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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

DEPARTMENTAL COMMITTEE ON HEALTH
.....

REPORT ON THE CONSIDERATION OF THE SENATE'S AMENDMENTS TO THE
NATIONAL HEALTH INSURANCE FUND (AMENDMENT) BILL (*NATIONAL ASSEMBLY
BILL NO. 21 OF 2021*)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER 2021

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Health on its consideration of the Senate's amendments to the National Health Insurance Fund (*National Assembly Bill No. 21 of 2021*). The National Health Insurance Fund (*National Assembly Bill No. 21 of 2021*) was passed by the National Assembly on 29th June 2021 and thereafter conveyed to the Senate in accordance with the provisions of Article 110(4) of the Constitution. Subsequently, the Senate considered the Bill and passed it with amendments on Thursday, 2nd December 2021. The amendments were thereafter referred to the Departmental Committee on Health on 7th December 2021. The Committee subsequently considered the amendments on 9th December 2021 as contained in this report.

The Bill seeks to amend the National Hospital Insurance Fund Act, 1998, to enhance the mandate and capacity of the National Hospital Insurance Fund to facilitate and deliver the Universal Health Coverage. The Bill sets out the Board's mandate in facilitating attainment of Universal Health Coverage including communication and stakeholder engagement.

The Bill also proposes to insert a new section 10A in the Act to provide for the appointment of the Corporation Secretary to comply with the "Mwongozo" Code of Conduct for State Corporations. Further, the Bill introduces provisions relating to the liability of employers to make matching contributions to the Fund equal to that which the employee is liable and makes it mandatory for Kenyan residents to contribute to the Fund.

The Bill also seeks to eliminate the outdated identification through cards and mandates the Board to prescribe means by which a beneficiary of the Fund may be identified. The Bill further seeks to mandate the Board to pay from the Fund, a benefit to an empanelled and contracted health care provider for an expense incurred by the provider, for the provision of health care services to the number of beneficiaries determined by the Board and to provide for an element of first charge where a beneficiary has a private health insurance cover. The Bill also enhances the penalties for those found culpable for the commission of offences under the Act.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Health and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Senate amendments to the National Health Insurance Fund (*National Assembly Bill No. 21 of 2021*).

Hon. Sabina Chege, M.P.

Chairperson, Departmental Committee on Health

PART ONE

I PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216 of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee are;
 - a) *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b) *Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
 - c) *Study and review all legislation referred to it;*
 - d) *Study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
 - e) *Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f) *Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204;*
 - fa) *Examine treaties, agreements and conventions;*
 - g) *Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h) *Consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i) *Examine any questions raised by Members on a matter within its mandate*

1.2 MANDATE OF THE COMMITTEE

1. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, matters related to health, medical care and health insurance.
2. In executing its mandate, the Committee oversees the Ministry of Health, its Semi-Autonomous Government Agencies, Regulatory Bodies and Health Advisory Bodies as follows:
 - a. Kenyatta National Hospital (KNH)
 - b. Moi Teaching and Referral Hospital (MTRH)
 - c. Kenyatta University Teaching Referral and Research Hospital (KUTRRH)
 - d. Kenya Medical Training College (KMTC)
 - e. Kenya Medical Supplies Authority (KEMSA)
 - f. Kenya Medical Research Institute (KEMRI)
 - g. National Hospital Insurance Fund (NHIF)
 - h. Pharmacy and Poisons Board (PPB)
 - i. National AIDS Control Council (NACC)
 - j. National Cancer Institute (NCI)
 - k. Kenya Nuclear Regulatory Authority (KENRA)
 - l. The Mathari National Teaching and Referral Hospital (MNTRH)
 - m. Kenya Health Professionals Oversight Authority (KHPOA)
 - n. Kenya Health Human Resource Advisory Council (KHHRAC)

1.3 COMMITTEE MEMBERSHIP

3. The Departmental Committee on Health was re-constituted by the House in July 2020 and comprises of the following Members:

Hon. Sabina Chege, MP - **Chairperson**
County MP for Muranga County
Jubilee Party

Hon. Joshua Kutuny, MP - **Vice-Chairperson**
Cherangan'y Constituency
Jubilee Party

Hon. (Dr.) Eseli Simiyu, MP
Tongaren Constituency
Ford Kenya Party

Hon. Gideon Ochanda, MP
Bondo Constituency
ODM Party

Hon. (Dr.) James Nyikal, MP
Seme Constituency
ODM Party

Hon. Alfred Agoi Masadia, MP
Sabatia Constituency
ANC Party

Hon. (Dr.) James K, Murgor, MP
Keiyo North Constituency
Jubilee Party

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. (Dr.) Mohamed D. Duale, MP
Daadab Constituency
KANU Party

Hon. Beatrice Adagala, MP
Vihiga County
ANC Party

Hon. James G Wamacukuru
Kabete Constituency
Jubilee Party

Hon. Prof. Mohamud Sheikh, MP
Wajir South
Jubilee Party

Hon. Sarah Puleta Korere, MP
Laikipia North Constituency
Jubilee Party

Hon. Capt. Ruweida Mohamed, MP
Lamu County
Jubilee Party

Hon. Kipsengeret Koros, MP
Sigowet-Soin Constituency
Independent Party

Hon. Martin Peters Owino, MP
Ndhiwa Constituency
ODM Party

Hon. Joyce Ekai Emanikor, MP
Turkana County
Jubilee Party

Hon. Said Hirabe, MP
Galole Constituency
Ford Kenya Party

Hon. Tongoyo Gabriel Koshal, MP
Narok West Constituency
CCM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Douglas Katho
Head of the Secretariat
Clerk Assistant II

Ms. Christine Odhiambo
Legal Counsel I

Mr. Muyodi Meldaki Emmanuel
Clerk Assistant II

Mr. Eric Kanyi
Fiscal Analyst II

Fiona Musili
Research Officer

Mr. Ahmed Yakub
Media Relations Officer

Ms. Catherine Wangui
Serjeant-At-Arms

Mr. Nimrod Ochieng
Audio Officer

PART TWO

2 CONSIDERATION OF THE SENATE'S AMENDMENTS TO THE NATIONAL HEALTH INSURANCE FUND (AMENDMENT) BILL (*NATIONAL ASSEMBLY BILL NO. 21 OF 2021*)

2.1 INTRODUCTION

6. The National Health Insurance Fund (Amendment) Bill (National Assembly Bill No. of 21 of 2021) was considered and passed with amendments by the Senate on Thursday, 2nd December 2021. The amendments were conveyed back to the National Assembly for considerations vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The amendments were then committed to the Departmental Committee on Health for consideration on 9th November 2021.

2.2 SENATE'S AMENDMENTS TO THE NATIONAL HEALTH INSURANCE FUND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2021)

The Senate proposed the following amendments to the National Health Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021):

CLAUSE 7

7. **THAT** clause 7 of the Bill be amended-

- (a) in paragraph (d) by deleting the proposed new definition of the word “employer” and substituting therefor the following new definition-

“employer” means a person, national government or national government entity, county government or county government entity, firm, corporation or company who or which has entered into a contract of service with an individual.

- (b) in paragraph (k) in the proposed new definition of the word “accreditation” by deleting the words “relevant body” appearing immediately after the words “provider by the” and substituting therefor the word “Board”; and

- (c) in the proposed new definition of the word “health care provider” by inserting the word “promotive” immediately after the words “palliative, convalescent, preventative”.

CLAUSE 8

8. **THAT** clause of the Bill be amended-

- (a) in paragraph (b) in the proposed new paragraph (a) –

- (i) by deleting subparagraph (iv) and substituting therefor the following new subparagraph-

- (iv) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme or an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits;
- (ii) in subparagraph (v) by deleting the word "funds" appearing immediately before the words "from post retirement funds" and substituting therefor the word "contributions".

CLAUSE 9

9. **THAT** clause 9 of the Bill be amended-

(a) in the proposed new subsection (1) by-

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

(d) one person nominated by the Kenya Medical Association;

(ii) in paragraph (g) by deleting the word "one person" appearing immediately before the words "not being a Governor" and substituting therefor the words "two persons";

(b) in the proposed new subsection (1A) by deleting the words "paragraphs (f) and (g)" appearing immediately after the words "appointed under" and substituting therefor the words "paragraphs (c), (f), (g) and (h)".

CLAUSE 10

10. **THAT** clause 10 of the Bill be amended-

(a) in paragraph (b) in the proposed new paragraph (c) by deleting the words "Cabinet Secretary" appearing immediately after the words "consultation with the" and substituting therefor the words "respective regulatory bodies specified under section 60 of the Health Act;

(b) by inserting the following new paragraph immediately after paragraph (d)-

(da) by inserting the following new subsection immediately after subsection (1)-

(2) The Board shall facilitate public participation and stakeholder engagement in the carrying out of its functions under this Act.

CLAUSE 14

11. **THAT** clause 14 of the Bill be amended in the proposed new section 10(2) by deleting the word "Bachelor's" appearing immediately after the words "at least a" and substituting therefor the word "Master's".

CLAUSE 15

12. **THAT** clause 15 of the Bill be amended in the proposed new section 10A by inserting the following new subsection immediately after subsection (1)-

(1A) A person is qualified for appointment as a corporation secretary under subsection (1) has been a member of the Institute of certified Public Secretaries for at least ten years and the person is in good standing with the Institute.

CLAUSE 19

13. **THAT** clause 19 of the Bill be amended-

(a) in paragraph (c) by deleting subparagraph (ii);

(b) in paragraph (d) by deleting the proposed new paragraph (e) and substituting therefor the following new paragraph-

(e) in the case of any other employer under subsection (1A)(c), a matching contribution equal to that which their employee is liable to contribute under subsection (1)(c) subject to section 6(c).

(c) by inserting the following new paragraph immediately after paragraph (d)-

(da) by inserting the following new subsection immediately after subsection (2)-

(2A) An employer other than the national government or county governments or their entities liable to pay a matching contribution under section 15 may be exempted from paying such matching contribution, if that employer has procured a private health insurance cover for its employees and the benefits are equal to or better than the benefits that the employees are entitled to under this Act.

(2B) An employer who intends to be exempted under subsection (2A) shall submit an application to the Board in writing together with a certificate issued by the Insurance Regulatory Authority to that employer—

(a) certifying that the respective employees have been insured by a private health insurer;

(b) specifying the details of the cover and the benefits; and

(c) specifying the validity period of the private health insurance cover.

(2C) The Board, -

(a) shall determine an application under subsection (2B) within thirty days of receipt; and

(b) may grant the exemption if the Board is satisfied that the private health insurance is adequate.

(d) in paragraph (i) in the proposed new subsection (6) by deleting the word “may” appearing immediately after the words “Cabinet Secretary” and substituting therefor the word “shall”.

CLAUSE 20

14. **THAT** clause 20 of the Bill be amended in paragraph (f) by deleting the words “one million” appearing immediately after the words “therefor the words” in subparagraph (ii) and substituting therefor the words “five hundred thousand”.

CLAUSE 21

15. **THAT** clause 21 of the Bill be amended-

(a) in paragraph (b) in the proposed new subsection (1) by deleting the proviso;

(b) in paragraph (c) by inserting the words “that would have been covered by the Fund” immediately after the words “pay the costs”;

(c) by inserting a new paragraph immediately after paragraph (c)-

(d) where an employer is a national government, county government or a national or county government entity, the respective accounting officer shall be personally liable for the costs that would have been covered by the Fund and incurred by the employee when seeking treatment from a contracted health care provider during the period when the contribution is due.

CLAUSE 23

16. **THAT** clause 23 of the Bill be amended by deleting the words “by the youth” appearing immediately after the words “inserting the words” and substituting therefor the words “by unemployed persons”.

CLAUSE 26

17. **THAT** clause 26 of the Bill be amended in paragraph (c) by-

(a) deleting the proposed subsection (3) and substituting therefor the following new subsections—

(3) The Board shall, in consultation with the Cabinet Secretary, prescribe benefits payable from the Fund including benefits available with respect to emergency treatment for –

- (a) primary angioplasty;
- (b) thrombolysis;
- (c) thrombolysis and rescue angioplasty; or
- (d) such other treatment as the Board may determine.

(3A) The benefits payable from the Fund shall be subject to such limits, and conditions as the Board may prescribe in regulations.

(b) deleting the proposed new subsection (3B) and substituting therefor the following new subsections-

(3B) The Board shall, every two years, carry out a review of the applicable tariffs payable to the Fund under section 15 and payable out of the Fund to empaneled contracted health care providers.

(3C) The Board shall use the approved risk spreading mechanism, approved claims administration services on benefits of outpatient, inpatient and on employees' benefits scheme as provided for under sections 3(iv) and (v), 15, 22 and 43.

CLAUSE 27

18. **THAT** clause 27 of the Bill be amended in the proposed new section 23 by-

- (a) renumbering the provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1)-
 - (2) The Board shall make regulations for the better carrying out of the provisions of this section.

CLAUSE 33

19. **THAT** clause 33 of the Bill be amended-

- (a) paragraph (b) in the proposed new subsection (1) by deleting the words "accreditation bodies" and substituting therefor the words "regulatory bodies specified under section 60 of the Health Act".
- (b) by deleting paragraph (d) and substituting therefor the following paragraph-
- (c) deleting subsection (3) and substituting therefor the following new subsections-
 - (3) The Board may, at any time, revoke any empanelment under this section.

(3A) Where the Board intends to revoke the empanelment of a health provider under subsection (3), the Board shall notify the health care provider of the intended revocation, in writing, setting out the reasons for revocation of empanelment.

(3B) A health provider may, upon receiving a notification under subsection (3A) submit a written response to the notification within seven days.

(c) by deleting paragraph (e) and substituting therefor the following new paragraph-

(e) inserting the following new subsections immediately after subsections (3) -

(4) A healthcare provider whose empanelment has been revoked under this section may apply to the Board for the review of the revocation in the first instance and, if dissatisfied by the decision of the Board upon review, appeal to the High Court against the revocation.

(5) The Board shall cause the name of every healthcare provider whose empanelment is revoked to be published in the Gazette and in at least three newspapers with nationwide circulation.

CLAUSE 35

20. **THAT** clause 35 of the Bill be amended in paragraph (c) by deleting the words “one million shillings or to imprisonment for a term not exceeding twenty-four months” appearing immediately after the words “therefor the words” and substituting therefor the words “one hundred thousand shillings or to imprisonment for a term not exceeding six months”.

CLAUSE 36

21. **THAT** clause 36 of the Bill be amended by-

(a) by inserting the following new paragraph immediately before paragraph (a)-

(Aa) in paragraph (a) by inserting the words “on the advice of the Central Bank of Kenya” immediately after the words “a reputable bank”.

CLAUSE 39

22. **THAT** the Bill be amended by deleting clause 39 and substituting therefor the following new clause-
Amendment of **39.** The principal Act is amended by deleting section 38 and section 38 of substituting therefor the following new section-
No. 9 of 1998.

Annual reports.	38. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediately preceding year.
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(2) The Cabinet Secretary shall, within three months of submission of the report under subsection (1), transmit the report to Parliament.

CLAUSE 44

23. **THAT** clause 44 of the Bill be amended by deleting the proposed new section 45A and substituting therefor the following new sections-

Application of Cap 487. **45A.** The provisions of the Insurance Act shall apply to the Fund only in respect to risk spreading and claims administration services.

Application of No. 3 of 1997. **45B.** The provisions of the Retirement Benefits Act shall apply to Fund only with respect to post-retirement medical contributions.

NEW CLAUSE 26A

24. **THAT** the Bill be amended by inserting the following new clause immediately after clause 26-

Insertion of new section 22A in No. 9 of 1998. **26A.** The principal Act is amended by inserting the following new section immediately after section 22-

Non- withdrawal of benefits. **22A.** (1) The Board shall not withdraw the benefits of a person undergoing treatment for a chronic illness.

(2) The Board shall, in making regulations for determining benefits under the Fund ensure that the Fund shall meet the costs of a contributor accessing inpatient services at any empaneled health care provider.

PART THREE

3 COMMITTEE'S RECOMENDATION

The Committee having considered the Bill, recommends that **all the amendments as proposed by the Senate be passed.**

SIGNED.......... DATE.....9/12/2021.....

**THE HON. SABINA CHEGE, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON HEALTH**

ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE SENATE'S AMENDMENTS TO THE NATIONAL HEALTH INSURANCE FUND (*NATIONAL ASSEMBLY BILL NO. 21 OF 2021*)

The report on the consideration of the Senate's amendments to the National Health Insurance Fund (*National Assembly Bill No. 21 of 2021*) was adopted by the Committee on Thursday, 9th November 2021 having been proposed by the Hon. Martin Peters Owino, MP and seconded by Hon. (Dr.) Mohamed D. Duale, MP.

The following Members who were present in the meeting considered, adopted and acceded to the recommendation proposed in the report to be considered during the Committee stage:

1. Hon. Sabina Chege, MP – Chairperson
2. Hon. Joshua Kutuny, MP – Vice/Chairperson
3. Hon. Dr. James Nyikal, MP
4. Hon. Dr. James Kipkosgei Murgor, MP
5. Hon. Dr. Mohamed Dahir Duale, MP
6. Hon. Muriuki Njagagua, MP
7. Hon. Sarah Paulata Korere, MP
8. Hon. Prof. Mohamud Sheikh Mohamed, MP
9. Hon. Martin Peters Owino, MP
10. Hon. Kipsengeret Koros, MP
11. Hon. Beatrice Adagala, MP
12. Hon. (Capt.) Ruweida Mohammed, MP
13. Hon. James Githua Kamau Wamacukuru, MP