

SPECIAL ISSUE

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SENATE BILLS, 2025

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THE HEALTH (AMENDMENT) BILL, 2025

A Bill for

AN ACT of Parliament to amend the Health Act to prohibit the detention of patients and corpses of patients by health facilities

ENACTED by the Parliament of Kenya as follows

1. This Act may be cited as the Health (Amendment) Act, 2025.

Short title.

2. The Health Act is amended by inserting the following new section immediately after section 7 —

Insertion of new section 7A in Cap. 241.

Non-detention of patients by health facilities.

7A. (1) A health facility shall not detain a patient or the corpse of a patient as lien over an outstanding fee incurred in relation to the access of services in the health facility.

(2) A person in-charge of a health facility which contravenes subsection (1) commits an offence.

(3) The Cabinet Secretary may make regulations for recovery of fees paid to access services in a health facility.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

This Bill seeks to amend the Health Act to prohibit the detention of patients and corpses of patients by health facilities.

Article 28 of the Constitution provides that *“every person has inherent dignity and the right to have the dignity respected and protected”* while Article 39(1) of the Constitution provides that *“every person has the right to freedom of movement”*.

Article 29(a) and (b) of the Constitution on the other hand states that *“every person has the right to freedom and security of the person, which includes the right not to be—*

- (a) deprived of freedom arbitrarily or without just cause;*
- (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;”*.

At the international front, there are international conventions and instruments which recognize human dignity, freedom, and respect. Article 2(6) of the Constitution stipulates that *“any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution”*.

Article 11 of the International Convention on Civil and Political Rights provides that no one shall be imprisoned merely for inability to pay a debt or discharge a contractual obligation. This refers to a situation where someone is committed to civil jail because he is unable to satisfy a decree.

Article 6 of the Africa Charter on Human and Peoples Rights provides that every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by the law. In particular, no one may be arbitrarily arrested or detained.

These international instruments support the protection of fundamental human rights that the right to liberty is inviolable except in accordance with the law.

Our courts have on numerous occasions been faced with cases on the detention of patients by hospitals for nonpayment of bills. Most courts have in such instances held the view that detention of petitioners for their inability to pay their medical bills is unlawful, arbitrary and unconstitutional.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary responsible for health to make regulations for recovery of fees paid to access services in a health facility.

The Bill does not limit any fundamental right or freedom.

Statement of how the Bill concerns County Governments

The Bill concerns county governments as it contains provisions relating to the treatment of patients and corpses of patients after accessing services in health facilities. Paragraph 2 of Part II of the Fourth Schedule to the Constitution designates county health services as county governments' functions.

The Bill therefore affects the functions and powers of county governments in terms of 110(1)(a) of the Constitution

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill deals with matters other than those listed in the definition of a money Bill under Article 114 (3) of the Constitution and is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th July, 2025.

MOGENI ERICK OKONG'O,
Senator.