14% in Kajiado County, 15% in Wajir County etc.

Conversely, the Committee observed that, according to NHIF, the public sector, indigents and the informal sector are set to contribute at least 75% of its revenue collection through contributions under the mandatory scheme envisaged by the Bill.

Considering that private health facilities benefit disproportionately from NHIF compared to public hospitals, and considering that the poor are more likely to access care at public health facilities, the Committee found that under the current scheme, there was a reverse subsidy of health services through NHIF reimbursements whereby the public sector, indigents and informal sector contributed up to 75% of the total revenue collection by NHIF, but public hospitals benefitted from only 7-30% of the total reimbursements by NHIF.

21. ***Need for improvement of standards and quality of care at public health facilities:*** Noting that the proportion of reimbursements received by hospitals was driven by demand, and further noting that a key goal of UHC is to ensure equity and access to health services, the Committee observed that National and County Governments must take deliberate action to improve the standards and quality of care at public health facilities in order to compete effectively with the private sector.

22. ***Ring-fencing of NHIF reimbursements to public health facilities:*** Noting that availing resources at facility level was likely to positively affect the performance of public health facilities, and to promote higher standards and quality of care, the Committee observed that there was a need to amend relevant provisions of the Public Finance Management Act to ring-fence NHIF reimbursements for purposes of facilitating direct financing of public health facilities.

    The Committee further observed that in line with section 87 of the Health Act, 2017, the National Treasury should facilitate the opening and maintenance of special-purpose bank accounts by county treasuries for purposes of operationalising disbursements from NHIF to health facilities at county level, in

accordance with the provisions of the Constitution and the Public Finance Management Act.

23. ***Prevention of the arbitrary withdrawal of health benefits for patients with chronic illnesses by the NHIF Board:*** The Committee took note of concerns raised by the Kenya Renal Association and others on recent attempts made by the NHIF Board to reduce the reimbursement for patients undergoing haemodialysis under their new scheme. The Committee noted that patients with chronic illnesses such as kidney disease are reliant on lifelong costly treatment for their survival, the bulk of which is paid for by NHIF.

    The Committee further observed that any arbitrary changes to existing health benefits packages for patients with chronic illnesses by the NHIF Board was likely to expose patients and their families to suffering, catastrophic health expenditure, and increased morbidity and death. The Committee thus observed that provisions should be made to prevent the Board from arbitrarily withdrawing existing health benefits for patients with chronic illnesses.

24. ***Emergency Medical Treatment:*** The Committee took note that Article 43 (2) of the Constitution provides that "*a person shall not be denied emergency medical treatment*".

    The Committee further took note that section 7(1) of the Health Act, 2017 guarantees every person the right to emergency medical treatment, while section 15(x) of the Health Act, 2017 obligates the National Government to establish an emergency medical treatment fund.

    Noting that the Senate has previously called for the immediate roll-out of an emergency services benefit package under Universal Health Care (UHC) for purposes of ensuring universal access to emergency medical care services in the country, the Committee observed that an amendment to the Bill was necessary to provide for benefits in respect to emergency treatment. In particular, noting that cardiovascular events remain a leading cause of death and illness, the Committee observed the need for an amendment to the Bill obligating the Board and Cabinet Secretary to prescribe benefits available in respect to emergency treatment, including acute cardiovascular events.

25. ***Perverse incentive of the capitation method:*** The Committee noted that under the current scheme, beneficiaries are required to select a preferred hospital for purposes of accessing their benefits package under NHIF. Hospitals are then compensated through a capitation method for providing services to beneficiaries.

    While appreciating that the capitation method had enabled the Fund to compensate hospitals in an accountable and convenient manner, the Committee noted that it had served to hinder patients from accessing healthcare at their point of need regardless of location.

    The Committee further observed that, in order to maximise profits, there were reports of hospitals engaging in unscrupulous practices aimed at maximising their capitation numbers and minimising treatment costs. This had resulted in reports of patients receiving under-treatment and/or substandard care.

26. ***Delayed payments of, and lack of clear timelines for the empanelment and contracting of health care service providers:*** The Committee observed that delayed payments of, and lack of clear timelines for the empanelment and contracting of health care service providers by the Fund remained a key challenge hindering service delivery and the attainment of UHC.

    The Committee further noted that under its expanded role and mandate in the realisation of UHC, health care providers are set to become increasingly reliant on reimbursements by the Fund for the financing of their operations. As such, the Committee observed that there was a need for the Fund to take necessary policy and administrative actions to ensure the timely payment of reimbursements, and the timely empanelment and contracting of accredited health care providers.

## CHAPTER FIVE

## COMMITTEE RECOMMENDATIONS

The Committee therefore recommends that:

1. Clause 7 of the Bill be amended to align the definition of the term 'employer' to the definition under the Employment Act, and to provide for the inclusion of promotive health services in the list of health care services covered by the Fund.

2. Clause 8 of the Bill be amended to include the compulsory public service employees insurance benefit scheme in the matters covered by the Fund.

3. Clause 9 of the Bill be amended to clarify on the membership of the Board of the Fund: to remove the proposed representative of Kenya Health Professionals Oversight Authority and to substitute therefor with a representative from the Kenya Medical Association; and to increase the representative of the Council of Governors from one person to two persons.

4. Clause 10 of the Bill be amended to ensure the Board carries out public participation in the carrying out of its functions under the Act and to further set out that the Board shall be in-charge of accreditation in consultation with relevant regulatory bodies.

5. Clause 14 of the Bill be amended to increase the academic qualifications requirements of the CEO to the NHIF Board to at least a Master's Degree from a recognised university.

6. Clause 15 of the Bill be amended to increase the qualification requirements of the Corporation Secretary to a certified public secretary with at least ten years experience.

7. Clause 19 of the Bill be amended to: exempt unemployed persons from mandatory contributions under the Fund; extend the requirement for matching contributions to employers in the private sector in addition to employers in the national and

county government; and to require the Cabinet Secretary to consult with the Board in making of regulations for the better carrying out of the provisions of the section.

8. Clause 19 of the Bill to be further amended to provide for an instance where an employer other than the national or county government may make an application to the Board to be exempted from matching the contributions of their employees where such an employer has procured a private medical cover for their employees whose benefits are equal to or better than the employees benefits under the Fund.

9. Clause 20 of the Bill be amended to reduce the proposed penalty for non-remittance of standard and matching contributions from one million shillings to five hundred thousand shillings.

10. Clause 21 of the Bill be amended to remove the exemption applicable to national and county governments on the penalty for meeting of costs incurred by an employee for late remittance of contributions to the Fund; to ensure that an employee required to meet the costs incurred by an employee due to late remittance only extends to costs that would have been met by the Fund; and to provide that accounting officers shall be personally liable for meeting costs where the employer is a national or county government entity.

11. Clause 23 be amended to provide that unemployed persons may make voluntary contributions to the Fund.

12. Clause 26 be amended to ensure the Fund covers emergency treatment under the Third Schedule; that the Board carry out biennial reviews of the tariffs payable into and out the fund; and that the Board uses the approved risk spreading mechanism, approved claims administration services on benefits of outpatient, inpatient and on employees benefits scheme

13. Clause 27 be amended to ensure the Board makes regulations for making available to contributors statements of their accounts with the Fund.

14. Clause 29 of the Bill be amended to ensure that the Board applies the principles of Fair Administrative Action where the Board intends to revoke the empanelment of a health care provider. Further the amendment seeks to require the notification of a revocation for empanelment in the Kenya Gazette and at least three newspapers with nationwide circulation

15. Clause 33 be amended to set out that the Board shall consult with regulatory bodies in publishing in the gazette the list of empaneled health care providers.

16. Clause 35 of the Bill be amended to reduce the penalty prescribed for willful obstruction of an inspector appointed under the Act from one million shillings to one hundred thousand shillings, and the applicable term of imprisonment from twenty-four months to six months.

17. Clause 36 of the Bill be amended to ensure that the Board seeks the advice of the Central Bank on reputable banks for the purpose of investing the monies of the Fund.

18. Clause 39 of the Bill be amended to ensure that the reports prepared by the Board and transmitted to the Cabinet Secretary are submitted to Parliament as an additional measure of oversight.

19. Clause 44 of the Bill be amended to set out the extent of the application of the Insurance Act and the Retirement Benefits Act to the administration of the Fund.