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PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT

SIXTH SESSION

THE STANDING COMMITTEE ON HEALTH

REPORT ON THE PETITION BY MR. COLLINS A. OMOLLO ON ALLEGED TAXATION OF PHARMACIES IN KENYA

Clerk's Chambers,

First Floor,

Parliament Buildings,

NAIROBI.

③ Hon. Speaker
You may approve for tabling
15/6/22

JUNE, 2022

COS
Forwarded and recommended for approval and processing
15/6/2022

DC-EG

Recommended & Forwarded for Approval
15/06/22

Approved
16/06/2022

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LIST OF ABBREVIATIONS AND ACRONYMS

CEO	Chief Executive Officer
FY	Financial Year
HR	Human Resource
IFRS	International Financial Reporting Standards
SOPs	Standard Operating Procedures

PREFACE

Establishment of the Committee

The 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.*”

Membership of the Committee

The Committee membership is composed of the following:

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

Mr. Speaker,

On 7th July, 2020, a petition by Mr. Collins Agutu Omollo concerning double taxation of pharmacies in Kenya was tabled before the Senate and committed to the Standing Committee on Health pursuant to Standing Order No. 226(1) of the Senate Standing Orders.

Mr. Speaker Sir,

The Petition sought the intervention of the Senate to enact legislation that will prevent the double taxation of pharmacies by the Pharmacy and Poisons Board, as well as by County Governments.

The Committee findings and determinations arising from this process are contained in this report.

Mr. Speaker Sir,

The Standing Committee on Health wishes to thank the Offices of the Speaker and Clerk of the Senate for their support during the process of considering this petition. 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.....15/6/2022.....

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

..... 

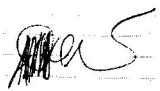
4. Sen. Beatrice Kwamboka, MP

..... 

5. Sen. (Prof) Samson Ongeru, EGH, MP

.....

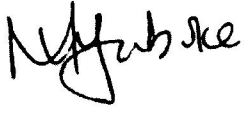
6. Sen. (Dr) Abdullahi Ali Ibrahim, MP

..... 


7. Sen. Fred Outa, MP

..... 

8. Sen. Millicent Omanga, MP

..... 

9. Sen. Ledama Olekina, MP

..... 

EXECUTIVE SUMMARY

On 7th July, 2020, a petition by Mr. Collins Agutu Omollo concerning the double taxation of pharmacies in Kenya was tabled before the Senate and committed to the Standing Committee on Health pursuant to Standing Order No. 226(1) of the Senate Standing Orders. Salient issues raised in the Petition included:-

- a) That under Section 23 of the Pharmacy and Poisons Act, practising of pharmacy shall only be carried out in premises registered by the Pharmacy and Poisons Board and that application for registration of the premise shall be made to the Board and shall be accompanied by the prescribed fees;
- b) That every year, all 47 County Governments enact Finance Acts that require pharmacies to pay single business permits for premises inspected, licenced and regulated by the Pharmacy and Poisons Board;
- c) That the requirement for pharmacies to pay a single business permit to respective County Governments as well as registration of the same premises to the Pharmacy and Poisons Board amounts to double taxation; and
- d) That the mandate for the Pharmacy and Poisons Board is only limited to registration of premises for practicing pharmacies and regulation of the profession and has no power to intervene on single business permit fees levied by counties.

In light of the above, the Petitioner humbly prayed that the Senate intervene with a view to enacting national legislation to remedy the situation and avoid double taxation by pharmacies, taking into consideration that pharmacy is a profession requiring advanced education and training.

In respect of the prayer made in the petition, the Committee made the following observations:

1. The Pharmacy and Poisons Board is the National Medicines Regulatory Authority and is established under the Pharmacy and Poisons Act, Cap 244. The Board has the sole responsibility of regulating the profession of pharmacy and ensuring the quality, safety and efficacy of health products and technologies;

2. All premises where pharmaceutical services are offered must be registered by the Board at an annual registration fee;
3. The practice of pharmacy does not only involve the mere distribution and dispensing of drugs, but also involves patient-oriented drug therapy;
4. Whereas Article 209 mandates Counties to impose property rates, entertainment taxes and any other tax as authorised by an Act of Parliament, on the question of the issuance of Single Business Permits, the Committee noted the case precedent and Order issued by the High Court sitting in Nairobi on 7th December, 1999, which restricted the Nairobi City Council and in extension all other Counties from collecting Single Business Permit fees from members of the Institute of Certified Public Accountants of Kenya who were in practice. (*HCCC No. 1624 of 1999*) and the Court Ruling in the High Court Miscellaneous Application No. 782 of 2000, *Republic – Vs – Municipal Council of Thika and Another EX-PARTE Kenya Medical Association and 5 others.*)

Further, the Committee observed that the Constitutional Petition No. 97 of 2016, filed by the Kenya Pharmaceutical Association and Pharmaceutical Society of Kenya sought the Court's intervention to prohibit County Governments from demanding, seeking or receiving applications for Single Business Permits or fees for such application or permit or license or otherwise from its members. In his ruling, the Judge drew a clear distinction between trade license fees and practicing license fees, and noted that County Governments are prohibited from the issuance of Regulatory Licenses. He further noted that trade licensing fees are paid for trading in the County for purposes of facilitating trade development;

Based on the foregoing, the Committee determined that, Pharmacy being a regulated profession and not a trade, County Governments should not subject Pharmacists to Single Business Permit fees like other general traders. This is in consideration of the fact that regulatory fees are duly paid PPB to enable the practice of pharmacy.

However, for Pharmacists who engage in practicing anything other than drug therapy, or who trade in anything other than health products and technologies (e.g. perfumes, cosmetics etc), then County Governments can raise revenue from their premises through issuance of Single Business Permits just like any other trader.

In light of the above, the Committee resolved that:

This report be dispatched to the Ministry of Health, the Pharmacy and Poisons Board, the Council of Governors for purposes of implementing its determinations within a period of six (6) months.

CHAPTER ONE

On 7th July, 2020, a petition by Mr. Collins Agutu Omollo concerning the double taxation of pharmacies in Kenya was tabled before the Senate and committed to the Standing Committee on Health pursuant to Standing Order No. 226(1) of the Senate Standing Orders.

The petition was in relation to the double taxation of pharmacies in Kenya. To this effect, the petitioners averred that:-

- a) That under Section 23 of the Pharmacy and Poisons Act, practising of pharmacy shall only be carried out in premises registered by the Pharmacy and Poisons Board and that application for registration of the premise shall be made to the Board and shall be accompanied by the prescribed fees;
- b) That every year, all 47 County Governments enact Finance Acts that require pharmacies to pay single business permits for premises inspected, licenced and regulated by the Pharmacy and Poisons Board;
- c) That the requirement for pharmacies to pay a single business permit to respective County Governments as well as registration of the same premises to the Pharmacy and Poisons Board amounts to double taxation; and
- d) That the mandate for the Pharmacy and Poisons Board is only limited to registration of premises for practicing pharmacies and regulation of the profession and has no power to intervene on single business permit fees levied by counties.

In light of the above, the Petitioner humbly prayed that the Senate intervenes with a view to enacting national legislation to remedy the situation and avoid double taxation by Pharmacies, taking into consideration that pharmacy is a profession requiring advanced education and training.

CHAPTER TWO

2.1. LEGALAND POLICY PROVISIONS RELATING TO THE PETITION

1. Role and Mandate of Parliament

Articles 94 as read together with Article 96 of the Constitution provides for the role of Parliament in general, and the Senate in particular. Generally, the Houses of Parliament exercise the legislative mandate of the people, deliberate on matters of national interest and oversee the exercise of power by other arms of government.

2. Right to Petition Parliament

The right to petition Parliament is provided for under Article 119 of the Constitution, which provides as follows:-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right.”

Further, Standing Order 226 the Senate Standing Order outlines the procedure for the committal of a petition to a Committee and transmission of its decision to the Petitioner. The Standing Committee on Health is mandated to consider all matters related to medical services, public health and sanitation. Further, the Petition to Parliament (Procedure) Act, 2012 and the Standing Orders of the Senate provide for the procedure to be followed in the submission, processing and consideration of a Petition.

3. Right to the Highest Attainable Standard of Health

Article 43 (1)(a) of the Constitution guarantees every person the right to *‘the highest attainable standard of health, which includes the right to health care services, including reproductive health care’*.

4. Analysis of the Law in regard to the Prayers

Article 209 mandates Counties to impose property rates, entertainment taxes and any any other tax as authorised by an Act of Parliament.

Section 23 of the Pharmacy and Poisons Act provides that practising of pharmacy shall only be carried out in premises registered by the Pharmacy and Poisons Board and that application for registration of the premise shall be made to the Board and shall be accompanied by the prescribed fees;

CHAPTER THREE

1.1. COMMITTEE PROCEEDINGS

In conducting its investigations, on diverse dates, the Committee met with key parties in relation to the petition including:

- 1) The Petitioner,
- 2) The Ministry of Health
- 3) The Advocate from Pharmacy and Poisons Board.

The minutes of the above meetings have been attached to this report as Annex 3. Further to the above, written memoranda as submitted to the Committee by the Ministry of Health and the petitioner have been annexed to this report for reference purposes.

CHAPTER FOUR

4.1.COMMITTEE DETERMINATIONS

In respect of the prayer made in the petition, the Committee made the following determinations:

1. The Pharmacy and Poisons Board is the National Medicines Regulatory Authority and is established under the Pharmacy and Poisons Act, Cap 244. The Board has the sole responsibility of regulating the profession of pharmacy and ensuring the quality, safety and efficacy of health products and technologies;
2. All premises where pharmaceutical services are offered must be registered by the Board at an annual registration fee;
3. The practice of pharmacy does not only involve the mere distribution and dispensing of drugs, but also involves patient-oriented drug therapy;
4. Whereas Article 209 mandates Counties to impose property rates, entertainment taxes and any any other tax as authorised by an Act of Parliament, on the question of the issuance of Single Business Permits, the Committee noted the case precedent and Order issued by the High Court sitting in Nairobi on 7th December, 1999, which restricted the Nairobi City Council and in extension all other Counties from collecting Single Business Permit fees from members of the Institute of Certified Public Accountants of Kenya who were in practice. (*HCCC No. 1624 of 1999*) and the Court Ruling in the High Court Miscellaneous Application No. 782 of 2000, *Republic – Vs – Municipal Council of Thika and Another EX-PARTE Kenya Medical Association and 5 others.*)

Further, the Committee observed that the Constitutional Petition No. 97 of 2016, filed by the Kenya Pharmaceutical Association and Pharmaceutical Society of Kenya sought the Court's intervention to prohibit County Governments from demanding, seeking or receiving applications for Single Business Permits or fees for such application or permit or license or otherwise from its members. In his ruling, the Judge drew a clear distinction between trade license fees and practicing license fees, and noted that County Governments are prohibited from the issuance

of Regulatory Licenses. He further noted that trade licensing fees are paid for trading in the County for purposes of facilitating trade development;

Based on the foregoing, the Committee determined that, Pharmacy being a regulated profession and not a trade center, County Governments should not subject Pharmacists to Single Business Permit fees like other general traders as the regulatory fees are duly paid to enable the practice of pharmacy.

However, for Pharmacists who engage in practicing anything other than drug therapy, or who trade in anything other than health products and technologies (e.g. perfumes, cosmetics etc), then County Governments can raise revenue from their premises through issuance of Single Business Permits just like any other trader.

In light of the above, the Committee resolved that:

This report be dispatched to the Ministry of Health, the Pharmacy and Poisons Board, the Council of Governors for purposes of implementing its determinations within a period of six (6) months.

Annexures

Annex 1: The Petition

Annex 2: Responses from the Ministry of Health

Annex 3: Standing Committee on Health Minutes



Handwritten notes: "HONOURABLE SENATORS", "You may approve", "MORRIS", "2/7/20"

PETITION TO THE SENATE CONCERNING DOUBLE TAXATION BY PHARMACIES IN KENYA

Handwritten signature and date: "Approved", "MORRIS", "2/7/20"

Honourable Senators,

1. I hereby report to the Senate that a petition has been submitted, through the Clerk, by Mr. Collins Agutu Omolo, a citizen of the Republic of Kenya.
2. As you are aware, under Article 119(1) of the Constitution, and I quote:-*"Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation."*
3. Honourable Senators, the salient issues raised in the Petition are:-
 - i) That, under Section 23 of the Pharmacy and Poisons Act, practicing of pharmacy shall only be carried out in premises registered by the Pharmacy and Poisons Board and that application for registration of the premise shall be made to the Board and shall be accompanied by the prescribed fees.
 - ii) That every year, all 47 county governments enact Finance Acts that require pharmacies to pay single business permits for premises inspected, licensed and regulated by the Pharmacy and Poisons Board;
 - iii) That the requirement for pharmacies to pay a single business permit to respective county governments as well as pay for registration of the same premises to the Pharmacy and Poisons Board amounts to double taxation;
 - iv) That the mandate of the Pharmacy and Poisons Board is only limited to registration of premises for practicing pharmacists and regulation of the profession and has no power to intervene on single business permit fees levied by counties.
4. Honourable Senators the Petitioner therefore prays that the Senate intervenes with a view to enacting national legislation to remedy the situation and avoid double taxation by pharmacies, taking into consideration that pharmacy is a profession requiring advanced education and training.

5. Honourable Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than thirty minutes.

[After expiry of 30 minutes or comments by Senators]

6. Honourable Senators, pursuant to standing order 232(1), the Petition should be committed to the relevant Standing Committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on Health.
7. In terms of Standing Order 232(2), the Committee is required, in not more than sixty calendar days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner, and laid on the Table of the Senate.
8. I thank you.

--xxx--

The management of these two conditions is led by a neurologist and supported by various health worker cadres including mental health specialist/psychiatrist/psychologist, physiotherapists, occupational therapist, nutritionist among others.

1. **Subsidy of price of medicine to a more affordable price. A DMG (disease modifying drugs) or injections can cost as high as ksh. 100,000 per week**

The Ministry of Health has been putting measures in place to reduce cost of medicines. The Disease Modifying Drugs including Etanercept, Abatacept, Golimumab, Infliximab, Ritximab and Tocilizumab among others that are used to treat the two conditions have been included in the essential drugs list. This gives guidance to government procurement and prioritization of the products to be availed to all health facilities through KEMSA.

In addition, the Ministry has formed committees to discuss and provide recommendations on price control and local productions which are targeted towards reduction of price of medicine. The Ministry of Health is further advocating for taxation incentives to make all essential products affordable and easier to produce locally.

2. **Intervene in the matter with a view to ensure that there are more qualified specialists especially in all hospitals especially district hospitals to ensure early diagnosis and management**

The lead specialist needed to support treatment of these two conditions is the neurologist who are currently available mainly in level five and six facilities. The Ministry recognizes the shortage of specialists in general and one of the measures undertaken is through the Kenyan Cuban project of increasing specialist services in Kenya. Through this project, three neurologists and three ophthalmologists were recruited to service provision at the county referral hospitals.

In addition, in the annual training plan, the specialty of neurology, ophthalmology, psychiatry has been identified as priority for scholarship by the Ministry. In the FY 2021/2022, the Ministry offered scholarship for **5, 13, and 10** positions for **Neurology, Ophthalmology and Psychiatry** training respectively. We are also looking out for any potential scholarship for training outside the country in collaboration with Ministry of Education as we seek to build critical mass needed.

In addition, the Ministry is taking steps to strengthen rehabilitation services in the country and one of the plans being included in Medium Term Plan IV is to scale up these services to primary health care facilities to increase access, train more physiotherapists, Occupational therapist, language and speech therapists among others in skills needed to provide quality services.

The county health service including hiring human resources for health is also a function of the counties and the Ministry appeals to the counties to also increase its specialists pool to provide this service

3. Initiate the recognition of this group as a group of People Living with Disability and therefore be exempted from taxation

The registration of persons with disability and implementation of benefit that is granted to the registered persons including tax exemption is the mandate of National Council of Persons with Disabilities. In the past, the assessment and categorization was undertaken in health facilities through assessment committees and then the forms were submitted to the Ministry to be signed off and forwarded to the council. This centralized approach caused delays in the process.

To address this, the Ministry in collaboration with the Council and other partners, developed a new guideline for assessment and categorization to standardize the process and also move the verification and validation of the assessment to County Director of Health's Office. By doing so, no person with disability needs to travel to Nairobi to get the forms verified or follow up on them.

One of the categories in the guideline is on the disabilities caused by progressive chronic conditions which can include diabetes, MS and NMO among others. Once assessments are done and signed off by County Director of Health, the reports are submitted to National Council of Persons with Disability for further action. The Council, based on its criteria for registration, will then register and take lead in the vetting of person with disability to identify those eligible for benefits including tax exemption in collaboration with Ministry of Health and Kenya Revenue Authority.

The Ministry of Health will continue to support the Council in delivering its mandate as it has done over the years.

4. Initiate free counseling and therapy

Counselling services are available in all level 4, 5, and 6 facilities in the country undertaken by various cadres including counsellors, psychologists, psychiatrists and other mental health experts. These services are available to all patients seeking care in these facilities including patients suffering from MS and NMO. In recognition of the rising need of mental health support especially during the COVID-19 pandemic, the Ministry recruited 160 psychologists. The Ministry of Health has also completed an exercise to map out mental health human resource and this report will inform planning for this critical resource.

The UHC NHIF packages include counselling and mental health packages that can be utilized by patients with MS and NMO. Considering that health service provision is devolved, the Ministry cannot unilaterally make services free, but we will engage the counties for further discussion.

5. Initiate the process of funds allocation to carry awareness campaigns that will involve the Government and Private section to understand the different conditions of the diseases and management of patients affected

Creation of awareness of the two conditions needs to be holistic, comprehensive and inclusive for it to be effective. There is need of involvement of the specialists in government facilities and private sector, professional bodies, County and National Government, partners and other non-governmental organizations. It is also important to note that for the Counties and MoH, the planning for financial year 2022/23 is complete. However, the Ministry will advocate for inclusion of creation of the two conditions in continuous medical education undertaken by various hospitals, professional association and regulatory bodies. In addition, the Ministry of Health will advocate to counties and partners to support awareness creation and refresher trainings for health workers on diagnosis and management of patients with MS and NMO among others. The Ministry will consider allocation of funds for awareness creation campaigns in future.

6 Intervene for the group to obtain a proper cover to the affected group under the NHIF like the case of cancer patients who gets free drugs and chemotherapy.

Looking at the spectrum of services needed by the patients affected by MS and NMO, some services like rehabilitation, imaging, counselling and other outpatient services are already covered in NHIF UHC packages. It is important to note that there is no exclusion of any ailments under any applicable cover under NHIF cover. However, MS and NMO have been singled out for comprehensive cover like Cancer, renal diseases and other diseases of high burden that significantly contribute to both morbidity and mortality.

The Ministry will initiate discussion around understanding the actual burden of the conditions as initial step to determine the best way forward in terms of NHIF cover.

2) Petition by Mr. Daniel Ngumi and other patients on NHIF cover for kidney post-transplant Medication

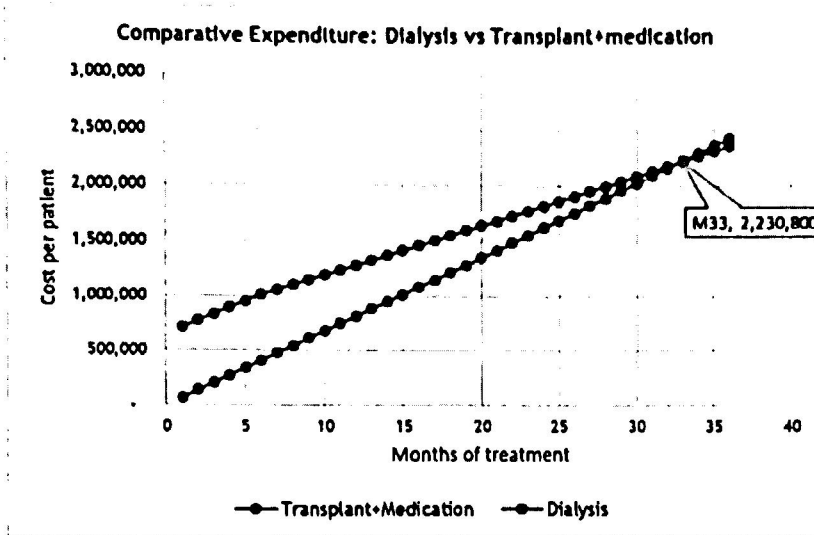
Answer

The National Hospital Insurance Fund was established under the National Hospital Insurance Fund Act (Cap. 255 of the Laws of Kenya) in 1966, which was later replaced by the National Hospital Insurance Fund Act, of 1998; and the revised act in 2022, to be operated and managed by the Board of Management.

Under the provisions of the Act and the approvals by the Board of management, the Fund implemented a cover for Renal Dialysis with the most common indication being End-Stage Renal Disease/Failure (ESRD). The Fund also made provisions for the cover for Kidney transplants, with the liability capped at KES 500,000. In the last financial year, 2020/21, the Fund spent KES 3.8B on renal dialysis, more than 7% of the total medical claims payout.

Presently, the Civil Service, Kenya Prisons and National Police Service, and other government employees and retirees can purchase an enhanced cover, which entitles them to additional benefits, unlike the national scheme beneficiaries. This is unlike the lack of equity that is alluded to in petition 7 in the memo, and request number three that implies the cover is dependent on the Job Groups, with the higher job groups having superior covers. The enhanced covers cost the government an additional KES 35,000 per year per employee for the enhancement, above the statutory contribution that is dependent on salary.

The Fund also acknowledges that renal transplants are a better long term plan in managing ESRD. From the projection estimates, a "break-even" is achieved at month 33, of dialysis, assuming 100% success rate with renal transplants.



Graph 1: Financing Dialysis vs Kidney Transplants

In line with this, the Fund has developed a long term plan to enable transition by incentivizing transplants without exposing the population to a significant risk of illegal organ harvesting and trafficking. These include:

- I. A selective procurement model in the purchasing of the transplant procedures.
- II. A pharmacy benefits management concept in line with the GOK Health Products and Technologies Strategic plan 2020-2025 to reduce the cost of post-transplant medication.
- III. A payment for performance model to incentivize success-rates and quality of care for these and other long-term care patients.

3)Petition Mr. Mikeson Mugo and other patients living with Autoimmune Diseases concerning payment of medical and healthcare costs and provision of health cover for persons living with autoimmune diseases by the National Hospital Insurance Fund.

1. Initiate the subsidy of the price of medicine to a more affordable price

Refer to answer on question 1(1) above

2. Intervene in the matter with a view to ensure that there are more and qualified dermatologist and rheumatologist in all hospitals especially district hospitals with a doctor/patient ration of 1:100,000

Refer to 1 (2) above. The Ministry of Health has prioritized specialist training and as outlined above, is undertaking various measures to increase the pool of specialists including dermatologists and rheumatologists. However, it is important to note that health service delivery remains to be a devolved function and allocation of specialist at County level remains at the discretion of the County Departments of Health. The Ministry can only guide the Counties on areas to allocate resources according to need as influenced by evidence.

3. Initiate the recognition of this group as people with disabilities with an aim of exempting them from tax

Refer to answer on question 1(3) above

4. Initiate the process of fund allocation to carry awareness campaigns that will involve the government and private sector to understand the different conditions of the diseases and management of patients affected.

Refer to answer on question 1(5) above

5. Intervene for the group to obtain a proper cover under the NHIF like the case of cancer patients who get free drugs and chemotherapy

Refer to answer on question 1(6) above

4) Petition by Mr. Collins A. Omolo on alleged taxation of pharmacies In Kenya.

The PPB has taken note of the contents of the petition by Mr. Collins A. Omolo and wishes to respond as follows:

The Pharmacy and Poisons Board (PPB) is the National Medicines Regulatory Authority established under the Pharmacy and Poisons Acts, Cap 244 of the Laws of Kenya. The PPB has the sole responsibility to protect the health of the public by regulating the profession of pharmacy and ensuring quality, safety, and efficacy of the health products technologies.

1. The law makes it a requirement for all premises where pharmaceutical services are offered to be registered and that the pharmacists and pharmaceutical technologists take out annual practice licenses. These regulatory processes of registration and licensing attract annual fees payable to the PPB.
2. Pharmacy practice goes beyond the traditional distribution and dispensing of pharmaceuticals and other health products and technologies (HPTS). Previously the roles of pharmacists have been perceived to be heavily product-focused and less patient-centered. The pharmaceutical industry and profession take on several roles (apart from dispensing) in making drug therapy safe, effective and affordable for the patient which include; *Pharmaceutical Care, is a practice in which the practitioner takes responsibility for a patient's drug-related needs (appropriateness, effectiveness, safety, adherence), and is held accountable for this commitment*".
3. In the course of the practice of pharmacy, responsible drug therapy is provided for the purpose of achieving positive outcomes. It should be noted, however, that this is a complimentary service for the overall care of the patient. Medical diagnosis and prescribing remains the prime responsibility of the physician while identifying, resolving and preventing of drug therapy problems would be the primary responsibility of the pharmacist in the Pharmaceutical Care model.
4. Pharmacy practice, therefore, includes offering of pharmaceutical services in a patient-oriented manner. The scope includes counselling of patients on medication therapy, family planning, immunization and other emerging areas of practice.
5. In view of the above, the PPB is of the considered opinion that pharmacy is a regulated profession and pharmacies are not just trade centers as perceived by the counties. They should therefore not be subject to the single business permit fees like other general traders as the regulatory fees are duly paid to enable the practice of pharmacy.

5) Petition by Dr. Alexander Irungu Wanjiru on the appointment of the Chief Executive Officer (CEO) for the National Health Insurance Fund.

Dr. Alexander Irungu Wanjiru filed a Petition before the Senate concerning the appointment of the Chief Executive Officer (CEO) to the Fund. The Petition alleges that the current (CEO) was appointed to the position without undergoing a competitive recruitment as envisaged by Section 10 (1) of the National Hospital Insurance Fund Act No. 9 of 1998.

The due processes and procedures were followed in undertaking the exercise on the recruitment of the CEO by initially publishing the vacancy by public advertisement in the local dailies, Standard and Daily Nation, published in July 2019. The short listing of candidates and interview process was carried out

A subsequent re-advertisement was published for the same position in February 2020, after it was noted that the initial advertisement did not include qualifications in the medical field. Thereafter the Fund undertook the preparation of the long lists and short listing, carried out the interviews and final to the appointment of the current CEO.

There is a constraint in tabling a complete report to the Senate Standing Committee on Health noting that there is a suit filed in court, *Employment and Labor Relations Court Petition No. 54 of 2022 filed by Oklya Omtatah Okoli Versus the Board of Management - National Hospital Insurance Fund, the Public Service Commission, Cabinet Secretary Ministry Of Health, the Hon. Attorney General and the Salaries & Remuneration Commission, the National Hospital Insurance Fund and Dr. Peter Kamunyo Gathege as interested parties*. This matter was served on the Fund on 21st April 2020 and sought to nullify the appointment of the Chief Executive.



Dr. Rashid A. Aman, Bpharm, PhD, CBS
FOR: CABINET SECRETARY

2nd June, 2022

TWELFTH PARLIAMENT | FOURTH SESSION



MINUTES OF THE 4TH SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON THURSDAY, 12TH AUGUST, 2021, AT 9.00A.M. ON THE ZOOM ONLINE MEETING WITH THE PETITIONER

PRESENT

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

SECRETARIAT

- 1) Ms. Emmy Chepkwony - Principal Clerk Assistant 1
- 2) Ms. Caroline Njue - Clerk Assistant III
- 3) Ms. Sombe Toona -Legal Counsel
- 4) Mr. Robert Rop -Audio Officer
- 5) Mr. Boniface Mbiti -SAA
- 6) Ms. Lynn Aseka - Parliamentary Intern, Committees

PETITIONERS

Mr. Collins A. Omollo- Pharmacist

MIN. NO. SCH. 17/8/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.03 a.m and the meeting commenced with a word of prayer.

MIN. NO. SCH. 18/8/2021: ADOPTION OF THE AGENDA

The Committee adopted the agenda of the sitting, as set out below, having been proposed by Sen. Beatrice Kwamboka, MP and seconded by Sen. Ledama Olekina, MP: -

1. Preliminaries
 - a) Prayer
 - b) Adoption of the Agenda
2. Confirmation of Minutes of the Previous Sittings
3. Meeting with the Petitioners concerning Double Taxation on Pharmaceuticals
4. Any other business.
5. Date of the Next Meeting.
6. Adjournment

MIN. NO. SCH. 19/8/2021 : CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The agenda was deferred to a later date.

MIN. NO. SCH. 20/8/2021 : MEETING WITH THE PETITIONER CONCERNING THE ALLEDGED DOUBLE TAXATION ON PHARMACEUTICALS IN KENYA.

The Committee held a meeting with the Petitioners to consider a Petition regarding double taxation of pharmaceuticals. The Petition was read in the House by the Honorable Speaker.

In the meeting the Petitioner presented to the Committee the following prayers-

- i That the Senate investigates the discriminative double taxation of pharmacies by county governments and Pharmacy and Poisons Board.
- ii That the senate puts in place appropriate measures including but not limited to enacting, amending or repealing any law as it may find necessary to remedy this double taxation.
- iii Be pleased to take any further actions that it shall deem fit and necessary.

The Committee noted that, to fully respond to the prayers of the Petitioner, submission from the County Governments and the National Government on the matter of double taxation will be critical. The Committee resolved to invite the key stakeholders to address the matter.

The Committee however noted that counties need to raise revenue and business permits is one of the avenue to raise revenue for county governments. It was observed that most chemists sell both pharmaceuticals and non-pharmaceuticals.

MIN. NO. SCH 21/8/2021: ADJOURNMENT& DATE OF THE NEXT SITTING

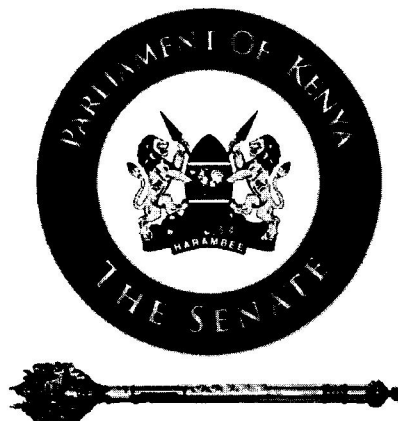
There being no other business, the meeting adjourned at 10.25 a.m the next meeting will be held at 10.30 a.m.

SIGNED: *Bruno*

CHAIRPERSON

DATE:15/6/2022.....

TWELFTH PARLIAMENT | FIFTH SESSION



MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON WEDNESDAY, 13TH SEPTEMBER, 2021 AT 9:00 A.M. ON THE ZOOM ONLINE PLATFORM

PRESENT

1. Sen. Mary Seneta, MP - Vice-Chairperson
2. Sen. Beth Mugo, EGH, MP
3. Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP
4. Sen. Fred Outa, MP
5. Sen. (Prof) Samson Ongeru, EGH, MP
6. Sen. Millicent Omanga, MP

APOLOGY

1. Sen. (Dr.) Michael Mbitio, MP - Chairperson
2. Sen. Ledama Olekina, MP
3. Sen. Beatrice Kwamboka, MP

IN ATTENDANCE

1. Dr. Peter Kamunyo - CEO, NHIF

SECRETARIAT

1. Dr. Christine Sagini - Clerk Assistant
2. Ms. Caroline Murugi Njue - Clerk Assistant
3. Ms. Farhiya Ali - Sergeant-at-Arms
4. Mr. Mbithi - Sergeant-at-Arms
5. Ms. Sombe Toona - Legal Counsel
6. Mr. Robert Rop - Audio Officer

MIN. NO. SCH2/23/10/2021: PRELIMINARIES

The Meeting commenced at 9:25 a.m with a word of prayer from the Chairperson.

MIN. NO. SCH2/24/10/2021: ADOPTION OF THE AGENDA

The Committee adopted the agenda of the sitting as set out below, having been proposed by Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP and seconded by Sen. Fred Outa, MP.

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*
2. ***Meeting with the CEO NHIF to consider the Petitions on challenges facing patients suffering from Multiple sclerosis, NHIF cover for kidney post-transplant medication, payment of medical and healthcare costs and provision of health cover for persons living auto-immune diseases.***
3. Any other business.
4. Date of the Next Meeting.
5. Adjournment.

MIN. NO. SCH2/25/10/2021: RESPONSES TO PETITIONS BEFORE THE STANDING COMMITTEE ON HEALTH

Regarding the petition by Mr. Daniel Ngumi and other patients on NHIF over for kidney post-transplant medication.

The CEO informed the committee that the uptake of kidney transplant in Kenya remains low due to inadequate regulatory framework regulating organ donation, cost of the procedure, coupled with cultural believes surrounding the same. Locally, an average of thirty (30) kidney transplants are performed annually, and about twenty (20) are done overseas. As a result of the low-uptake, the cost of post- transplant medication remains high, when compared to other countries where organ transplant is higher. This makes designing of a stand-alone benefit package for these medicines costly. We envision that with UHC scale-up and with passing of a regulatory and legal framework on organ donation, the uptake of kidney transplant can improve and thereby considerations for a stand-alone post-organ transplant medication package can be considered. NHIF however covers post-transplant medication for enhanced scheme beneficiaries.

Regarding the petition by Mikeson Mugo and other patients living with Autoimmune Disease and payment of medical and healthcare cost

He mentioned that as explained under **Petition No.2** above, NHIF covers autoimmune diseases, not as a stand-alone benefit package, but through the existing benefit packages based on the current needs of the beneficiary. He also explained that each package is stand alone and paid separately.

MIN. NO. SCH.26/10/2021: ANY OTHER BUSINESS

There was no other business.

MIN. NO. SCH2/27/10/2021: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:09 am.

Bunn

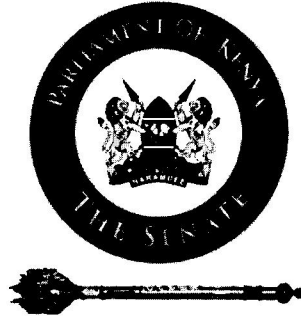
SIGNED:

(CHAIRPERSON)

15/6/2022

DATE:

TWELFTH PARLIAMENT | SIXTH SESSION



MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON THURSDAY, 2ND JUNE, 2022, AT 9:00 A.M. ON THE ZOOM ONLINE PLATFORM

PRESENT

- | | | |
|-------------------------------|---|------------------|
| 1. Sen. Michael Mbito, MP | - | Chairperson |
| 2. Sen. Mary Seneta, MP | - | Vice-Chairperson |
| 3. Sen. Beatrice Kwamboka, MP | | |
| 4. Sen. Millicent Omanga, MP | | |
| 5. Sen. Fred Outa, CBS, MP | | |

APOLOGY

1. Sen. Beth Mugo, EGH, MP
2. Sen. (Prof) Samson Ongeru, EGH, MP
3. Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP
4. Sen. Ledama Olekina, MP

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Dr. Christine Sagini | - | Clerk Assistant I |
| 2. Ms. Caroline Njue | - | Clerk Assistant II |
| 3. Mr. Moses Kenyanchui | - | Legal Counsel |
| 4. Mr. Robert Rop | - | Audio Officer |
| 5. Mr. Frank Mutulu | - | Media Relations Officer |

IN ATTENDANCE

- | | | |
|----------------------|---|------------------------------------------|
| 1. Dr. Peter Kamunyo | - | CEO NHIF |
| 2. Ms. Janet Boit | - | Legal Dept NHIF |
| 3. Ms. Grace Kimani | - | Legal Dept NHIF |
| 4. Dr. Rashid Aman | - | CAS Ministry of Health |
| 5. Mr. Fred Siyoi | - | CEO Pharmacy and Poisons Board |
| 6. Ms. Nancy Arunga | - | Legal Counsel Pharmacy and Poisons Board |

MIN. NO. SCH/01/06/2022: PRELIMINARIES

The Chairperson called the meeting to order at 9:11 a.m. and the meeting commenced with a word of prayer.

MIN. NO. SCH/02/06/2022: ADOPTION OF THE AGENDA

The Committee adopted the agenda of the sitting, as set out below, having been proposed by **Sen. Beatrice Kwamboka, MP** and seconded by **Sen. Mary Senet, MP**:

1. Preliminaries
 - a. Prayer*
 - b. Adoption of the Agenda*
2. ***Meeting with CS Ministry of Health and the Chief Executive Officer, National Hospital Insurance Fund in relation to pending petitions before the Committee***
3. Any Other business.
4. Date of the Next Meeting
5. Adjournment.

MIN.NO.SCH/03/06/2022: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The Chief Administrative Secretary, Ministry of Health took the committee through a presentation that included all the petitions pending before the committee as follows:

1. **Petition by Ms. Mario Juma and others on the Challenges faced by patients suffering from Multiple Sclerosis (MS) and Neuromyelitis Optica (NMO)**

He started by defining Multiple Sclerosis as an autoimmune disease that attacks the protective sheath (myelin) that covers nerve fibers in the brain and spinal cord. It is

potentially disabling as it eventually causes permanent damage or deterioration of the nerves. He also defined Neuromyelitis Optica Spectrum Disorder (NOSD) also known as Devic disease, as a chronic disorder of the brain and spinal cord dominated by inflammation of the spinal cord (myelitis).

He mentioned that the management of the two conditions is. Mainly through the use of immunomodulatory therapy (IMT) for the underlying immune disorder using disease modifying frugs and therapies to relive or modify symptoms.

The continued to say that actual burden of these two diseases has not been fully established but data from hospitals published, for example Aga khan hospital reported 99 cases over 10 years (2008-2018). In 1988-89, KNH registered six patients of MS while a private physician recorded 9 cases of MS over a 10-year period (1989-1999). Between 2008-2020, 11 cases of NMO were recorded in Agakhan University Hospital. These data shows that MS and NMO are not very rare in Kenya and there is need to increase awareness and strengthen our system to be able to diagnose and provide appropriate management.

He informed the committee that the management of the two conditions was led by neurologists and supported by various health worker specialists psychiatrist/psychologist, physiotherapists/occupational therapist, nutritionists among others.

He informed the committee of the following ways of managing of the two conditions:

- a) Subsidy of price of medicine to a more affordable price. A DMG (disease modifying drugs) or injections can cost as high as Ksh. 100,000 per week
- b) Intervene in the matter with a view to ensure there are more qualified specialists especially in all hospitals especially district hospitals to ensure early diagnosis and management
- c) Initiate the recognition of this group as a group of people living with disability and therefore be exempted from taxation
- d) Initiate the process of funds allocation to carry awareness campaigns that will involve the government and Private section to understand the different conditions of the diseases and management of patients affected
- e) Intervene for the group to obtain a proper cover to the affected group under the NHIF like the case of cancer patients who get free drugs and chemotherapy
- f) Initiate free counselling and therapy

2. Petition by Mr. Daniel Ngumi and other patients on NHIF cover for kidney post-transplant Medication

He informed the committee that the National Hospital Insurance Fund was established under the National Hospital Insurance Fund Act (Cap. 255 of the Laws of Kenya) in 1966, which was later replaced by the National Hospital Insurance Fund Act, of 1998, and the revised act in 2022, to be operated and managed by the Board of Management.

Under the provisions of the Act and the approvals by the Board of management, the fund implemented a cover for Renal Dialysis with the most common indication being End Stage Renal Disease/Failure (ESRD). The fund also made provisions for the cover for kidney transplants, with the liability capped at KES 500,000. In the last financial year, 2020/21, the fund spent KES. 3.8B on renal dialysis, more than 7% of the total medical claims payout.

Presently, the Civil Service, Kenya Prisons and National Police Service, and other government employees and retirees can purchase an enhanced cover, which entitles them to additional benefits, unlike the national scheme beneficiaries.

This is unlike the lack of equity that is alluded to in petition 7 in the memo, and request number three that implies the cover is dependent on the Job Groups, with the higher job groups having superior covers. The enhanced covers cost the government an additional KES 35,000 per year per employee for the enhancement, above the statutory contribution that is dependent on salary.

3. Petition by Mr. Mikeson Mugo and other patients living with Autoimmune Diseases concerning payment of medical and healthcare costs and provision of health cover for persons living with autoimmune diseases by the National Hospital Insurance Fund

He informed the committee that the answers to this petition was similar to the first petition by Ms. Mario Juma.

4. Petition by Mr. Collins A. Omolo on alleged double taxation of pharmacies in Kenya

The CAS informed the Committee that the Pharmacy and Poisons Board had taken note of the contents of the petition by Mr. Collins A. Omolo and wished to respond as follows:

- a) That the law makes it a requirement for all premises where pharmaceutical services are offered to be registered and that the pharmacists and pharmaceutical technologists take out annual practice licenses. These regulatory processes of registration and licensing attract annual fees payable to the PPB.
- b) That Pharmacy practice goes beyond the traditional distribution and dispensing of pharmaceuticals and other health products and technologies (HPTS). Previously, the roles of pharmacists have been perceived to be heavily product-focused and less patient-centered. The pharmaceutical industry and profession take on several roles (apart from dispensing) in making drug therapy safe, effective and affordable for the patient which include; Pharmaceutical care, is a practice in which the practitioner takes responsibility for a patients drug-related needs (appropriateness, effectiveness, safety and adherence), and is held accountable for this commitment”.

- c) That in the case of the practice of pharmacy, responsible drug therapy is provided for the purpose of achieving positive outcomes. It should be noted, however, that this is a complimentary service for the overall care of the patient. Medical diagnosis and prescribing remains the prime responsibility of the physician while identifying, resolving and preventing of drug therapy problems would be the primary responsibility of the pharmacist in the pharmaceutical Care model.
- d) That pharmacy practice, therefore, included offering of pharmaceutical services in a patient-oriented manner. The scope includes counselling of patients on medication therapy, family planning, immunization and other emerging areas of practice.
- e) In view of the above, the PPB is the one considered opinion that pharmacy is a regulated profession and pharmacies are not just trade centers as perceived by the counties. They should therefore not just be subject to the single business permit fees like other general traders as the regulatory fees are duly paid to enable the practice of pharmacy.

5. Petition by Dr. Alexander Irungu Wanjiru on the appointment of the Chief Executive Officer (CEO) for the National Insurance Fund

The CAS informed the Committee that Dr. Alexander Irungu Wanjiru filed a petition before the Senate concerning the appointment of the Chief Executive Officer was appointed to the position without undergoing a competitive recruitment process as envisaged by Section 10(1) of the National Hospital Insurance Fund Act No. 9 of 1998.

The mentioned that the due processes and procedures were followed in undertaking the exercise of the recruitment of the CEO by initially publicizing the vacancy by public advertisement in the local dailies, Standard and Daily Nation, published in July 2019. The short listing of candidates and interview process was carried out

A subsequent re-advertisement was published for the same position in February 2020, after it was noted that the initial advertisement did not include qualifications in the medical field. Thereafter, the fund undertook the preparation of the 2022e longlist and short listing, carried out the interviews and final to the appointment of the current CEO.

He noted that there was a constraint in tabling the complete report to the Senate Standing Committee on Health noting that there is a suit filed in court, Employment and Labor Relations Court Petition No. 54 filed by Okiya Omutatah Okolti sersus the Board of Management-National Hospital Insurance Fund, the Public Service Commission, Cabinet Secretary Ministry of Health, the Attorney General and the Salaries and Remuneration Commission, the National Hospital Insurance Fund and Dr. Peter Kamunyo Gathege as interested parties. He informed the Committee that the

matter was served on the fund on 21st April, 2020 and sought to nullify the appointment of the Chief Executive Officer.

MIN. NO. SCH/04/06/2022: ANY OTHER BUSINESS

The committee was informed that the secretariat would do draft reports of the petitions and the members will adopt the report in the next meeting.

MIN. NO. SCH/05/06/2022: ADJOURNMENT

There being no other business, the meeting was adjourned at 9:45 a.m.



SIGNED:
(CHAIRPERSON)

DATE:15/6/022.....

TWELFTH PARLIAMENT | SIXTH SESSION



MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON WEDNESDAY, 15th JUNE, 2022, AT 9:00 A.M. ON THE ZOOM ONLINE PLATFORM

PRESENT

- | | | |
|----------------------------------------------|---|------------------|
| 6. Sen. Michael Mbiti, MP | - | Chairperson |
| 7. Sen. Mary Seneta, MP | - | Vice-Chairperson |
| 8. Sen. Beth Mugo, EGH, MP | | |
| 9. Sen. Beatrice Kwamboka, MP | | |
| 10. Sen. Fred Outa, CBS, MP | | |
| 11. Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP | | |
| 12. Sen. Ledama Olekina, MP | | |
| 13. Sen. Millicent Omanga, MP | | |

APOLOGY

5. Sen. (Prof) Samson Ongeru, EGH, MP

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 6. Dr. Christine Sagini | - | Clerk Assistant I |
| 7. Ms. Caroline Njue | - | Clerk Assistant II |
| 8. Mr. Moses Kenyanchui | - | Legal Counsel |
| 9. Mr. Robert Rop | - | Audio Officer |
| 10. Mr. Frank Mutulu | - | Media Relations Officer |

MIN. NO. SCH/6/06/2022: PRELIMINARIES

The Meeting commenced at 9:20 a.m. with a word of prayer from the Chairperson.

MIN. NO. SCH/7/06/2022: ADOPTION OF THE AGENDA

The Committee adopted the agenda of the sitting, as set out below, having been proposed by Sen. Fred Outa, CBS, MP and seconded by Sen. (Dr.) Abdullahi Ali, MP: -

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of Agenda*
2. Consideration and adoption of the following reports:
 - *Report on the petition by Dr. Alexander Irungu on the appointment of the NHIF CEO;*
 - *Report on the petition by Mr. Collins Omollo on double taxation of pharmacies;*
 - *Report on the petition by Mr. Daniel Ngumi et al on NHIF cover for post-transplant kidney patients;*
 - *Report on the petition by Mr. Mikeson et al on payment of medical and health care costs for persons with autoimmune diseases;*
 - *Report on the petition by the Wachangwame Community on the status of Mkomani Clinic Society trading as Bomu Hospital.*
3. Any other business
4. Date of Next Meeting
5. Adjournment

MIN. NO. SCH/8/06/2022: CONSIDERATION AND ADOPTION OF PETITION REPORTS

The Committee considered and adopted the report on the petition on the payment of medical and health care costs, and provision of health cover for persons with auto-immune diseases having been proposed by Sen. Mary Seneta, MP, and seconded by Sen. Millicent Omanga

The Committee considered and adopted the report on the petition on the double taxation of pharmacies in Kenya having been proposed by Sen. Mary Seneta, MP, and seconded by Sen. Ledama Olekina, MP.

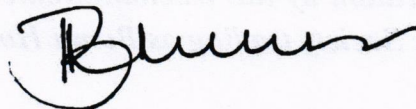
The Committee considered and adopted the report on the petition on the NHIF cover for kidney post-transplant kidney patients having been proposed by Sen. Mary Seneta, MP, and seconded by Sen.

The Committee considered and adopted the report on the petition by the Wachangamwe Community on the status of Mkomani Clinic Society trading as Bomu Hospital having been proposed by Sen. Mary Seneta, MP, and seconded by Sen.

The Committee considered and adopted the report on the petition on the appointment of the NHIF CEO having been proposed by Sen. Mary Seneta, MP, and seconded by Sen.

MIN. NO. SCH/9/06/2022: ADJOURNMENT

There being no other business the meeting was adjourned at 11:00 a.m.



SIGNED:

(CHAIRPERSON)

DATE:15/6/2022.....