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TABLE OFFICE  
S/No: .....  
17 MAY 2017  
PAPER LAID

bid by Member,  
Hon. Pukose, MP  
Mediation Committee  
on Wednesday 17/5/17  
Afternoon sitting  
Ash

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT-FIFTH SESSION

PARLIAMENT  
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THE MEDIATION COMMITTEE ON THE HEALTH BILL 2015, NATIONAL  
ASSEMBLY BILL (BILL NO.14 OF 2015)

JOINT CLERKS' CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

MAY 2017

## 1.0 INTRODUCTION

### 1.1 Establishment of the Committee

The Mediation Committee on The Health Bill 2016, National Assembly Bills (Bills No.14 of 2015) was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) and the Speaker of the Senate pursuant to Senate Standing Orders No. 154 (2) on 4<sup>th</sup> May, 2016, and 14<sup>th</sup> July, 2016, respectively.

#### Committee Membership:-

Hon. Dr. Rachel Nyamai, M.P.	- Chairperson
Sen. Dr. Wilfred Machage, M.P.	- Vice Chairperson
Sen. Dr. Zipporah Kittony, M.P.	- Member
Hon. Dr. James Nyikal, M.P.	- Member
Sen. Mvita Mshenga, M.P.	- Member
Hon. Dr. Robert Pukose, M.P.	- Member
Hon. Dr. Naomi Shaban, M.P.	- Member
Sen. Prof. Wilfred Lesan, M.P.	-Member
Hon. Dr. Enoch Kibunguchy, M.P.	-Member
Sen. Muriuki Karue	- Member

### 1.2 The Mandate of the Mediation Committee

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, Standing Order 149 of the National Assembly and Standing Order 154 of the Senate which outlines the functions of the Committee as follows:-

- *To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*
- *To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and*
- *To attempt to develop a version of the Bill that both Houses will pass.*

The Committee was established to develop an agreed version of The Health Bill 2016, National Assembly Bills (Bills No.14 of 2015) that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order 155 (3).

### 1.3 Committee Sittings

The Committee held its first Sitting on 4<sup>th</sup> April, 2017 and elected Hon. Dr. Racheal Nyamai, M.P. and Sen. Dr. Wilfred Machage, M.P as Chairperson and Vice Chairperson, respectively.

### 1.4 Committee Resolutions

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is appended to this report.

### 1.5 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

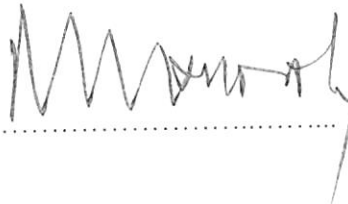
**Mr. Speaker Sir,**

It is my pleasant duty, pursuant to Standing Order 150(1) of the National Assembly and Standing Order 155 (1) of the Senate, to present a report of the Mediation Committee on The Health Bill 2016, National Assembly Bills (Bills No.14 of 2015) for consideration by the House.

SIGNED.....



SIGNED: .....



**HON. DR. RACHEL NYAMAI, M.P.**

**SEN. DR. WILFRED MACHAGE, MP**

CHAIRPERSON

VICE CHAIRPERSON

DATE.....

10/5/2017

## **2.0 MEDIATION COMMITTEE ON THE HEALTH BILL**

### **2.1 Background**

The Health Bill 2016, National Assembly Bills (Bills No.14 of 2015) was published in the Kenya Gazette Supplement No. 44 of, 2015 as a Bill originating in the National Assembly. The Bill underwent the First and Second Readings and was subjected to public participation as required by the Constitution and the National Assembly Standing Orders and was passed on 29<sup>th</sup> March, 2016. It was then referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142.

The Senate subjected the Bill to a First and Second Readings and public participation as required by the Constitution and Senate Standing Orders and was passed on 14<sup>th</sup> July, 2016 with amendments and referred back to the National Assembly.

The National Assembly, during its House Sitting of 24<sup>th</sup> November, 2016 considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154 the Bill, was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

### **3.0 CONSIDERATION OF THE HEALTH BILL 2016, NATIONAL ASSEMBLY BILL (BILL NO.14 OF 2015)**

The Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is appended to this report.

### **3.1 Contentious Clauses**

The following were the contentious clauses as rejected by the National Assembly:

#### **CLAUSE 5**

**THAT** Clause 5 of the Bill be amended by inserting the following new subsections immediately after subsection (2) —

- (3) The national and county governments shall ensure the provision of free and compulsory —
  - (a) vaccination for children under five years of age; and
  - (b) Maternity care.
- (4) For the purposes of implementing subsection (3), the national government shall in consultation with the respective county government provide conditional grants to county governments

**Senate Justification**

The amendment seeks to anchor into legislation provision of free maternity care and ensure provision of funds through conditional grants to cater for the service.

The Committee rejects the Senate amendment to clause (5) (4).

**Justification**

To legislate for the conditional grants goes against best practice and causes rigidity in law

**CLAUSE 15**

**THAT** Clause 15 of the Bill be amended in sub-clause (1) by –

- (a) deleting paragraph (c);

**Senate Justification**

These amendments will ensure that the role of the national government is more of policy as health is a devolved function.

**Committee Recommendation**

The Committee rejects the Senate amendment for Clause (15) (c).

**Justification**

The role of the National Government is to ensure the implementation of the rights to health, enforcing standards and policies including ensuring that Kenya meets the international health obligations

**CLAUSE 16**

**THAT** Clause 16 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

- (2) The Director-General for health shall be recruited by the Public Service Commission through a competitive process and appointed by the Cabinet Secretary.

Substituting paragraph (a) with a new paragraph “be a health practitioner registered by respective regulatory body;

**Senate Justification**

The position of the director-general is not equivalent to that of a cabinet secretary or principal secretary and as such there would be no need to have the director-general vetted by Parliament and appointed by the President. The amendment will make the

director-general's position to be appointed by the cabinet secretary through a competent recruitment exercise carried out by the Public Service Commission.

**Committee Recommendation**

The Committee rejects the Senate amendment to Clause 16(2) and paragraph (a)

**Justification**

Best practice show that Director General for Health are qualified Medical practitioners. Health is key to a population as all other sectors are dependent on a healthy nation.

**CLAUSE 17**

THAT Clause 17 of the bill be amended by –

- (a) Deleting paragraph (i) “ provide guidelines for registration, licensing, certification, gazettelement of all health facilities
- (b) Deleting paragraph (j)be responsible for internship program for health workers

**Committee Recommendation**

The Committee rejects the proposed Senate amendments on Clause 17(i) and (j)

**Justification**

The role of the National Government is developing standards, policies and guidelines for registration, licensing, certification, and gazettelement. Additionally, internship is part of training. Training and capacity building is a function of the National Government.

**CLAUSE 18**

THAT Clause 18 of the Bill be deleted and substituted with the following new clause-

18. For purposes of section 15(1) (b), the Cabinet Secretary shall-

- (a) form directorates to deal with the following matters -
  - (i) medical services;
  - (ii) nursing and allied workers;
  - (iii) pharmaceutical services;
  - (iv) public health; and
  - (v) administrative services;
- (b) Notwithstanding paragraph (a), form directorates based on policy priority areas in consultation with the Director-General.

**Senate Justification**

The amendment compels the Cabinet Secretary to create directorates that deal with key areas within the health sector for better coordination

**Committee Recommendation**

The Committee rejects the Senate amendments to Clause 18

**Justification**

Creation of Directorates is an administrative issue that does not require legislation. This also introduces rigidity in the law and will therefore mean that whenever the Ministry requires reorganization an amendment to the law will be required. Further the proposed directorates are limiting and are cadre specific.

**CLAUSE 19**

THAT Clause 19 of the Bill be amended in sub-clause (4) by deleting paragraph (a) and substituting therefor the following new paragraph-

- (a) be a health practitioner registered by the respective regulatory body

**Committee Recommendation**

The Committee rejects the Senate amendment to Clause 19(4) (a)

**Justification**

For the effective management of the health function in the County, the County Director of Health must be a medical practitioner.

**CLAUSE 20**

THAT clause 20 of the Bill be amended by-

- (a) deleting the introductory phrase and substituting therefor the following new phrase-  
the county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for-
- (b) deleting the marginal note and inserting therefor the following new marginal note-  
duties of county government

**Senate Justification**

Part 2 of the Fourth Schedule to the Constitution assigns functions to County governments and not departments and as such, the amendment seeks to realign the clause to the Constitution.

**Committee Recommendation**

The Committee rejects the Senate Committee to Clause 20 and proposes further amendments to include the phrase “Health” after “of the” and the phrase “in consultation through the established inter-governmental relations mechanisms” immediately after the Constitution.

The Committee further accepts the Senate amendment to the marginal notes on Clause 20 and recommends its approval

#### **CLAUSE 24**

THAT Clause 24 of the Bill be amended by deleting paragraph (a).

##### **Senate Justification**

This amendment is necessary after the deletion of classification of health facilities.

##### **Committee Recommendation**

The Committee rejects the Senate amendments to Clause 24(a)

##### **Justification**

The Constitutional role of the National Government is to manage any public health institutions classified as a national referral facility

#### **CLAUSE 25**

THAT Clause 25 of the Bill be deleted.

##### **Senate Justification**

This clause deletes the classification of health facilities as highlighted in the First Schedule to the Bill. County governments need to be given the freedom to develop health facilities to the highest standards without the fear that these facilities will later be taken up by the National government

##### **Committee Recommendation**

The Committee rejects the Senate amendment to Clause 25

##### **Justification**

The technical classifications are in line with the Health Policy 2014-2030 which provide for the technical classifications as Community, Dispensaries, Health Centre, Primary referral facilities, Secondary referral facilities and Tertiary referral facilities.

#### **CLAUSE 30**



THAT Clause 30 of the Bill be deleted.

**CLAUSE 31**

THAT Clause 31 of the Bill be deleted.

**CLAUSE 32**

THAT Clause 32 of the Bill be deleted.

**CLAUSE 33**

THAT Clause 33 of the Bill be deleted.

**CLAUSE 34**

THAT Clause 34 of the Bill be deleted.

**CLAUSE 35**

THAT Clause 35 of the Bill be deleted.

**CLAUSE 36**

THAT Clause 36 of the Bill be deleted.

**CLAUSE 37**

THAT Clause 37 of the Bill be deleted.

**CLAUSE 38**

THAT clause 38 of the Bill be deleted.

**CLAUSE 39**

THAT clause 39 of the Bill be deleted.

**CLAUSE 40**

THAT clause 40 of the Bill be deleted.

**CLAUSE 41**

THAT Clause 41 of the Bill be deleted.

**CLAUSE 42**

THAT Clause 42 of the Bill be deleted.

**CLAUSE 43**

THAT Clause 43 of the Bill be deleted.

**CLAUSE 44**

**THAT** Clause 44 of the Bill be deleted.

**Senate Justification**

**Deletion of Clauses 30 to 44, deletes the entire Part V of the Bill, which deals with the establishment of the Kenya Human Resource Advisory Council in order to give the county governments the independence to deal with the health workforce.**

**Committee Recommendation**

**The Committee rejects the Senate amendments to Clauses 30 – 44**

**Justification**

**The Health Human Resource Advisory Council was established to address the current gap in the harmonization of the County health workers emerging issues including but not limited to internships, rationalizing of remuneration, transfers, promotions and other staff issues.**

**CLAUSE 46**

**THAT** Clause 46 of the Bill be amended by:-

- (a) deleting sub-clause (1)(f); and

**Senate Justification**

**After deleting the Council at Clause 30, the amendment is necessary as reference had been made to the Council to nominate members to the health professions oversight authority.**

**Committee Recommendation**

**The Committee rejects the proposed Senate amendment to Clause 46(1f) and amends it to include the phrase “of Governors”.**

**CLAUSE 62**

**THAT** the Bill be amended by deleting Clause 62

**CLAUSE 63**

**THAT** the Bill be amended by deleting Clause 63

**CLAUSE 64**

**THAT** the Bill be amended by deleting Clause 64

**CLAUSE 65**

THAT the Bill be amended by deleting Clause 65

**CLAUSE 66**

THAT the Bill be amended by deleting Clause 66

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clauses 62- 66**

**Justification**

**Clauses 62-66 provide for the establishment by an Act of Parliament a single regulatory body for regulation of health products and health technologies. The Government policy is to separate the regulation of professionals from products and health technologies for efficiency and to improve health services. This is informed by health practices in other Countries like the United States Food and Drugs Authority.**

**CLAUSE 67**

THAT the Bill be amended by deleting Clause 67

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 67**

**Justification**

**This is aimed at standardizing the quality and cost of drugs and medicines procured by all Government facilities at both the National and County Governments**

**CLAUSE 73**

THAT the Bill be amended by deleting Clause 73

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 73**

**Justification**

**Mental health is a major health issue and its inclusion in the Health Bill 2016 is to give effect to other legislations**

**CLAUSE 89**

THAT the Bill be amended by deleting Clause 89

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 89**

**Justification**

**This is to encourage Private sector participation in the health sector**

**CLAUSE 91**

**THAT** the Bill be amended by deleting Clause 91

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 91**

**Justification**

**Private sector participation in the health sector requires regulation**

**The First Schedule**

**THAT** the First Schedule be amended –

The schedule is amended as follow:

The technical levels as follows Level Four amended from Primary Hospital to County Referral Hospital; Level 5 amended from Secondary Hospital to Regional Referral Hospital and Level 6 amended from Tertiary Hospital to National Referral Hospital.

- (a) Level 1, Delete the Note and replace with “ The In charge is a qualified health practitioner registered by the respective regulatory body
- (b) Level 3, Delete the Note and replace with “The In charge is a nurse, Clinical officer or medical officer. The in charge shall have at least two years work experience in a management position.
- (c) Level 4 “Delete the Note and replace with “The In charge is a qualified health practitioner registered by the respective regulatory body
- (d) Level 5 “Delete the Note and replace with “The In charge is a qualified health practitioner registered by the respective regulatory body  
Holds a Masters degree in a health related field from a university recognized in Kenya;  
Has a postgraduate qualification in management  
Has at least five years work experience in management position
- (e) Level 6 “Delete the Note and replace with “The In charge is a qualified health practitioner registered by the respective regulatory body

Holds a Masters degree in a health related field from a university recognized in Kenya;

Has a postgraduate qualification in management

Has knowledge and at least ten years work experience in a senior management position

#### **Committee Recommendation**

**The Committee rejects the Senate amendments to the First Schedule**

#### **4.0 RESOLUTIONS OF THE MEDIATION COMMITTEE**

The Mediation Committee considered the amendments proposed by the Senate to the Health Bill (National Assembly Bill No. 14 of 2015) and resolved as follows, that:

#### **Clause 5: Standard of Health**

#### **Senate Amendment**

**THAT** Clause 5 of the Bill be amended by inserting the following new subsections immediately after subsection (2) —

- (5) The national and county governments shall ensure the provision of free and compulsory —
  - (c) vaccination for children under five years of age; and
  - (d) maternity care.
- (6) For the purposes of implementing subsection (3), the national government shall in consultation with the respective county government provide conditional grants to county governments

#### **Senate Justification**

**The amendment seeks to anchor into legislation provision of free maternity care and ensure provision of funds through conditional grants to cater for the service.**

#### **Committee Recommendation**

**The Committee agrees with the proposed amendment to clause 5(3) with further amendment to delete the phrase “compulsory”.**

**The Committee rejects the Senate amendment to Clause 5(4).**

#### **Justification**

**To legislate for the conditional grants goes against best practice and causes rigidity in law**

### Mediation Committee Resolution

The Members agreed with the proposal by the Senate to insert the following new sub-clause (4) so as to read as follows-

**“For purposes of implementing subsection (3), the national government shall in consultation with the respective county governments provide funds to county governments.”**

### **Justification**

The amendment seeks to anchor into legislation provision of free maternity care and ensure provision of funds to cater for the service.

### Clause 15: National Government Ministry Responsible for Health

#### Senate Amendment

#### **CLAUSE 15**

**THAT** Clause 15 of the Bill be amended in sub-clause (1) by –

- (a) deleting paragraph (c);

#### Senate Justification

**These amendments will ensure that the role of the national government is more of policy as health is a devolved function.**

**The Committee rejected the Senate amendment for Clause 15(c).**

#### Justification

**The role of the National Government is to ensure the implementation of the rights to health, enforcing standards and policies including ensuring that Kenya meets the international health obligations**

#### Mediation Committee Resolution

The Committee resolved to reinstate sub-clause (1)(c) as passed by the National Assembly as follows-

**“ensure the implementation of rights to health specified in the Bill of Rights and more particularly the progressive realization of the right of all to the highest attainable standard of health including reproductive health care and the right to emergency treatment;”**

#### **Justification**

The role of the National Government is to ensure the implementation of the rights to health, enforcing standards and policies including ensuring that Kenya meets the international health obligations. It further secures the right to emergency treatment.

## Clause 16: Office of the Director-General

### Senate Amendment

THAT Clause 16 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) The Director-General for health shall be recruited by the Public Service Commission through a competitive process and appointed by the Cabinet Secretary.

Substituting paragraph (a) with a new paragraph “be a health practitioner registered by respective regulatory body;

### Senate Justification

The position of the director-general is not equivalent to that of a cabinet secretary or principal secretary and as such there would be no need to have the director-general vetted by Parliament and appointed by the President. The amendment will make the director-general’s position to be appointed by the cabinet secretary through a competent recruitment exercise carried out by the Public Service Commission.

### Committee Recommendation

The Committee rejects the Senate amendment to Clause 16(2) and paragraph (a)

### Mediation Committee Resolution

The Committee resolved to have clause 16 (2) to read-

**“The Director General for health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the Cabinet Secretary.”**

### **Justification**

Given the role of the Director General as advisor to the government on all matters relating to health within the Health Sector, vetting by Parliament will ensure public representation in the process through elected representatives.

1. The Committee agreed with the National Assembly’s position on clause 16 (3)(a) as follows-

**(3) A person appointed under subsection (2) must-  
(a) be a medical practitioner registered by the Medical Practitioners and Dentists Board.”**

### **Justification**

The Director General being in charge of the Country’s Health sector should have general understanding and qualification in medicine as a first degree.

### **Clause 17: Functions of the Director-General**

#### **Senate Amendment**

THAT Clause 17 of the bill be amended by –

- (a) deleting paragraph (i) “ provide guidelines for registration, licensing, certification, gazettelement of all health facilities
- (b) deleting paragraph (j) be responsible for internship program for health workers

#### **Committee Recommendation**

The Committee rejects the proposed Senate amendments on Clause 17(i) and (j)

#### **Justification**

The role of the National Government is developing standards, policies and guidelines for registration, licensing, certification, and gazettelement. Additionally, internship is part of training. Training and capacity building is a function of the National Government.

#### **Mediation Committee Resolution**

The Committee resolved to reinstate clause 17 (i) and (j) as per the National Assembly’s amendments as follows-

- (i) provide guidelines for registration, licensing, certification and gazettelement of all health facilities;
- (j) be responsible for internship program for health workers;

#### **Justification**

This is in line with the functions of the National Government in developing standards, policies and guidelines for registration, licensing, certification and gazettelement. Internship is part of training, which is a function of the National Government.

### **Clause 18: Directorates**

#### **Senate Amendment**

THAT Clause 18 of the Bill be deleted and substituted with the following new clause-

18. For purposes of section 15(1) (b), the Cabinet Secretary shall—

- (a) form directorates to deal with the following matters -
  - (i) medical services;
  - (ii) nursing and allied workers;



- (iii) pharmaceutical services;
  - (iv) public health; and
  - (v) administrative services;
- (b) notwithstanding paragraph (a), form directorates based on policy priority areas in consultation with the Director-General.

**Senate Justification**

**The amendment compels the Cabinet Secretary to create directorates that deal with key areas within the health sector for better coordination**

**Committee Recommendation**

**The Committee rejects the Senate amendments to Clause 18**

**Justification**

**Creation of Directorates is an administrative issue that does not require legislation. This also introduces rigidity in the law and will therefore mean that whenever the Ministry requires reorganization an amendment to the law will be required. Further the proposed directorates are limiting and are cadre specific.**

**Mediation Committee Resolution**

The Committee agreed with the Senate amendment on the creation of Directorates by the Cabinet Secretary as follows-

**“For purposes of section 15(1)(b), the Cabinet Secretary shall-**

- (a) Form directorates to deal with the following matters-**
  - (i) medical services;**
  - (ii) nursing;**
  - (iii) pharmaceutical services;**
  - (iv) public health; and**
  - (v) administrative services;”**
- (b) notwithstanding paragraph (a), form other directorates based on policy priority areas in consultation with the Director-General.**

**Justification**

This is to enable the Cabinet Secretary to create directorates that deal with key areas within the health sector for better coordination. Deleting the phrase ‘allied workers’ is meant remove any ambiguity in law.

**Clause 19: County Health System**

**Senate Amendment**

THAT Clause 19 of the Bill be amended in sub-clause (4) by deleting paragraph (a) and substituting therefor the following new paragraph-

- (a) be a health practitioner registered by the respective regulatory body

**Committee Recommendation**

The Committee rejects the Senate amendment to Clause 19(4) (a)

**Justification**

For the effective management of the health function in the County, the County Director of Health must be a medical practitioner.

**Mediation Committee Resolution**

The Committee resolved to retain the National Assembly position on Clause 19(4)(a) as follows-

- (4) A person appointed a County Director of Health shall-

- (a) be a medical practitioner registered by the Medical Practitioners and Dentists Board.

**Justification**

For the effective management of the health function in the County, the County Director of Health should be a medical practitioner as he is in charge of all other cadres of health Practitioners in the County.

**Clause 20: Duties of County Executive for Health**

**Senate Amendment**

THAT clause 20 of the Bill be amended by-

- (a) deleting the introductory phrase and substituting therefor the following new phrase-  
the county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for-
- (b) deleting the marginal note and inserting therefor the following new marginal note-  
duties of county government

**Senate Justification**

Part 2 of the Fourth Schedule to the Constitution assigns functions to County governments and not departments and as such, the amendment seeks to realign the clause to the Constitution.

**Committee Recommendation**

The Committee rejected the Senate Committee to Clause 20 and proposes further amendments to include the phrase “Health” after “of the” and the phrase “in consultation through the established inter-governmental relations mechanisms” immediately after the Constitution.

#### Mediation Committee Resolution

The Committee agreed with the Senate’s position to delete the introductory phrase in clause 20 and substitute therefore with the following new phrase-

**“The county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for- ”**

The Committee agreed with the Senate’s position to delete deleting the marginal note and inserting therefor the following new marginal note-

duties of county government

#### Justification

The amendment seeks to realign the clause to Part 2 of the Fourth Schedule to the Constitution which assigns functions to county governments and not departments.

#### Clause 24: Retention of service provision Senate Amendment

**THAT** Clause 24 of the Bill be amended by deleting paragraph (a).

#### Senate Justification

This amendment is necessary after the deletion of classification of health facilities.

#### Committee Recommendation

The House rejected the Senate amendments to Clause 24(a)

#### Justification

The Constitutional role of the National Government is to manage any public health institutions classified as a national referral facility

#### Mediation Committee Resolution

The Committee agreed with the Senate’s position to delete clause 24 (b).

#### Justification

Retention of clause 24 (b) could have interfered with devolved health functions/facilities. It could also hamper development of county health facilities to the highest level possible.

#### Clause 25: Classification of levels of health care

**Senate Amendment**

THAT Clause 25 of the Bill be deleted.

**Senate Justification**

This clause deletes the classification of health facilities as highlighted in the First Schedule to the Bill. County governments need to be given the freedom to develop health facilities to the highest standards without the fear that these facilities will later be taken up by the National government

**Committee Recommendation**

The Committee rejects the Senate amendment to Clause 25

**Justification**

The technical classifications are in line with the Health Policy 2014-2030 which provide for the technical classifications as Community, Dispensaries, Health Centre, Primary referral facilities, Secondary referral facilities and Tertiary referral facilities.

**Mediation Committee Resolution**

The Committee agreed with the National Assembly's position to reinstate Clause 25. However, it was also agreed that a new Clause 25 (b) should be introduced to provide that classification shall not affect health facilities already devolved to the counties

**Justification**

The technical classification of health facilities was in in line with the operational Health Policy.

**Clause 25: Classification of levels of health care**

**Senate Amendment**

THAT Clause 25 of the Bill be deleted.

**Senate Justification**

This clause deletes the classification of health facilities as highlighted in the First Schedule to the Bill. County governments need to be given the freedom to develop health facilities to the highest standards without the fear that these facilities will later be taken up by the National government

**Committee Recommendation**

The Committee rejects the Senate amendment to Clause 25

**Justification**

The technical classifications are in line with the Health Policy 2014-2030 which provide for the technical classifications as Community, Dispensaries, Health Centre, Primary referral facilities, Secondary referral facilities and Tertiary referral facilities.

### **Mediation Committee Resolution**

The Committee resolved to reinstate the Clause with amendments as follows:

- (a) Renumbering the prefatory statement as sub clause (1)
- (b) Inserting the following new sub clause immediately after the renumbered sub clause (1)

“(2) Subsections (1) shall not apply to a health facility under the management of a county government at the commencement of this Act”

Consequential amendments to be made to the following clause and schedule

### **Clause 112: Regulations**

Insert a new sub-clause (r) to read as follows-

**“grading of health facilities in consultation with county governments.”**

### **Justification**

The amendment seeks to provide guidelines for upgrading or downgrading of health facilities.

### **First schedule –Technical classification of levels of healthcare delivery**

LEVEL 5: SECONDARY HOSPITAL

Amend the schedule to expand the functions of the Level 5 hospital to include:

- (a) General specialization
- (b) Provision of county specific specialized care Services
- (c) Research centres to provide for research services on issues of importance relating to local conditions

### **Justification**

To give room for county governments to develop Level 5 facilities to provide specialized services to the counties.

### **Part V/Clauses 30 to 44: Establishment of the Kenya Health Human Resource Advisory Council**

#### **Senate Amendment**

#### **CLAUSE 30**

THAT Clause 30 of the Bill be deleted.

#### **CLAUSE 31**

THAT Clause 31 of the Bill be deleted.

**CLAUSE 32**

THAT Clause 32 of the Bill be deleted.

**CLAUSE 33**

THAT Clause 33 of the Bill be deleted.

**CLAUSE 34**

THAT Clause 34 of the Bill be deleted.

**CLAUSE 35**

THAT Clause 35 of the Bill be deleted.

**CLAUSE 36**

THAT Clause 36 of the Bill be deleted.

**CLAUSE 37**

THAT Clause 37 of the Bill be deleted.

**CLAUSE 38**

THAT clause 38 of the Bill be deleted.

**CLAUSE 39**

THAT clause 39 of the Bill be deleted.

**CLAUSE 40**

THAT clause 40 of the Bill be deleted.

**CLAUSE 41**

THAT Clause 41 of the Bill be deleted.

**CLAUSE 42**

THAT Clause 42 of the Bill be deleted.

**CLAUSE 43**

THAT Clause 43 of the Bill be deleted.

**CLAUSE 44**

THAT Clause 44 of the Bill be deleted.

### Senate Justification

Deletion of Clauses 30 to 44, deletes the entire Part V of the Bill, which deals with the establishment of the Kenya Human Resource Advisory Council in order to give the county governments the independence to deal with the health workforce.

### Committee Recommendation

The Committee rejects the Senate amendments to Clauses 30 – 44

### Justification

The Health Human Resource Advisory Council was established to address the current gap in the harmonization of the County health workers emerging issues including but not limited to internships, rationalizing of remuneration, transfers, promotions and other staff issues.

### Mediation Committee Resolution

The Committee agreed with the National Assembly's position to reinstate clauses 30 to 44 with amendments to the following clauses:

#### Clause 30 of the bill be amended in sub clause (1) by-

- (a) deleting (c) and substituting therefor with-  
**“one person, not being a governor, nominated by the Council of Governors”**
- (b) deleting the words “intergovernmental Consultative Council” and substituting therefor the words “County Directors of Health” appearing in paragraph (g) to read as follows  
**“one person nominated by the county directors of health”**
- (c) Inserting the words “who shall be an *ex officio* member” immediately after the word “Officer” appearing in paragraph (j) to read as follows-  
**“the Chief Executive Officer who shall be an *ex officio* member and secretary to the Council.”**

### **Justification**

The amendment will provide for representation of counties and the Council of Governors, and allow the Council of Governors to appoint their preferred representative in the Health Human Resource Advisory Council.

#### Clause 31 of the bill be amended in sub clause (1) by-

- (a) Inserting the words “welfare” before the word “the Scheme” appearing in paragraph (d) to read as follows:  
**“the welfare and the scheme of service for health professionals”**

### **Justification**

The amendment allows for flexibility in handling issues affecting health professionals both at the County and National Levels

#### Clause 46: Board of the Authority and its composition

### **Senate Amendment**

THAT Clause 46 of the Bill be amended by:-

- (a) deleting sub-clause (1)(f); and

### **Senate Justification**

After deleting the Council at Clause 30, the amendment is necessary as reference had been made to the Council to nominate members to the health professions oversight authority.

### **Committee Recommendation**

The Committee rejects the proposed Senate amendment to Clause 46(1f) and amends it to include the phrase “of Governors”.

### **Mediation Committee Resolution**

The Committee resolved to reinstate sub-clause (1)(f) as passed by the National Assembly with a further amendment to insert the words “of governors” immediately after the word “council” to read as follows-

**“two representatives nominated by the Council of Governors”**

### **Justification**

It is a requirement to have the council of governors represented in the health professionals’ oversight authority

### **Clause 48: Functions of the Authority**

#### **Senate Amendment**

#### **Mediation Committee Resolution**

The Committee resolved to amend paragraph (a) by-

- (a) Inserting the words “and county” after the word “national” appearing in paragraph (a) to read as follows:

**“maintain a duplicate register of all health professionals working within the national and county health system”**

### **Justification**

To cater for health professionals working in the counties

### **Part VII/Clauses 62 to 67: Regulation of Health Products and Health Technologies**

#### **Senate Amendment**



THAT the Bill be amended by deleting Clause 62

**CLAUSE 63**

THAT the Bill be amended by deleting Clause 63

**CLAUSE 64**

THAT the Bill be amended by deleting Clause 64

**CLAUSE 65**

THAT the Bill be amended by deleting Clause 65

**CLAUSE 66**

THAT the Bill be amended by deleting Clause 66

**Committee Recommendation**

The Committee rejects the Senate amendment to Clauses 62- 66

**Justification**

Clauses 62-66 provide for the establishment by an Act of Parliament a single regulatory body for regulation of health products and health technologies. The Government policy is to separate the regulation of professionals from products and health technologies for efficiency and to improve health services. This is informed by health practices in other Countries like the United States Food and Drugs Authority.

**Mediation Committee Resolution**

The Committee agreed with the National Assembly's position to reinstate clauses 62 to 67 with an amendment to the following clause:

**Clause 67 of the bill be amended**

1. In sub clause (1) by-
  - (a) deleting the words “where the Kenya Medical Supplies Authority is the primary provider” appearing immediately after the word “upon” to read as follows:

**“The procurement for the public health services of health products and technologies shall be undertaken in line with the Public Procurement and Disposal Act as well as the intergovernmental arrangements for medicine and medical products agreed upon”**

2. In sub clause (3) by-
  - (a) deleting the word “national” appearing immediately after the word “county” to read as follows:

**“The Kenya Medical Supplies Authority may be the point of first call for procurement of health products at the county referral level and it shall endeavor to establish branches within each county at such locations as it may determine”**

**Justification**

The government policy is to separate the regulation of professional from products and health technologies for efficiency and to improve health service. This is also informed by international best practice.

The further amendment proposed removes the mandatory requirement placed on procuring entities to procure from the Kenya Medical Supplies Authority alone, and allows room to procure from other providers of health products, where the commodities may not be available at KEMSA.

**Part IX Clauses 73: Mental Health**

**Senate Amendment**

**THAT** the Bill be amended by deleting Clause 73

**Senate Justification**

There is existing legal framework and as such there is no need to have it included in this Bill.

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 73**

**Justification**

**Mental health is a major health issue and its inclusion in the Health Bill 2016 is to give effect to other legislations**

**Mediation Committee Resolution**

The Committee agreed with the National Assembly’s position to reinstate clause 73 with the following amendment

- (a) Inserting the words “ both at the national and county levels” immediately after the word “country” appearing in paragraph (c) to read as follows:

**“establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country both at the national and county levels”**

**Justification**

The Inclusion of Mental Health in the Health Bill which is the parent law anchoring health matters gives effect to other legislations. The amendment further allows counties to take initiative in promoting mental health.

**Clauses 89: Licensing of private entities to operate hospitals, clinics etc.**

**Senate Amendment**

**THAT** the Bill be amended by deleting Clause 89

**Senate Justification**

A separate legislation should be enacted to provide for regulation of health facilities including public and private health facilities.

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 89**

**Mediation Committee Resolution**

The Committee agreed with the National Assembly's position to reinstate clause 89

**Justification**

The provision is provided for to foster and encourage private sector participation in the health sector.

**Clauses 91: Duty of licensees.**

**Senate Amendment**

**THAT** the Bill be amended by deleting Clause 91

**Senate Justification**

A separate legislation should be enacted to provide for regulation of health facilities including public and private health facilities.

**Committee Recommendation**

**The Committee rejects the Senate amendment to Clause 91**

**Justification**

**Private sector participation in the health sector requires regulation**

**Mediation Committee Resolution**

The Committee agreed with the National Assembly's position to reinstate clause 91

**Justification**

Private sector participation in the health sector requires regulation.

**ANNEXES:**

1. Minutes of the Mediation Committee
2. The agreed Version of the Bill



**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE MEDIATION COMMITTEE ON THE HEALTH BILL HELD ON WEDNESDAY 3<sup>RD</sup> MAY, 2017 IN THE RED CROSS BUILDING BOARD ROOM, GROUND FLOOR, PARLIAMENT BUILDINGS AT 11.00 AM.**

**PRESENT**

- |                                    |                               |
|------------------------------------|-------------------------------|
| 1. Hon. Dr. Racheal Nyamai, M.P.   | (Chairperson)                 |
| 2. Sen. Dr. Wilfred Machage, M.P.  | (Vice-Chairperson) - Chairing |
| 3. Hon. Dr. Naomi Shaban, M.P.     | Member                        |
| 4. Sen. Dr. Zipporah Kittony, M.P. | Member                        |
| 5. Hon. Dr. James Nyikal, M.P.     | Member                        |
| 6. Sen. Mvita Mshenga, M.P.        | Member                        |

**ABSENT WITH APOLOGY**

- |                                     |        |
|-------------------------------------|--------|
| 1. Hon. Dr. Robert Pukose, M.P.     | Member |
| 2. Sen. Muriuki Karue, M.P.         | Member |
| 3. Hon. Dr. Enoch Kibunguchy, M.P.  | Member |
| 4. Sen. (Prof.) Wilfred Lesan, M.P. | Member |

**IN ATTENDANCE**

**SENATE SECRETARIAT**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Ms. Rose Mudibo      | - | Second Clerk Assistant      |
| 2. Mr. Chris Njogu      | - | Third Clerk Assistant       |
| 3. Dr. Christine Sagini | - | Research And Policy Analyst |
| 4. Ms. Beatrice Kapei   | - | Legal Counsel               |

**NATIONAL ASSEMBLY SECRETARIAT**

- |                      |   |                                      |
|----------------------|---|--------------------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant                |
| 2. Ms. Ruth Mwihaki  | - | Third Clerk Assistant                |
| 3. Ms. Sande Marale  | - | Senior Researcher and Policy Analyst |
| 4. Mr. Sydney Okumu  | - | Legal Counsel                        |

**MIN.NO. MCHB 26/2017: PRELIMINARIES**

The Chairperson called the meeting to order at 11.28 a.m. and said a word of prayer.

**MIN.NO. MCHB 27/2017: ADOPTION OF THE AGENDA**

The agenda was adopted as presented having been proposed and seconded by Sen Dr. Zipporah Kittony, M.P. and Hon. Dr. James Nyikal., M.P. respectively.

**MIN.NO. MCHB 28 /2017: CONFIRMATION OF MINUTES OF THE 3<sup>RD</sup> SITTING**

The Minutes of the 4<sup>th</sup> Sitting held on Tuesday 11<sup>th</sup> April, 2017 were confirmed and signed, having been proposed by Sen. Dr. Zipporah Kittony, M.P. and seconded by Hon. Dr. James Nyikal, M.P.

**MIN.NO. MCHB 29/2017:                    CONSIDERATION AND ADOPTION OF THE  
MEDIATION COMMITTEE REPORT ON THE  
HEALTH BILL**

The Committee considered and adopted the report of the Mediation Committee on the Health Bill 2016, National Assembly Bills (Bill No.14 of 2015) having been proposed by the Hon. Dr. James Nyikal , M.P and Seconded by Sen. Dr. Zipporah Kittony , M.P with the following amendment;

**Part V-Establishment of the Kenya Health Human Resource Advisory Council**

**Clause 30- Establishment of the Council**

That Clause 30 of the bill be amended in sub clause (1)(c) by-

- (a) deleting (c) and substituting therefor with-  
“one person, not being a Governor, nominated by the Council of Governors”

**Justification**

To ensure the Council of Governors is specifically represented in the Council by a technocrat as opposed to having an elected public person representing it.

**MIN.NO. MCHB 30/2017:                    ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.07 p.m.

**SIGNED:** .....

**DATE:** .....

**HON (DR.) RACHAEL NYAMAI, M.P.**

**CHAIRPERSON**

**SIGNED:** .....

**DATE:** .....

**SEN. DR. WILFRED MACHAGE, M.P.**

**VICE CHAIRPERSON**

**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE MEDIATION COMMITTEE ON THE HEALTH BILL HELD ON TUESDAY 11<sup>TH</sup> APRIL, 2017 IN THE RED CROSS BUILDING BOARD ROOM, GROUND FLOOR, PARLIAMENT BUILDINGS AT 11.00 AM.**

**PRESENT**

- |                                    |                    |
|------------------------------------|--------------------|
| 1. Hon. Dr. Racheal Nyamai, M.P.   | (Chairperson)      |
| 2. Sen. Dr. Wilfred Machage, M.P.  | (Vice-Chairperson) |
| 3. Hon. Dr. Robert Pukose, M.P.    | Member             |
| 4. Sen. Dr. Zipporah Kittony, M.P. | Member             |
| 5. Hon. Dr. James Nyikal, M.P.     | Member             |

**ABSENT WITH APOLOGY**

- |                                     |        |
|-------------------------------------|--------|
| 1. Hon. Dr. Naomi Shaban, M.P.      | Member |
| 2. Sen. Muriuki Karue, M.P.         | Member |
| 3. Sen. Mvita Mshenga, M.P.         | Member |
| 4. Hon. Dr. Enoch Kibunguchy, M.P.  | Member |
| 5. Sen. (Prof.) Wilfred Lesan, M.P. | Member |

**IN ATTENDANCE**

**SENATE SECRETARIAT**

- |                           |   |                             |
|---------------------------|---|-----------------------------|
| 1. Ms. Rose Mudibo        | - | Second Clerk Assistant      |
| 2. Mr. Chris Njogu        | - | Third Clerk Assistant       |
| 3. Dr. Christine Sagini   | - | Research And Policy Analyst |
| 4. Ms. Carolyne Cheruiyot | - | Legal Counsel               |
| 5. Ms. Sombe Toona        | - | Legal Counsel               |

**NATIONAL ASSEMBLY SECRETARIAT**

- |                      |   |                                      |
|----------------------|---|--------------------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant                |
| 2. Ms. Ruth Mwihaki  | - | Third Clerk Assistant                |
| 3. Mr. Dennis Mogare | - | Third Clerk Assistant                |
| 4. Ms. Sande Marale  | - | Senior Researcher and Policy Analyst |
| 5. Mr. Sydney Okumu  | - | Legal Counsel                        |
| 6. Mr. Eugene Lutesh | - | Audio Recording Officer              |

**MIN.NO. MCHB 19/2017: PRELIMINARIES**

The Chairperson called the meeting to order at 11.21 a.m. and said a word of prayer.

**MIN.NO. MCHB 20/2017: ADOPTION OF THE AGENDA**

The agenda was adopted as presented having been proposed and seconded by Sen. Dr. Wilfred Machage, M.P. and Sen. Dr. Zipporah Kittony, M.P. respectively.



**MIN.NO. MCHB 21 /2017: CONFIRMATION OF MINUTES OF THE 3<sup>RD</sup> SITTING**

The Minutes of the 3<sup>rd</sup> sitting held on Thursday 6<sup>th</sup> April, 2017 were confirmed and signed, having been proposed by Sen. Dr. Wilfred Machage, M.P. and seconded by Sen. Dr. Zipporah Kittony, M.P.

**MIN.NO. MCHB 22 /2017: MATTERS ARISING**

Under **MIN.NO. MCHB 16 /2017:**

**Clause 25: Classification of levels of health care**

The Committee resolved to reinstate the Clause with amendments as follows:

- (a) Renumbering the prefatory statement as sub clause (1)
- (b) Inserting the following new sub clause immediately after the renumbered sub clause (1)

“(2) Subsections (1) shall not apply to a health facility under the management of a county government at the commencement of this Act”

Consequential amendments to be made to the following clause and schedule

**Clause 112: Regulations**

Insert a new sub-clause (s) to read as follows-

“**criteria for grading of health facilities in consultation with county governments.**”

**Justification**

The amendment seeks to provide guidelines for upgrading or downgrading of health facilities.

**First schedule –Technical classification of levels of healthcare delivery**

LEVEL 5:SECONDARY HOSPITAL

Amend the schedule to expand the functions of the Level 5 hospital to include:

In consultation with the National Government-

- (a) General specialization
- (b) Provision of county specific specialized care Services
- (c) Research centres to provide for research services on issues of importance relating to local conditions

**Justification**

To give room for county governments to develop Level 5 facilities to provide specialized services to the counties.

**MIN.NO. MCHB 23 /2017: REVIEW OF CONTENTIOUS CLAUSES IN THE HEALTH BILL**

The Committee secretariat led by the Legal Counsel took the Members through the contentious clauses in the Health Bill and resolved as follows:

**Part IV/Clauses 30 to 44: Establishment of the Kenya Health Human Resource Advisory Council**

The Committee agreed with the National Assembly's position to reinstate clauses 30 to 44 with amendments to the following clauses:

Clause 30 of the bill be amended in sub clause (1) by-

(a) deleting (c) and substituting therefor with-

**“a representative of the Council of Governors”**

(b) deleting the words “intergovernmental Consultative Council” and substituting therefor the words “County Directors of Health” appearing in paragraph (g) to read as follows

**“one person nominated by the County Directors of Health”**

(c) Inserting the words “who shall be an *ex officio* member” immediately after the word “Officer” appearing in paragraph (j) to read as follows-

**“the Chief Executive Officer who shall be an *ex officio* member”**

**Justification**

The amendment will provide for representation of counties and the Council of Governors, and allow the Council of Governors to appoint their preferred representative in the Health Human Resource Advisory Council.

Clause 31 of the bill be amended in sub clause (1) by-

(a) Inserting the words “welfare” before the word “the Scheme” appearing in paragraph (d) to read as follows:

**“Welfare and scheme of service for health professionals”**

**Justification**

The amendment allows for flexibility in handling issues affecting health professionals both at the County and National Levels

**Clause 46: Board of the Authority and its composition**

The Committee resolved to reinstate sub-clause (1)(f) as passed by the National Assembly with a further amendment to insert the words “of governors” immediately after the word “council” to read as follows-

**“two representatives nominated by the council of governors”**

**Justification**

It is a requirement to have the council of governors represented in the health professionals’ oversight authority

**Clause 48: Functions of the Authority**

The Committee resolved to amend sub clause (a) by-

(a) Inserting the words “county and” before the word “national” appearing in paragraph (a) to read as follows:

**“maintain a duplicate register of all health professionals working within the county and national health system”**

**Justification**

To cater for health professionals working in the counties

**Part VII/Clauses 62 to 67: Regulation of Health Products and Health Technologies**

The Committee agreed with the National Assembly’s position to reinstate clauses 62 to 67 with an amendment to the following clause:

**Clause 67 of the bill be amended**

1. In sub clause (1) by-

(a) deleting the words “where the Kenya Medical Supplies Authority is the primary provider” appearing immediately after the word “upon” to read as follows:

**“The procurement for the public health services of health products and technologies shall be undertaken in line with the Public Procurement and Disposal Act as well as the intergovernmental arrangements for medicine and medical products agreed upon”**

2. In sub clause (3) by-

(a) deleting the word “national” appearing immediately after the word “county” to read as follows:

**“The Kenya Medical Supplies Authority may be the point of first call for procurement of health products at the county referral level and it shall endeavor to establish branches within each county at such locations as it may determine”**

**Justification**

The Government policy is to separate the regulation of professional from products and health technologies for efficiency and to improve health service. This is also informed by international best practice.

The further amendment proposed removes the mandatory requirement placed on procuring entities to procure from the Kenya Medical Supplies Authority alone, and allows room to procure from other providers of health products, where the commodities may not be available at KEMSA.

#### **Part IX/Clauses 73: Mental Health**

The Committee agreed with the National Assembly's position to reinstate clause 73 with the following amendment

- (a) Inserting the words “ both at the county and national levels” immediately after the word “country” appearing in paragraph (c) to read as follows:

**“establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country both at the county and national levels”**

#### **Justification**

The inclusion of Mental Health in the Health Bill which is the parent law anchoring health matters gives effect to other legislations. The amendment further allows counties to take initiative in promoting mental health.

#### **Clauses 89: Licensing of private entities to operate hospitals, clinics etc.**

The Committee agreed with the National Assembly's position to reinstate clause 89

#### **Justification**

The provision is provided for to foster and encourage private sector participation in the health sector.

#### **Clauses 91: Duty of licensees.**

The Committee agreed with the National Assembly's position to reinstate clause 91

#### **Justification**

Private sector participation in the health sector requires regulation.

### **WAY FORWARD**

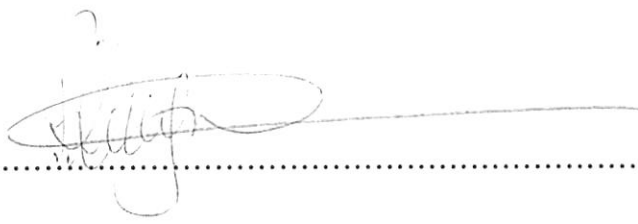
The Committee resolved that the final proposal incorporating the amendments proposed be presented to the Committee for consideration and adoption. Advance copies of the report should be circulated to Members through email before the next meeting.

MIN.NO. MCHB 24 /2017:            DATE OF NEXT MEETING

The next meeting would be held on Tuesday, 2<sup>nd</sup> May 2017.

MIN.NO. MCHB 25 /2017:            ADJOURNMENT

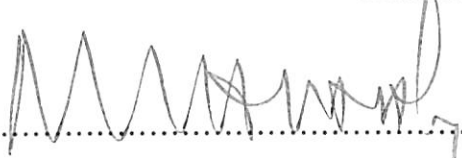
There being no other business, the meeting was adjourned at 1.07 p.m.

SIGNED: .....  


DATE: .....  
31 / 5 / 2017

HON (DR.) RACHAEL NYAMAI, M.P.

CHAIRPERSON

SIGNED: .....  


DATE: .....  
3 / 5 / 2017

SEN. DR. WILFRED MACHAGE, M.P.

VICE CHAIRPERSON

**MINUTES OF THE 3<sup>RD</sup> SITTING OF THE MEDIATION COMMITTEE ON THE HEALTH BILL HELD ON THURSDAY 6<sup>TH</sup> APRIL, 2017 IN THE RED CROSS BUILDING BOARD ROOM, GROUND FLOOR, PARLIAMENT BUILDINGS AT 10.00 AM.**

**PRESENT**

- |                                  |                    |
|----------------------------------|--------------------|
| 1. Hon. Dr. Racheal Nyamai, M.P. | (Chairperson)      |
| 2. Sen. Wilfred Machage, M.P.    | (Vice-Chairperson) |
| 3. Hon. Dr. Robert Pukose, M.P.  | Member             |
| 4. Sen. Zipporah Kittony, M.P.   | Member             |

**ABSENT WITH APOLOGY**

- |                                     |        |
|-------------------------------------|--------|
| 1. Hon. Dr. Naomi Shaban, M.P.      | Member |
| 2. Sen. Muriuki Karue, M.P.         | Member |
| 3. Sen. Mvita Mshenga, M.P.         | Member |
| 4. Hon. Dr. Enoch Kibunguchy, M.P.  | Member |
| 5. Sen. (Prof.) Wilfred Lesan, M.P. | Member |
| 6. Hon. Dr. James Nyikal, M.P.      | Member |

**IN ATTENDANCE**

**SENATE SECRETARIAT**

- |                           |   |                             |
|---------------------------|---|-----------------------------|
| 1. Ms. Rose Mudibo        | - | Second Clerk Assistant      |
| 2. Mr. Chris Njogu        | - | Third Clerk Assistant       |
| 3. Dr. Christine Sagini   | - | Research And Policy Analyst |
| 4. Ms. Carolyne Cheruiyot | - | Legal Counsel               |
| 5. Ms. Sombe Toona        | - | Legal Counsel               |

**NATIONAL ASSEMBLY SECRETARIAT**

- |                      |   |                         |
|----------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant   |
| 2. Ms. Ruth Mwihaki  | - | Third Clerk Assistant   |
| 3. Mr. Dennis Mogare | - | Third Clerk Assistant   |
| 4. Ms. Sydney Okumu  | - | Legal Counsel           |
| 5. Mr. John Ng'ang'a | - | Audio Recording Officer |

**MIN.NO. MCHB 13 /2017: PRELIMINARIES**

The Chairperson called the meeting to order at 10.24 a.m. followed by a word of prayer by Sen. Dr. Wilfred Machage.

**MIN.NO. MCHB 14/2017: ADOPTION OF THE AGENDA**

The agenda was adopted as presented having been proposed and seconded by Sen. Dr. Wilfred Machage, M.P. and Hon. Dr. Rachel Nyamai, M.P. respectively.

**MIN.NO. MCHB 15 /2017: CONFIRMATION OF MINUTES OF THE 2<sup>ND</sup> SITTING**

The Minutes of the 2<sup>nd</sup> sitting held on Wednesday 5<sup>th</sup> April, 2017 were confirmed and signed, having been proposed by Sen. Dr. Wilfred Machage, M.P. and seconded by Hon. Dr. Rachel Nyamai, M.P.

**MIN.NO. MCHB 16 /2017: REVIEW OF CONTENTIOUS CLAUSES IN THE HEALTH BILL**

The Committee secretariat led by the Legal Counsel took the Members through the contentious clauses in the Health Bill and after lengthy deliberations, it was resolved as follows:

**Clause 24: Retention of service provision**

The Committee agreed with the Senate's position to delete the clause 24 (b).

**Justification**

Retention of clause 24 (b) could have interfered with devolved health functions/facilities. It could also hamper development of county health facilities to the highest level possible.

**Clause 25: Classification of levels of health care**

The Committee agreed with the National Assembly's position to reinstate Clause 25. However, it was also agreed that a new Clause 25 (b) should be introduced to provide that classification shall not affect health facilities already devolved to the counties (The legal counsels were tasked to draft the proviso for consideration in the next meeting).

**Justification**

The technical classification of health facilities was in in line with the operational Health Policy.

**Part IV/Clauses 30 to 44: Establishment of the Kenya Health Human Resource Advisory Council**

The Committee agreed with the National Assembly's position to reinstate clauses 30 to 44. However, it was also agreed that the legal counsels scrutinize the clauses to ensure that they:

- i) Were constitutional

- ii) Don't interfere with the mandate of other constitutional commissions especially the Public Service Commission; and
- iii) Don't interfere with the mandate of the 47 County Public Service Boards in the country.

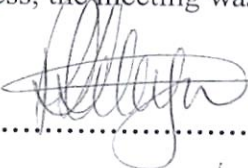
The legal counsels were instructed to report to the Committee in the next meeting.


**MIN.NO. MCHB 17 /2017:                      DATE OF NEXT MEETING**

The next meeting would be held on Tuesday, 11<sup>th</sup> April, 2017 at 10.00 a.m.

**MIN.NO. MCHB 18 /2017:                      ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.07 a.m.

**SIGNED:** ..... 

**DATE:** .....  11/17/2017

**HON (DR.) RACHAEL NYAMAI, M.P.**

**CHAIRPERSON**

**SIGNED:** ..... 

**DATE:** ..... 11/4/2017

**SEN.WILFRED MACHAGE**

**VICE CHAIRPERSON**





**MINUTES OF THE 2<sup>ND</sup> SITTING OF THE MEDIATION COMMITTEE ON THE HEALTH BILL HELD ON WEDNESDY 5<sup>TH</sup> APRIL, 2017 IN THE RED CROSS BUILDING BOARD ROOM, GROUND FLOOR, PARLIAMENT BUILDINGS AT 11.00 AM.**

**PRESENT**

1. Hon. Dr. Racheal Nyamai, M.P. **(Chairperson)**
2. Sen. Wilfred Machage, M.P. **(Vice-Chairperson)**
3. Hon. Dr. Robert Pukose, M.P. Member
4. Sen. Zipporah Kittony, M.P. Member
5. Sen. (Prof.) Wilfred Lesan, M.P. Member
6. Hon. Dr. James Nyikal, M.P. Member

**ABSENT WITH APOLOGY**

1. Hon. Dr. Naomi Shaban, M.P. Member
2. Sen. Muriuki Karue, M.P. Member
3. Sen. Mvita Mshenga, M.P. Member
4. Hon. Dr. Enoch Kibunguchy, M.P. Member

**IN ATTENDANCE**

**SENATE SECRETARIAT**

1. Ms. Rose Mudibo - Second Clerk Assistant
2. Dr. Christine Sagini - Research and Policy Analyst
3. Ms. Carolyne Cheruiyot - Legal Counsel

**NATIONAL ASSEMBLY SECRETARIAT**

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Ms. Ruth Mwihaki - Third Clerk Assistant
3. Mr. Dennis Mogare - Third Clerk Assistant
4. Ms. Lynette Otieno - Legal Counsel
5. Mr. John Ng'ang'a - Audio Recording Officer

**MIN.NO. MCHB 07 /2017: PRELIMINARIES**

The Chairperson called the meeting to order at 10.20 a.m. followed by a word of prayer by Sen. Dr. Wilfred Machage.

**MIN.NO. MCHB 08 /2017: ADOPTION OF THE AGENDA**

The agenda was adopted as presented having been proposed by Sen. Dr. Wilfred Machage, M.P. and seconded by Hon. Dr. Rachel Nyamai, M.P., respectively.

**MIN.NO. MCHB 09 /2017: CONFIRMATION OF MINUTES OF THE 1<sup>ST</sup> SITTING**

The Minutes of the 1<sup>st</sup> sitting held on Tuesday 4<sup>th</sup> April 2017 were confirmed and signed, having been proposed by Sen. Dr. Wilfred Machage, M.P. and seconded by Hon. Dr. Rachel Nyamai, M.P.

**MIN.NO. MCHB 10 /2017: REVIEW OF CLAUSES WITH DISPARITY BETWEEN THE SENATE AND THE NATIONAL ASSEMBLY**

The Committee secretariat led by the Legal Counsel took the Members through the contentious clauses in the Health Bill and the following was resolved:

Clause 5: Standard of Health

The Members agreed with the proposal by the Senate Committee to insert the following new sub-clause (4) reading as follows-

**“For purposes of implementing subsection (3), the national government shall in consultation with the respective county governments provide funds to county governments.”**

**Justification**

The amendment seeks to anchor into legislation provision of free maternity care and ensure provision of funds to cater for the service.

Clause 15: National Government Ministry Responsible for Health

The Committee resolved to reinstate sub-clause (1c) as passed by the National Assembly as follows-

**“ensure the implementation of rights to health specified in the Bill of Rights ”**

**Justification**

The role of the National Government is to ensure the implementation of the rights to health, enforcing standards and policies including ensuring that Kenya meets the international health obligations. It further secures the right to emergency treatment.

Clause 16: Office of the Director-General

1. The Committee resolved to have clause 16 (2) to read-

**“The Director General for health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the Cabinet Secretary.”**

**Justification**

Given the role of the Director General as advisor to the government on all matters relating to health within the Health Sector, vetting by Parliament will ensure public representation in the process through elected representatives.

2. The Committee agreed with the National Assembly's position on clause 16 (3)(a) as follows-

**(3) A person appointed under subsection (2) must-**

**(a) be a medical practitioner registered by the Medical Practitioners and Dentists Board."**

#### **Justification**

The Director General being in charge of the Country's Health sector should have general understanding and qualification in medicine as a first degree.

#### Clause 17: Functions of the Director-General

The Committee resolved to reinstate clause 17 (i) and (j) as per the National Assembly's amendments as follows-

**(i) provide guidelines for registration, licensing, certification and gazettement of all health facilities;**

**(j) be responsible for internship program for health workers;**

#### **Justification**

This is in line with the functions of the National Government in developing standards, policies and guidelines for registration, licensing, certification and gazettement. Internship is part of training, which is a function of the National Government.

#### Clause 18: Directorates

The Committee agreed with the Senate amendment on the creation of Directorates by the Cabinet Secretary as follows-

**"For purposes of section 15(1)(b), the Cabinet Secretary shall-**

**(a) Form directorates to deal with the following matters-**

**(i) medical services;**

**(ii) nursing;**

**(iii) pharmaceutical services;**

**(iv) public health; and**

**(v) administrative services;"**

#### **Justification**

This is to enable the Cabinet Secretary to create directorates that deal with key areas within the health sector for better coordination. Deleting the phrase 'allied workers' is meant to remove any ambiguity in law.

#### Clause 19: County Health System

The Committee resolved retain the National Assembly position on clause 19(4)(a) as follows-

**(4) A person appointed a County Director of Health shall-**

- (a) be a medical practitioner registered by the Medical Practitioners and Dentists Board.**

**Justification**

For the effective management of the health function in the County, the County Director of Health should be a medical practitioner as he is in charge of all other cadres of health Practitioners in the County.

Clause 20: Duties of County Executive for Health

The Committee agreed with the Senate’s position to delete the introductory phrase in clause 20 and substitute therefore with the following new phrase-

**“The county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for- ”**

**Justification**

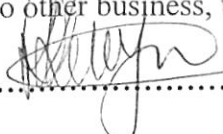
The amendment seeks to realign the clause to Part 2 of the Fourth Schedule to the Constitution which assigns functions to county governments and not departments.

**MIN.NO. MCHB 11 /2017:                      DATE OF NEXT MEETING**

The next meeting would be held on Wednesday 5<sup>th</sup> April, 2017 at 4.00 p.m.

**MIN.NO. MCHB 12 /2017:                      ADJOURNMENT**

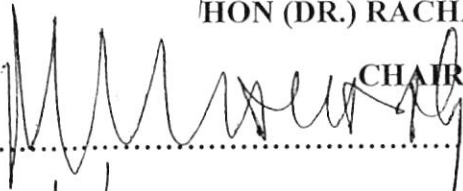
There being no other business, the meeting was adjourned at 12.47 p.m.

SIGNED: ..... 

DATE: ..... 11/4/2017

HON (DR.) RACHAEL NYAMAI, M.P.

CHAIRPERSON

SIGNED: ..... 

DATE: ..... 11/4/2017

SEN.WILFRED MACHAGE

VICE CHAIRPERSON

**MINUTES OF THE 1<sup>ST</sup> SITTING OF THE MEDIATION COMMITTEE ON THE HEALTH BILL HELD ON TUESDAY 4<sup>TH</sup> APRIL, 2017 IN THE RED CROSS BUILDING BOARD ROOM, GROUND FLOOR, PARLIAMENT BUILDINGS AT 11.00 AM.**

**PRESENT**

1. Sen. Wilfred Machage (Chairman, Standing Committee on Health)
2. Hon. Dr. Racheal Nyamai, MP (Chairperson, Departmental Committee on Health)
3. Hon. Dr. Robert Pukose, M.P. (Vice-Chairperson, Departmental Committee on Health)
4. Sen. Zipporah Kittony (Vice-Chairperson, Standing Committee on Health)
5. Sen. Mvita Mshenga
6. Hon. Dr. Naomi Shaban, M.P.

**ABSENT WITH APOLOGY**

1. Sen. (Prof.) Wilfred Lesan
2. Sen. Muriuki Karue
3. Hon. Dr. Enoch Kibunguchy, M.P.
4. Hon. Dr. James Nyikal, M.P.

**IN ATTENDANCE**

**SENATE SECRETARIAT**

1. Ms. Rose Mudibo - Second Clerk Assistant.
2. Mr. Crispus Njogu - Third Clerk Assistant.
3. Dr. Christine Sagini - Research and Policy Analyst
4. Ms. Caroline Cheruiyot - Legal Counsel

**NATIONAL ASSEMBLY SECRETARIAT**

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Ms. Ruth Mwihaki - Third Clerk Assistant.
3. Mr. Dennis Mogare - Third Clerk Assistant
4. Ms. Lynette Otieno - Legal Counsel
5. Mr. John Ng'ang'a - Audio Recording Officer

**MIN.NO. MCHB 01 /2017: PRELIMINARIES.**

The Presiding Clerk, Ms. Rose Mudibo called the meeting to order at 11.15 am and said a prayer.

She informed the meeting that the main agenda for the meeting was the election of the Chairperson and vice chairperson of the Mediation Committee. She thereafter presided over the election of the Chairperson and vice Chairperson of the committee.

**MIN.NO. MCHB 02 /2017: ADOPTION OF THE AGENDA**

The agenda was adopted after being proposed and seconded by Sen. Wilfred Machage and Hon.Dr. Robert Pukose, M.P respectively.

**MIN.NO. MCHB 03 /2017: ELECTION OF THE CHAIRPERSON OF THE MEDIATION COMMITTEE**

Hon. Dr. Rachael Nyamai, M.P, Chairperson, Departmental Committee on Health was elected as the Chairperson of the Mediation Committee after being proposed and seconded by Hon. Dr. Robert Pukose, M.P. and Sen. Zipporah Kittony respectively.

**MIN.NO. MCHB 04 /2017: ELECTION OF THE VICE CHAIRPERSON OF THE MEDIATION COMMITTEE**

Sen Wilfred Machage, Chairperson, Standing Committee on Health was elected as the Vice Chairperson of the Mediation Committee after being proposed and seconded by Sen. Mvita Mshenga and Hon. Dr. Robert Pukose, M.P respectively.

**MIN.NO. MCHB 05 /2017: WAY FORWARD ON MEDIATION OF THE HEALTH BILL**

**Remarks from the Chairperson**

The Chairperson thanked the Members for electing her as the Chairperson of the Mediation Committee and informed them that the process leading the passing of the Health Bill both at the National Assembly, and the Senate had been participatory, and that all the major stakeholders had been involved during public participation hearings.

She thereafter informed members that the Committee had 30 days from the date of the first Sitting to finalise on the amendments and make its report to respective Houses of Parliament.

**Remarks from the Vice- Chairperson**

The Vice Chairperson thanked the Members for electing him as the Vice Chairperson of the Mediation Committee. He thereafter urged the members to finalise the consideration of amendments to allow for the finalisation and passing of the Health Bill into law.

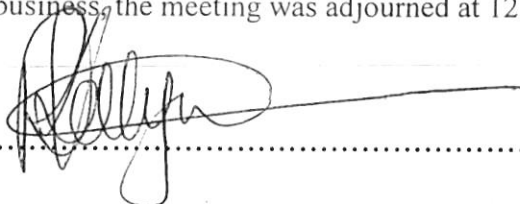
**Way Forward**

The Committee resolved to resume its sittings on Wednesday, 5<sup>th</sup> April 2017 at 10.00am to review the clauses with disparity between the Senate and National Assembly.

**MIN.NO. MCHB 06 /2017: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.07 pm.

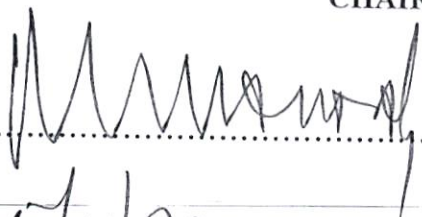
SIGNED: .....



DATE: 5/4/2017

HON (DR.) RACHAEL NYAMAI, M.P.

CHAIRPERSON

SIGNED: 

DATE: 5/4/2017

SEN. WILFRED MACHAGE

VICE CHAIRPERSON







THE NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT  
(THIRD SESSION)

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**EXCERPT OF THE MEDIATED VERSION OF THE  
HEALTH BILL, 2015 SHOWING THE AGREED-UPON  
VERSIONS OF THE CONTENTIOUS CLAUSES**

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The Mediation Committee identified Clauses 5, 15, 16, 17, 18, 19, 20, 25, 30, 31, 46, 48, 67, 73, 89, 91 and the FIRST SCHEDULE as being contentious and agreed on the following version:

**(i) Clause 5 – mediated version**

Standard of health.

5. (1) Every person has the right to the highest attainable standard of health which shall include progressive access for provision of promotive, preventive, curative, palliative and rehabilitative services.

(2) Every person shall have the right to be treated with dignity, respect and have their privacy respected in accordance with the Constitution and this Act.

(3) The national and county governments shall ensure the provision of free and compulsory —

- (a) vaccination for children under five years of age; and
- (b) maternity care.

(4) For the purposes of implementing subsection (3), the national government shall in consultation with the respective county governments provide funds to county governments.

**(ii) Clause 15 – mediated version**

15. (1) The national government ministry responsible for health shall —

- (a) develop health policies, laws and administrative procedures and programmes in consultation with county governments and health sector stakeholders and the public for the progressive realization of the highest attainable standards of health including reproductive health care and the right to emergency treatment;
- (b) develop and maintain an organizational structure of the Ministry at the national level comprising of technical directorates;
- (c) ensure the implementation of rights to health specified in the Bill of Rights, and more particularly the progressive realization of the right of all to the highest attainable standard of health including reproductive health care and the right to emergency treatment;
- (d) ensure, in consultation and collaboration with other arms of government and other stakeholders, that there is stewardship in setting policy guidelines and standards for human food consumption, dietetic services and healthy lifestyle;
- (e) offer technical support at all levels with emphasis on health system strengthening;
- (f) develop policy measures to promote equitable access to health services to the entire population, with special emphasis on eliminating the disparity in realization of the objects of this Act for marginalized areas and disadvantaged populations;
- (g) develop and promote application of norms and standards for the development of human resources for health including affirmative action measures for health workers working in marginalized areas;
- (h) provide for medical audit of deaths with a special emphasis on maternal and neonatal deaths as a tool for the further development of obstetric and neonatal care;
- (i) put in place policy intervention measures to reduce the burden of communicable and non-communicable diseases, emerging and re-emerging diseases and neglected diseases;
- (j) develop, through regulatory bodies, standards of training and institutions providing education to meet the needs of service delivery;
- (k) set guidelines for the designation of referral health facilities;
- (l) through respective regulatory bodies to develop and ensure compliance on professional standards on registration and licensing of individuals in the health sector;
- (m) coordinate development of standards for quality health service delivery;
- (n) provide for accreditation of health services;
- (o) coordinate through the established inter-governmental relations mechanisms all health aspects of disaster and

- emergencies;
- (p) ensure through intergovernmental mechanisms that financial resources are mobilized to ensure uninterrupted access to quality health services country wide;
  - (q) promote the development of public and private health institutions to ensure their efficient and harmonious development and in the common interest work towards progressive achievement of the right to health;
  - (r) provide for the development and expansion of a countrywide national health information management system;
  - (s) facilitate all forms of research that can advance the interests of public health;
  - (t) develop and manage the national and specialized health referral facilities;
  - (u) promote the use of appropriate health technologies for improving the quality of health care;
  - (v) provide policy guidelines and regulations for hospital waste management and conduct of environmental health impact assessment;
  - (w) collaborate in the common interest with the health authorities of other countries and with regional and international bodies in the field of health;
  - (x) establish an emergency medical treatment fund for emergencies to provide for unforeseen situations calling for supplementary finance;
  - (y) provide policy guidelines in public-private partnerships for health to enhance private sector investment; and
  - (z) provide policy and training, maintenance of standards and co-ordination mechanisms for the provision of emergency healthcare.
- (2) The Cabinet Secretary responsible for health in consultation through the established inter-governmental relations mechanisms shall make regulations on any matter where it is necessary or expedient in order—
- (a) to implement any provision of this Act; and
  - (b) to implement within Kenya measures agreed upon within the framework of any treaty, international convention or regional intergovernmental agreement to which Kenya is a party.

## **(i) Clause 16 – mediated version**

Office of the  
Director -General.

16. (1) There shall hereby be established the office of the Director-General for Health.

(2) The Director General for health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the Cabinet Secretary.

(3) A person appointed under subsection (2) must—

- (a) be a medical practitioner registered by the Medical Practitioners and Dentists Board;
  - (b) at least be a holder of a Masters degree in public health, medicine or any other health related field;
  - (c) have experience of at least ten years in management of health services, five of which must be at a senior management position; and
  - (d) meet the provisions of Chapter Six of the Constitution of Kenya.
- (4) The Director-General shall hold office for a term of five (5) years renewable once.

## **(ii) Clause 17 – mediated version**

Functions of the  
Director-General.

17. The Director-General shall—
- (a) be the technical advisor to the Government on all matters relating to health within the health sector;
  - (b) be the technical advisor to the Cabinet Secretary of health;
  - (c) be responsible for preventing and guarding against the introduction of infectious diseases into Kenya;
  - (d) promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within Kenya;
  - (e) advice the two levels of Government on matters of national security on public health;
  - (f) promote and facilitate research and investigations in connection with the prevention or treatment of human diseases;
  - (g) prepare and publish reports and statistical or other information relative to the public health;
  - (h) obtain and publish periodically information on infectious diseases and other health matters and such procurable information regarding epidemic diseases in territories adjacent to Kenya or in other Countries as the interests of public health may require;
  - (i) provide guidelines for registration, licensing, certification and gazettement of all health facilities;
  - (j) be responsible for internship program for health workers;
  - (k) supervise the directorates within the national Ministry of health; and(l) perform any other duties as may be assigned by the appointing authority and any other written law.

## **(iii) Clause 18 – mediated version**

Directorates.

18. For purposes of section 15(1)(b), the Cabinet Secretary shall —
- (a) form directorates to deal with the following matters —

- (i) medical services;
- (ii) nursing;
- (iii) pharmaceutical services;
- (iv) public health; and
- (v) administrative services;

(a) notwithstanding paragraph (a), form directorates based on policy priority areas in consultation with the Director-General.

#### **(iv) Clause 19 – mediated version**

19. (1) There shall be established with respect to every county, a county executive department responsible for health, which shall be in line with the health policy guidelines for setting up county health system and shall in all matters be answerable to the Governor and the County Assembly subject to the provisions of the Constitution and of any applicable written law.

(2) There shall be established the office of the County Director of health who shall be a technical advisor on all matters of health in the County.

(3) The County Director of health shall be recruited through a competitive process in conformity with the rules and regulations set from time to time by the County Public Service Board.

(4) A person appointed a County Director of health shall—

- (a) be a medical practitioner registered by the Medical Practitioners and Dentists Board;
- (b) be at least a holder of a Masters degree in public health, medicine or any other health related discipline; and
- (c) have at least five (5) years' experience in management of health services.

(5) The County Director of health shall—

- (a) be the technical advisor on all matters relating to health within the County;
- (b) be the technical advisor to the County Health Executive Committee member and the Governor;
- (c) supervise all health services within the County;
- (d) promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within the County;
- (e) prepare and publish reports and statistical or other information relative to the public health within the County;
- (f) report periodically to the Director-General for health on all public health occurrences including disease outbreaks, disasters and any other health matters; and
- (g) perform any other duties as may be assigned by the

appointing authority and any other written law.

**(v) Clause 20 – mediated version**

Duties of county  
government.

20. The county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for —

- (a) implementing the national health policy and standards as laid down by national government Ministry responsible for health;
- (b) service delivery, including the maintenance, financing and further development of those health services and institutions that have been devolved to it;
- (c) coordination of health activities in order to ensure complementary inputs, avoid duplication and provide for cross-referral, where necessary to and from institutions in other counties;
- (d) facilitating registration, licensing and accreditation of providers and health facilities respectively according to standards set nationally by the national government department responsible for health and relevant regulatory bodies;
- (e) designation of county referral hospitals according to criteria agreed upon by the intergovernmental health coordinating mechanism;
- (f) developing and implementing, in consultation with the Salaries and Remuneration Commission, such policies as may be necessary to guarantee the staffing of the public health service in marginal areas including taking into account the use of equalization fund;
- (g) procuring and managing health supplies;
- (h) maintaining standards of environmental health and sanitation as laid down in applicable law;
- (i) providing access and practical support for monitoring standards compliance undertaken within the county by the national government department responsible for health, the Authority and professional regulatory bodies established under any written law;
- (j) providing access and practical support for technical assistance, monitoring and evaluation, research for health by the national and county government department responsible for health;
- (k) developing supplementary sources of income for the provision of services, in so far as these are compatible with the applicable law;
- (l) making due provision and develop criteria to compensate health care facilities for debts arising through failure to secure payment for bills for non-payment of treatment of indigent users;
- (m) reporting, according to standards established by law,

on activities, development and the state of finance within the county health services;

- (n) making known to the public at all times the health facilities through which generalized or specialized services are available to them;
- (o) developing and promoting public participation in the planning and management of local health facilities so as to promote broad ownership;
- (p) ensuring and coordinating the participation of communities in the governance of health services at the county level so as to promote a participatory approach in health care governance.

## **(vi) Clause 24 – mediated version**

Retention of service provision.

24. Without prejudice to the distribution of health functions and services between the national and county levels of government as set out in Fourth Schedule of the Constitution, the national government shall manage and be responsible for—

- (a) any public health institution classified as a national referral facility under this Act;
- (b) any institution or service dependent for its function on expertise that is a shared resource as classified from time to time in regulations under this Act
- (c) laboratories and other institutions designated as serving a national rather than a regional purpose;
- (d) regulation of health products and health technologies including assessment, licensing and control of commercial and industrial activities;
- (e) facilitation through inter-governmental institutions, procurement and supply chain management of public health goods including vaccines, pharmaceutical and non-pharmaceuticals for the purpose of ensuring control of highly infectious and communicable health conditions, putting measures for quality assurance and standards as well as measures for guarding against resistance strains in the interest of public health; and
- (f) any health care function or service that is not otherwise assigned to the county government.

## **(vii) Clause 25 – mediated version**

Classification of levels of health care.

25. (1) The technical classification of levels of health care shall be as set out in the First Schedule.

(2) Subsection (1) shall not apply to a health facility under the management of a county government at the commencement of this Act.



### **(viii) Clause 30 – mediated version**

Establishment of the Council.

30. (1) There is established a Kenya Health Human Resource Advisory Council which shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary for the time being responsible for matter relating to health or a representative designated by the Principal Secretary;
- (c) one person not being a governor nominated by the Council of Governors;
- (d) the Attorney General or a representative designated by the Attorney General;
- (e) the Director-General for health or a representative designated by the Director-General;
- (f) one representative nominated by the Public Service Commission;
- (g) one person nominated by the county directors of health;
- (h) one person nominated by the county public service boards;
- (i) three persons nominated by the public universities, private universities and mid-level institutions; and
- (j) the Chief Executive Officer who shall be an *ex officio* member and secretary to the Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may be lawfully done by a body corporate.

### **(ix) Clause 31 – mediated version**

Functions of the Council.

31. The Council shall review policy and establish uniform norms and standards for—

- (a) posting of interns to National Government and County Government facilities;
- (b) inter county transfer of healthcare professionals;
- (c) transfer of healthcare professionals from one level of Government to another;
- (d) the welfare and the scheme of service for health professionals;
- (e) management and rotation of specialists; and
- (f) the maintenance of a master register for all health

practitioners in the counties.

**(x) Clause 46 – mediated version**

46. (1) The Authority shall be administered by a Board which shall consist of—
- (a) a chairperson appointed by the Cabinet Secretary who shall be a health professional who meets the requirements of Chapter six of the Constitution of Kenya;
  - (b) the Principal Secretary in the Ministry for the time being responsible for health or a designated representative;
  - (c) the Director-General for health or a designated representative;
  - (d) the Attorney General or a designated representative;
  - (e) two representatives nominated by the health regulatory bodies established under an Act of Parliament;
  - (f) two representatives nominated by the Council of Governors;
  - (g) two representatives nominated by the health professional associations registered by the Registrar of Societies who are not regulated or registered by any regulatory body;
  - (h) one representative from the private sector appointed by the Cabinet Secretary;
  - (i) one representative from consumer rights bodies appointed by the Cabinet Secretary; and
  - (j) the Chief Executive Officer, appointed by the Authority, through a competitive process and who shall be an ex officio member and the secretary to the Authority.
- (2) The Authority shall be supported by a Secretariat which shall be headed by the Chief Executive Officer.
- (3) The powers of the Authority shall be vested in the advisory Board.
- (4) The business and affairs of the Authority shall be conducted in accordance with the Second Schedule.

**(xi) Clause 48 – mediated version**

Functions of the Authority.

48. The functions of the Authority shall be to—
- (a) maintain a duplicate register of all health professionals working within the national and county health system;
  - (b) promote and regulate inter-professional liaison between statutory regulatory bodies;
  - (c) coordinate joint inspections with all regulatory bodies;
  - (d) receive and facilitate the resolution of complaints from patients, aggrieved parties and regulatory bodies;
  - (e) monitor the execution of respective mandates and functions of regulatory bodies recognised under an Act of Parliament;

- (f) arbitrate disputes between statutory regulatory bodies, including conflict or dispute resolution amongst Boards and Councils; and
- (g) ensure the necessary standards for health professionals are not compromised by the regulatory bodies.

(2) The Cabinet Secretary shall, in consultation with the Authority make regulations generally for the better carrying out of the provisions of this section and without limiting the generality of the foregoing, the Cabinet Secretary shall make regulations to prescribe—

- (a) the manner and form of coordinating joint inspections with all regulatory bodies;
- (b) the procedure for receipt and facilitation of the resolution of complaints from patients aggrieved parties and regulatory bodies;
- (c) the manner of monitoring the execution of respective mandates and functions of regulatory bodies recognized under an Act of Parliament;
- (d) the mechanisms for arbitration of disputes between statutory regulatory bodies, including conflict or dispute resolution amongst Boards and Authorities; and
- (e) mechanisms to ensure that the necessary standards for health professionals are not compromised by the regulatory bodies.

## **(xii) Clause 67– mediated version**

Procurement of health products and technologies.

67. (1) The procurement for the public health services of health products and technologies shall be undertaken in line with the Public Procurement and Disposal Act as well as the inter-governmental arrangements for medicine and medical products agreed upon.

(2) The classes of products procured by Kenya Medical Supplies Authority shall extend to therapeutic feeds and nutritional formulations.

(3) The Kenya Medical Supplies Authority may be the point of first call for procurement of health products at the county referral level and it shall endeavor to establish branches within each county at such locations as it may determine.

(4) The national government shall provide guidelines for the procurement, distribution and management of health products and technologies including essential medicines, laboratory chemicals and reagents and non-pharmaceuticals at all levels of the national health system.

## **(xiii) Clause 73 – mediated version**

Mental health.

73. There shall be established by an Act of Parliament, legislation to—

- (a) protect the rights of any individual suffering from any mental disorder or condition;
- (b) ensure the custody of such persons and the management of their

estates as necessary;

- (c) establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country at the national and county levels;
- (d) advance the implementation of other measures introduced by specific legislation in the field of mental health; and
- (e) ensure research is conducted to identify the factors associated with mental health.

#### **(xiv) Clause 89 – mediated version**

Licensing of private entities to operate hospitals, clinics, etc.

89. (1) Private entities shall be permitted to operate hospitals, clinics, laboratories and other institutions in the health sector, subject to licensing by the appropriate regulatory bodies.

(2) The standards to be met in order to qualify for the issue of an operational licence under this section and the conditions that may be attached to such a licence shall be as defined in regulations issued under this Act by the Cabinet Secretary.

#### **(xv) Clause 91 – mediated version**

91. (1) Institutions licensed under section 88 and private health workers licensed under section 89 shall irrespective of any specific conditions attached to such a licence be bound—

(a) to permit and facilitate inspection at any time by the Authority and regulatory bodies;

(b) to provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.

(2) Institutions and private health workers shall nevertheless be entitled to compensation under similar terms as contemplated under this Act.

**(xvi) C  
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#### **(xvii) Clause 112 – mediated version**

Regulations.

112. The Cabinet Secretary in consultation with the Director General shall make regulations generally for the better carrying out of the provisions of this Act and without limiting the generality of the foregoing, the Cabinet Secretary may make regulations for—

- (a) the fees to be paid to access services in a public health facility;

- (b) the norms and standards for health service delivery;
- (c) specified types of protective clothing and the use, cleaning and disposal of such clothing;
- (d) co-operation and interaction between private health care providers and private health establishments on the one hand and public health care providers and public health establishments on the other;
- (e) returns, registers, reports, records, documents and forms to be completed and kept by national referral institutions and county health institutions, public health facilities and private health facilities;
- (f) communicable and non-communicable diseases;
- (g) notifiable medical conditions;
- (h) rehabilitation;
- (i) emergency medical services and emergency medical treatment;
- (j) health nuisances and medical waste;
- (k) the import and export of pathogenic micro-organisms;
- (l) health research;
- (m) health technology;
- (n) the national health information system;
- (o) the documentation of traditional medicines and a database of herbalists;
- (p) the rendering of forensic pathology, forensic medicine and related laboratory services, including the provision of medico-legal mortuaries and medico-legal services;
- (q) the procurement of health products and health technologies;
- (r) grading of health facilities in consultation with the county governments; and
- (s) anything which may be prescribed under this Act.

## **(xviii) FIRST SCHEDULE – mediated version**

### **FIRST SCHEDULE**

**(s. 25)**

#### **TECHNICAL CLASSIFICATION OF LEVELS OF HEALTHCARE DELIVERY**

##### **LEVEL 1: COMMUNITY HEALTH SERVICES**

Functions—

- (a) Facilitates individuals, households and communities to carry out appropriate healthy behaviours;
- (b) Provides agreed health services;
- (c) Recognizes signs and symptoms of conditions requiring referral;
- (d) Facilitates community diagnosis, management and referral.

**Note:** The In-charge is the community health extension worker.

##### **LEVEL 2: DISPENSARY/CLINIC**

Functions-

- (a) This is a health facility with no in-patient services and provides consultation, treatment for minor ailments;
- (b) Provides rehabilitative services;
- (c) Provision of preventive and promotive services.

**Note:** The In-charge is a nurse or clinical officer.

**LEVEL 3:**

**HEALTH CENTRE**

Functions—

- (a) It provides out-patient care;
- (b) Provision of limited emergency care;
- (c) Maternity for normal deliveries;
- (d) Laboratories, oral health and referral services;
- (e) Provision of preventive and promotive services;
- (f) In-patient observations.

**Note:** The In-charge is the clinical officer or medical officer with at least two years managerial experience.

**LEVEL 4:**

**PRIMARY HOSPITAL**

Functions-

- (a) Clinical supportive supervision to lower level facilities;
- (b) Referral level out-patient care;
- (c) In-patient services;
- (d) Emergency obstetric care and oral health services;
- (e) Surgery on in-patient basis;
- (f) Client health education;
- (g) Provision of specialized laboratory tests;
- (h) Radiology service;
- (i) Proper case management of referral cases through the provision of four main clinical specialties (i.e internal medicine, general surgery, gynaecobstetrics and paediatrics) by general practitioners backed by appropriate technical devices;
- (j) Proper counter referral;
- (k) Provision of logistical support to the lower facilities in the catchment area;
- (l) Coordination of information flow from facilities in the catchment area.

**Note:** The In-charge is a registered medical practitioner with a Master's degree in a health related field.

**LEVEL 5:**

**SECONDARY HOSPITAL**

Functions—

- (a) Provision of specialized services;
- (b) Training facilities for cadres of health workers who function at the primary care level (paramedical staff);
- (c) Serves as an internship centre for all staff, up-to medical officers;
- (d) Serves as a research centre, that provides research services for issues of

county importance;

**Note:** The In-charge is a registered medical practitioner with a Masters degree in a health related field.

**LEVEL 6:**

**TERTIARY HOSPITAL**

Functions—

- (a) Provides highly specialized services. These include-
  - (i) general specialization;
  - (ii) discipline specialization; and
  - (iii) geographical/regional specialization including highly specialized healthcare for area/regional specialization;
- (b) Research centre, provides training and research services for issues of national importance.

**Note:**

1. The In-charge is a registered medical practitioner with a Masters degree in a health related field and with training and experience of over ten (10) years in senior management.
2. Level 6 shall be National Referral Hospitals and established in every County.
3. Facilities from levels 2-5 can be upgraded or downgraded by the Director-General based on a set criteria.

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REPUBLIC OF KENYA

PARLIAMENT

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**NATIONAL ASSEMBLY BILLS**

*(Bill No. 14 of 2015)*

**THE HEALTH ACT, 2017**

(A version of the Health Bill, 2016 (National Assembly Bill No. 14 of 2015) as agreed on 3<sup>rd</sup> May, 2017, by a mediation committee appointed pursuant to Article 113 of the Constitution.)

**N.A. /B/No. 14/2015**

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**THE HEALTH ACT, 2017**  
**ARRANGEMENT OF CLAUSES**

*Clause*

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**THE HEALTH BILL, 2017****A Bill for**

**AN ACT of Parliament to establish a unified health system, to coordinate the inter-relationship between the national government and county government health systems, to provide for regulation of health care service and health care service providers, health products and health technologies and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Health Act, 2017 and shall come into operation upon the expiry of ninety days from the date of publication.

Short title and commencement.

2. In this Act unless the context otherwise requires—

Interpretation

“abortion” means termination of a pregnancy before the foetus is viable as an independent life outside the womb;

“alternative medicine” means complementary medicine and includes a broad set of health care practices that are not part of Kenya’s tradition and are not integrated into dominant health care system;

“Authority” means the Kenya Health Professions Oversight Authority established under section 46;

“Board” refers to the Governing Board of the Kenya Health Professions Oversight Authority;

“breastfeeding means the method of feeding an infant directly from the female breast;”

“Cabinet Secretary” means the Cabinet Secretary for Ministry responsible for matters relating to health;

“Committee” means the National Research for Health Committee established under section 93;

“Director-General” means the Director-General for health appointed under section 16;

“disaster” means but is not limited to an adverse situation or event, which overwhelms local capacity for response and recovery, necessitating external assistance;

“disease” refers to any physical or mental condition that causes pain, dysfunction, distress, social problems or death to the person afflicted or similar problems for those in contact with the person;

“e-Health” means the combined use of electronic communication and information technology in the health sector including telemedicine”;

“emergency treatment” refers to necessary immediate health care that must be administered to prevent death or worsening of a medical situation;

“expressing milk” means the acts of extracting human milk from the breast by hand or by pump into a container”

“health” refers to a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

“health care professional” includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;

“health care provider” means a person who provides health care services and includes a health care professional;”

“health care services” means the prevention, promotion, management or alleviation of disease, illness, injury, and other physical and mental impairments in individuals, delivered by health care professionals through the health care system’s routine health services, or its emergency health services;

“health extension worker” means a health care professional working in health centres in rural and medically underserved areas, where they provide emergency treatments and a range of other health services to patients;

“health facility” means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;

“ health system” means an organization of people,



institutions and resources, that deliver health care services to meet the health needs of the population, in accordance with established policies”;

“health technology” refers to the application of organized knowledge and skills in the form of devices, medicine, vaccines, procedures and systems developed to solve a health problem and improve the quality of life;

“human blood products” means any product derived or produced from blood, including plasma, sera, circulating progenitor cells, bone marrow progenitor cells and umbilical cord progenitor cells;

“informed consent” refers to a process of getting permission before conducting a health care prevention on a person;

“lactation stations” means private, clean, sanitary and well ventilated rooms or areas in the workplace where nursing mothers can wash up, breast feed or express their milk and hygienically preserve it;

“medical emergency” means an acute situation of injury or illness that poses an immediate risk to life or health of a person or has potential for deterioration in the health of a person or if not managed timely would lead to adverse consequences in the well-being;

“private health services” means provision of health services by a health facility that is not owned by the national or county governments and includes health care services provided by individuals, faith-based organizations and private health institutions;

“ public good” means a good or service whose benefits may be provided to a group at no more cost than that required to provide for one person;

“public health services” means health services owned and offered by the national and county governments;

“referral” means the process by which a given health facility transfers a client service, specimen and client parameters to another facility to assume responsibility for consultation, review or further management;

“reproductive cloning of a human being” means the manipulation of genetic material in order to achieve the

reproduction of a human being and includes nuclear transfer or embryo splitting for such purpose;

“research for health” includes but is not limited to research which seeks to contribute to the extension of knowledge in any health related field, such as that concerned with the biological, clinical, psychological or social processes in human beings improved methods for the provision of health services; or human pathology; or the causes of disease; or the effects of the environment on the human body; or the development or new application of pharmaceuticals, medicines and other preventative, therapeutic or curative agents; or the development of new applications of health technology;

“risk” means probability or threat of damage, injury, liability, loss or any other negative occurrence caused by external or internal vulnerabilities that may be avoided through pre-emptive action;

“specialist” means a health professional who is specially trained in a certain branch of his or her profession related to specific services or procedures;

“telemedicine” refers to the provision of health care services and sharing of medical knowledge over distance using telecommunications and it includes consultative, diagnostic, and treatment services;

“therapeutic manipulation or cloning” means handling of genetic material of zygotic or embryonic cells in order to alter, for therapeutic purposes, the function of cells or tissues;

“tissues” shall include but not limited to the placenta, embryonic or foetal tissue, stem cells and umbilical cord; and

“traditional medicine” includes the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness..

3. The objects of this Act are to—

Objects of the Act.

(a) establish a national health system which

encompasses public and private institutions and providers of health services at the national and county levels and facilitate in a progressive and equitable manner, the highest attainable standard of health services;

- (b) protect, respect, promote and fulfill the health rights of all persons in Kenya to the progressive realization of their right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment;
- (c) protect, respect, promote and fulfill the rights of children to basic nutrition and health care services contemplated in Articles 43(1) (c) and 53(1) (c) of the Constitution;
- (d) protect, respect, promote and fulfill the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health; and
- (e) recognize the role of health regulatory bodies established under any written law and to distinguish their regulatory role from the policy making function of the national government.

4. It is a fundamental duty of the State to observe, respect, protect, promote and fulfill the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by *inter alia* —

- (a) developing policies, laws and other measures necessary to protect, promote, improve and maintain the health and well-being of every person;
- (b) ensuring the prioritization and adequate investment in research for health to promote technology and innovation in health care delivery;
- (c) ensuring the realization of the health related rights and interests of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities;
- (d) ensuring the provision of a health service package

Responsibility for health.

at all levels of the health care system, which shall include services addressing promotion, prevention, curative, palliative and rehabilitation, as well as physical and financial access to health care;

- (e) ensuring adequate investment in research for health to promote technology and innovation in health care delivery.

5. (1) Every person has the right to the highest attainable standard of health which shall include progressive access for provision of promotive, preventive, curative, palliative and rehabilitative services.

Standard of health.

(2) Every person shall have the right to be treated with dignity, respect and have their privacy respected in accordance with the Constitution and this Act.

(3) The national and county governments shall ensure the provision of free and compulsory —

- (a) vaccination for children under five years of age; and

- (b) maternity care.

(4) For the purposes of implementing subsection (3), the national government shall in consultation with the respective county governments provide funds to county governments.

## PART II—RIGHTS AND DUTIES

6. (1) Every person has a right to reproductive health care which includes—

Reproductive health.

- (a) the right of men and women of reproductive age to be informed about, and to have access to reproductive health services including to safe, effective, affordable and acceptable family planning services;

- (b) the right of access to appropriate health-care services that will enable parents to go safely through pregnancy, childbirth, and the post-partum period, and provide parents with the best chance of having a healthy infant;

- (c) access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened. All such cases shall be regarded as comprising notifiable conditions.

(2) For the purposes of subsection (1) (c), the term “a trained health professional” shall refer to a health professional with formal medical training at the proficiency level of a medical officer, a nurse, midwife, or a clinical officer who has been educated and trained to proficiency in the skills needed to manage pregnancy-related complications in women, and who has a valid license from the recognized regulatory authorities to carry out that procedure.

(3) Any procedure carried out under subsection (1) (a) or (1) (c) shall be performed in a legally recognized health facility with an enabling environment consisting of the minimum human resources, infrastructure, commodities and supplies for the facility as defined in the norms and standards developed under this Act.

7. (1) Every person has the right to emergency medical treatment.

Emergency  
treatment.

(2) For the purposes of this section, emergency medical treatment shall include-

- (a) pre-hospital care;
- (b) stabilizing the health status of the individual;  
or
- (c) arranging for referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

(3) Any medical institution that fails to provide emergency medical treatment while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding three million shillings.

8. (1) Every health care provider shall inform a user or, where the user of the information is a minor or incapacitated, inform the guardian of the—

Health  
information.

- (a) user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user;
- (b) range of promotive, preventive and diagnostic procedures and treatment options generally available to the user;
- (c) benefits, risks, costs and consequences generally associated with each option; and
- (d) user's right to refuse recommended medical options and explain the implications, risks, and legal consequences of such refusal.

(2) The health care provider concerned must, where possible, inform the user as contemplated in subsection (1) in a language that the user understands and in a manner which takes into account the user's level of literacy.

(3) Where the user exercises the right to refuse a treatment option, the health care provider may at its discretion require the user to confirm such refusal in a formal manner.

(4) In this section, the word "user" refers to any person who seeks or intends to seek medical care from a health care provider and the expression "health care provider" includes any health facility.

9. (1) No specified health service may be provided to a patient without the patient's informed consent unless-

Consent

- (a) the patient is unable to give informed consent and such consent is given by a person—
  - (i) mandated by the patient in writing to grant consent on his or her behalf; or
  - (ii) authorized to give such consent in terms of any law or court order;
- (b) the patient is unable to give informed consent and no person is mandated or authorized to give such consent, but the consent is given by

the next of kin;

- (c) the provision of a health service without informed consent is authorized by an applicable law or court order;
- (d) the patient is being treated in an emergency situation;
- (e) failure to treat the user, or a group of people which includes the user, will result in a serious risk to public health; or
- (f) any delay in the provision of the health service to the patient might result in his or her death or irreversible damage to his or her health and the patient has not expressly, or by implication or by conduct refused that service.

(2) A health care provider must take all reasonable steps to obtain the user's informed consent.

(3) For the purposes of this section "informed consent" means consent for the provision of a specified health service given by a person with legal capacity to do so and who has been informed as provided for in section 8 of this Act.

**10.** The national government, county governments and every organ having a role or responsibility within the National Health System, shall ensure that appropriate, adequate and comprehensive information is disseminated on the health functions for which they are responsible being cognizant of the provisions of Article 35 (1) (b) of the Constitution, which must include-

Information  
dissemination

- (a) the types, availability and cost if any of health services;
- (b) the organization of health services;
- (c) operating schedules and timetables of visits;
- (d) procedures for access to the health services;
- (e) procedures for laying complaints;
- (f) the rights and duties of users and health care providers under this Act and as provided for in the

applicable service charters; and

- (g) management of environmental risk factors to safeguard public health.

**11.** (1) Information concerning a user, including information relating to his or her health status, treatment or stay in a health facility is confidential except where such information is disclosed under order of court or informed consent for health research and policy planning purposes. Confidentiality.

(2) Subject to the Constitution and this Act, no person may disclose any information contemplated in subsection (1) unless—

- (a) the user consents to such disclosure in writing in the prescribed form;
- (b) a court order or any applicable law requires such disclosure; or
- (c) non-disclosure of the information represents a serious threat to public health.

(3) Any proposed disclosure of information under subsection 2 (c), shall be subject to regulations published by the Cabinet Secretary of health, from time to time

**12.** (1) The Rights and duties of healthcare providers shall include — Healthcare providers.

- (a) not to be unfairly discriminated against on account of any of the grounds set out in Article 27(4) of the Constitution;
- (b) the right to a safe working environment that minimizes the risk of disease transmission and injury or damage to the health care personnel or to their clients, families or property;
- (c) the right to refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her except in an emergency situation where no alternative health care personnel is available;
- (d) the right to apply for and accept a salaried post in the public service or the private sector.

(2) All healthcare providers, whether in the public or



private sector, shall have the duty —

- (a) to provide health care, conscientiously and to the best of their knowledge within their scope of practice and ability, to every person entrusted to their care or seeking their support;
- (b) to provide emergency medical treatment as provided for under section 7(2);
- (c) to inform a user of the health system, in a manner commensurate with his or her understanding, of his or her health status:

Provided that where this would be contrary to the best interests of the user, then in such cases, the requisite information should be communicated to the next of kin or guardian as case may be.

(3) Notwithstanding the provisions of subsection (1) (a), the head of any health facility may impose conditions on the service that may be provided by a health care provider taking into account his or her health status.

**13.** A user of the health system has the duty, in the absence of any observable incapacity —

Duty of users.

- (a) to adhere to the rules of a health facility when receiving treatment or using the health services provided by the establishment;
- (b) to adhere to the medical advice and treatment provided by the establishment;
- (c) to supply the healthcare provider with accurate information pertaining to his or her health status;
- (d) to cooperate with the healthcare provider;
- (e) to treat healthcare providers and health workers with dignity and respect;
- (f) if so requested, to sign a discharge certificate or release of liability if he or she refuses to accept or implement recommended treatment.

**14.** (1) Any person has a right to file a complaint about the manner in which he or she was treated at a health

Complaints.

facility and have the complaint investigated appropriately.

(2) The relevant national and county governments shall establish and publish the procedure for the laying of complaints within public and private health care facilities in those areas of the national health system for which they are responsible.

(3) The procedures for laying complaints shall—

- (a) be displayed by all health facilities in a manner that is visible for any person entering the establishment and the procedure must be communicated to users on a regular basis; and
- (b) be primarily handled by the head of the relevant facility or any person designated by the facility as responsible for handling user complaints.

(4) Every complainant under subsection (1) has a right to be informed, in writing and within a period of three months from the date the complaint was lodged, of the action taken or decision made regarding the complaint.

(5) Where a health facility or a regulatory body fails to resolve a complaint to the satisfaction of the complainant, the Authority shall take necessary action.

**15.** (1) The national government ministry responsible for health shall —

Duties of national government.

- (a) develop health policies, laws and administrative procedures and programmes in consultation with county governments and health sector stakeholders and the public for the progressive realization of the highest attainable standards of health including reproductive health care and the right to emergency treatment;
- (b) develop and maintain an organizational structure of the Ministry at the national level comprising of technical directorates;
- (c) ensure the implementation of rights to health specified in the Bill of Rights and more particularly the progressive realization of the right of all to the highest attainable standard

- of health including reproductive health care and the right to emergency treatment;
- (d) ensure, in consultation and collaboration with other arms of government and other stakeholders, that there is stewardship in setting policy guidelines and standards for human food consumption, dietetic services and healthy lifestyle;
  - (e) offer technical support at all levels with emphasis on health system strengthening;
  - (f) develop policy measures to promote equitable access to health services to the entire population, with special emphasis on eliminating the disparity in realization of the objects of this Act for marginalized areas and disadvantaged populations;
  - (g) develop and promote application of norms and standards for the development of human resources for health including affirmative action measures for health workers working in marginalized areas;
  - (h) provide for medical audit of deaths with a special emphasis on maternal and neonatal deaths as a tool for the further development of obstetric and neonatal care;
  - (i) put in place policy intervention measures to reduce the burden of communicable and non - communicable diseases, emerging and re-emerging diseases and neglected diseases;
  - (j) develop, through regulatory bodies, standards of training and institutions providing education to meet the needs of service delivery;
  - (k) set guidelines for the designation of referral health facilities;
  - (l) through respective regulatory bodies to develop and ensure compliance on professional standards on registration and licensing of individuals in the health sector;

- (m) coordinate development of standards for quality health service delivery;
- (n) provide for accreditation of health services;
- (o) coordinate through the established inter-governmental relations mechanisms all health aspects of disaster and emergencies;
- (p) ensure through intergovernmental mechanisms that financial resources are mobilized to ensure uninterrupted access to quality health services country wide;
- (q) promote the development of public and private health institutions to ensure their efficient and harmonious development and in the common interest work towards progressive achievement of the right to health;
- (r) provide for the development and expansion of a countrywide national health information management system;
- (s) facilitate all forms of research that can advance the interests of public health;
- (t) develop and manage the national and specialized health referral facilities;
- (u) promote the use of appropriate health technologies for improving the quality of health care;
- (v) provide policy guidelines and regulations for hospital waste management and conduct of environmental health impact assessment;
- (w) collaborate in the common interest with the health authorities of other countries and with regional and international bodies in the field of health;
- (x) establish an emergency medical treatment fund for emergencies to provide for unforeseen situations calling for supplementary finance;
- (y) provide policy guidelines in public-private

partnerships for health to enhance private sector investment; and

(z) provide policy and training, maintenance of standards and co-ordination mechanisms for the provision of emergency healthcare.

(2) The Cabinet Secretary responsible for health in consultation through the established inter-governmental relations mechanisms shall make regulations on any matter where it is necessary or expedient in order—

(a) to implement any provision of this Act; and

(b) to implement within Kenya measures agreed upon within the framework of any treaty, international convention or regional intergovernmental agreement to which Kenya is a party.

16. (1) There shall hereby be established the office of the Director-General for health.

Office of the  
Director -General.

(2) The Director General for health shall be recruited by the Public Service Commission through a competitive process, vetted by Parliament and appointed by the Cabinet Secretary.

(3) A person appointed under subsection (2) must—

(a) be a medical practitioner registered by the Medical Practitioners and Dentists Board;

(b) at least be a holder of a Masters degree in public health, medicine or any other health related field;

(c) have experience of at least ten years in management of health services, five of which must be at a senior management position; and

(d) meet the provisions of Chapter Six of the Constitution of Kenya.

(4) The Director-General shall hold office for a term of five years renewable once.

17. The Director-General shall—

Functions of the  
Director-General.

(a) be the technical advisor to the Government on all matters relating to health within the health

- sector;
- (b) be the technical advisor to the Cabinet Secretary of health;
  - (c) be responsible for preventing and guarding against the introduction of infectious diseases into Kenya;
  - (d) promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within Kenya;
  - (e) advise the two levels of Government on matters of national security on public health;
  - (f) promote and facilitate research and investigations in connection with the prevention or treatment of human diseases;
  - (g) prepare and publish reports and statistical or other information relative to the public health;
  - (h) obtain and publish periodically information on infectious diseases and other health matters and such procurable information regarding epidemic diseases in territories adjacent to Kenya or in other Countries as the interests of public health may require;
  - (i) provide guidelines for registration, licensing, certification and gazettement of all health facilities;
  - (j) be responsible for internship program for health workers;
  - (k) supervise the directorates within the national Ministry of health; and (l) perform any other duties as may be assigned by the appointing authority and any other written law.

**18.** For purposes of section 15(1)(b), the Cabinet Secretary shall— Directorates.

- (a) form directorates to deal with the following matters —
  - (i) medical services;
  - (ii) nursing;

- (iii) pharmaceutical services;
  - (iv) public health; and
  - (v) administrative services;
- (b) notwithstanding paragraph (a), form other directorates based on policy priority areas in consultation with the Director-General.

19. (1) There shall be established with respect to every county, a county executive department responsible for health, which shall be in line with the health policy guidelines for setting up county health system and shall in all matters be answerable to the Governor and the County Assembly subject to the provisions of the Constitution and of any applicable written law.

County health system.

(2) There shall be established the office of the County Director of health who shall be a technical advisor on all matters of health in the County.

(3) The County Director of health shall be recruited through a competitive process in conformity with the rules and regulations set from time to time by the County Public Service Board.

(4) A person appointed a County Director of health shall—

- (a) be a medical practitioner registered by the Medical Practitioners and Dentists Board;
- (b) be at least a holder of a Masters degree in public health, medicine or any other health related discipline; and
- (c) have at least five (5) years' experience in management of health services.

(5) The County Director of health shall-

- (a) be the technical advisor on all matters relating to health within the County;
- (b) be the technical advisor to the County Health Executive Committee member and the Governor;

- (c) supervise all health services within the County;
- (d) promote the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within the County;
- (e) prepare and publish reports and statistical or other information relative to the public health within the County;
- (f) report periodically to the Director-General for health on all public health occurrences including disease outbreaks, disasters and any other health matters; and
- (g) perform any other duties as may be assigned by the appointing authority and any other written law.

20. The county government in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution shall be responsible for —

Duties of county government.

- (a) implementing the national health policy and standards as laid down by national government Ministry responsible for health;
- (b) service delivery, including the maintenance, financing and further development of those health services and institutions that have been devolved to it;
- (c) coordination of health activities in order to ensure complementary inputs, avoid duplication and provide for cross-referral, where necessary to and from institutions in other counties;
- (d) facilitating registration, licensing and accreditation of providers and health facilities respectively according to standards set nationally by the national government department responsible for health and relevant regulatory bodies;
- (e) designation of county referral hospitals according to criteria agreed upon by the



- intergovernmental health coordinating mechanism;
- (f) developing and implementing, in consultation with the Salaries and Remuneration Commission, such policies as may be necessary to guarantee the staffing of the public health service in marginal areas including taking into account the use of equalization fund;
  - (g) procuring and managing health supplies;
  - (h) maintaining standards of environmental health and sanitation as laid down in applicable law;
  - (i) providing access and practical support for monitoring standards compliance undertaken within the county by the national government department responsible for health, the Authority and professional regulatory bodies established under any written law;
  - (j) providing access and practical support for technical assistance, monitoring and evaluation, research for health by the national and county government department responsible for health;
  - (k) developing supplementary sources of income for the provision of services, in so far as these are compatible with the applicable law;
  - (l) making due provision and develop criteria to compensate health care facilities for debts arising through failure to secure payment for bills for non-payment of treatment of indigent users;
  - (m) reporting, according to standards established by law, on activities, development and the state of finance within the county health services;
  - (n) making known to the public at all times the health facilities through which generalized or specialized services are available to them;

- (o) developing and promoting public participation in the planning and management of local health facilities so as to promote broad ownership;
- (p) ensuring and coordinating the participation of communities in the governance of health services at the county level so as to promote a participatory approach in health care governance.

21. The National Health System shall work in a manner that respects the distinct levels of government, while respecting the principles of cooperation and coordination as outlined in this Act and in legislation regulating the relationships and functions of the county and national government.

Coordination.

**PART III—PUBLIC HEALTH FACILITIES**

22. The national and county governments shall ensure the progressively equitable distribution throughout the country of such publicly owned health institutions, including hospitals, health centers, pharmacies, clinics and laboratories, as are deemed necessary for the promotive, preventive and rehabilitative health services.

Public health facilities.

23. Notwithstanding the provisions of section 66 and subject to any other law regulating public-private partnerships, nothing under this Act shall prevent the national and county governments from entering into public-private partnerships for the purpose of establishing and deepening health service provision.

Public private partnership.

24. Without prejudice to the distribution of health functions and services between the national and county levels of government as set out in Fourth Schedule of the Constitution, the national Government shall manage and be responsible for—

Retention of service provision.

- (a) any public health institution classified as a national referral facility under this Act;
- (b) any institution or service dependent for its function on expertise that is a shared resource as classified from time to time in regulations under this Act
- (c) laboratories and other institutions designated as serving a national rather than a regional purpose;
- (d) regulation of health products and health technologies including assessment, licensing and control of commercial and industrial activities;
- (e) facilitation through inter-governmental institutions, procurement and supply chain management of public health goods including vaccines, pharmaceutical and non-pharmaceuticals for the purpose of ensuring control of highly infectious and communicable health conditions, putting measures for quality assurance and standards as well as measures for guarding against resistance strains in the interest of public health; and
- (f) any health care function or service that is not otherwise assigned to the county government.

25. (1) The technical classification of levels of health care shall be as set out in the First Schedule.

Classification of levels of health care.

(2) Subsection (1) shall not apply to a health facility under the management of a county government at the commencement of this Act.

#### **PART IV – KENYA HEALTH SECTOR INTER-GOVERNMENTAL CONSULTATIVE FORUM**

26. (1) There is established a Health Sector Inter-Governmental Consultative Forum, in line with the provisions of the Inter-Governmental Relations Act, and any applicable law.

Establishment of forum.

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(2). The Forum shall comprise of—

- (a) the Director-General for health or a

designated representative; and

(b) each County Director of health or a designated representative.

27. (1) The Forum shall—

Purpose of the Forum.

(a) develop criteria and framework for determining matters requiring inter-governmental consultation; and

(b) develop inter-governmental agreements for joint implementation of any activities for health service delivery.

(c) be a platform for mutual consultation, coordination and collaboration between the national and county governments on all matters related to health.

28. The Forum shall meet at least twice a year.

Meetings of the Forum.

29. The Forum shall regulate the conduct and regulation of the business and affairs of the Forum.

Conduct of Business.

**PART V—ESTABLISHMENT OF THE KENYA HEALTH HUMAN RESOURCE ADVISORY COUNCIL**

30. (1) There is established a Kenya Health Human Resource Advisory Council which shall consist of—

Establishment of the Council.

(a) a Chairperson, who shall be appointed by the President;

(b) the Principal Secretary for the time being responsible for matter relating to health or a representative designated by the Principal Secretary;

(c) one person, not being a governor, nominated by the Council of Governors;

(d) the Attorney General or a representative designated by the Attorney General;

(e) the Director-General for health or a representative designated by the Director-General;

- (f) one representative nominated by the Public Service Commission;
- (g) one person nominated by the county directors of health;
- (h) one person nominated by the county public service boards;
- (i) three persons nominated by the public universities, private universities and mid-level institutions; and
- (j) the Chief Executive Officer who shall be an *ex officio* member and secretary to the Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may be lawfully done by a body corporate.

**31.** The Council shall review policy and establish uniform norms and standards for—

Functions of the Council.

- (a) posting of interns to National Government and County Government facilities;
- (b) inter county transfer of healthcare professionals;
- (c) transfer of healthcare professionals from one level of Government to another;
- (d) the welfare and the scheme of service for health professionals;
- (e) management and rotation of specialists; and
- (f) the maintenance of a master register for all health practitioners in the counties.

**32.** The Council shall have all powers necessary for the proper performance of its functions under this Act and

Powers of the Council.

in particular, but without prejudice to the generality of the foregoing, the Council shall have power to—

- (a) control, supervise and administer the assets of the Council in such manner and for such purpose as best promotes the purposes for which the Council is established;
- (b) determine the provision to be made for capital and recurrent expenditure and for the reserves of the Council;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which the Council is established;
- (e) open a banking account or banking accounts for the funds of the Council; and
- (f) invest any funds of the Council not immediately required for its purposes as may be permitted by law for the time being in force.

33. (1) The Public Service Commission shall, through an open and transparent process, recruit a Chief Executive Officer who shall be appointed by the Council.

Chief Executive Officer.

(2) A person is qualified for appointment as the Chief Executive Officer to the Council if the person—

- (a) holds at least a degree in medicine from a university recognized in Kenya, and is registered by the Kenya Medical Practitioners and Dentist Board;
- (b) has at least ten years' experience in the practice of medicine, five of which shall be experience at a senior management level; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall serve the Council for a term of five years and shall be eligible,

subject to satisfactory performance of his or her functions, for reappointment for one further term.

(4) A person shall not be appointed as the Chief Executive Officer or an officer of the Council if such person has any direct or indirect interest in the health sector.

(5) The Chief Executive Officer may be removed from office for gross misconduct, violation of the Constitution or any other law or any other ground as may be provided for in the contract of employment.

(6) The Chief Executive Officer shall be responsible for the day to day operations of the Council.

**34.** (1) The conduct and regulation of the Business and affairs of the Council shall be as provided in the Second Schedule.

Conduct of business and affairs of the Council.

(2) Except as provided in the Second Schedule, the Council may regulate its own procedure.

**35.** The Council may, by resolution generally or in any particular case, delegate to any committee of the Council or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Delegation by the Council.

**36.** (1) The chairperson and the members of the Council, other than the *ex-officio* members, shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

Tenure of office.

(2) The members of the Council shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.

**37. (1)** The Council may competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Council.

Staff of the Council.

(2) In the appointment of the staff of the Council, the Council shall comply with the values and principles set out in the Constitution and in particular—

- (a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups

and persons with disabilities;

- (b) exercise transparency in the recruitment process; and
- (c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

**38.** The staff of the Council shall serve on such terms of service as the Council, on recommendation of the Salaries and Remuneration Commission may determine.

Terms and conditions of service.

**39.** (1) A member of the Council or any person working under the instructions of the Council shall not be personally liable for any act or default of the Council done or omitted to be done in good faith in the course of carrying on the functions of, or exercising of powers conferred upon the Council under this Act.

Protection from liability.

(2) Despite subsection (1), the Council shall not be relieved of its liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interest caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

**40.** The funds of the Council shall comprise—

Funds of the Council.

- (a) such funds as may be appropriated by the Parliament.
- (b) such monies or assets as may accrue to or vest in the Council in the performance of its functions or exercise of its powers under this Act or any other written law; and
- (c) all monies from any other source provided for, donated or lent to the Council.

**41.** The Financial year of the Council shall be the period of twelve months ending on the thirtieth day of June in every year.

Financial year.

**42.** (1) The Council shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Council for that financial year.

Annual estimates.



(2) The annual estimates shall make provisions for all the estimated expenditure of the Council for the financial year concerned and in particular shall provide for the —

- (a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Council;
- (b) payment of pensions, gratuities and other charges in respect of members and other staff of the Council;
- (c) proper maintenance of buildings and grounds of the Council;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Council; and
- (e) funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

(3) The annual estimates shall be approved by the Council before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Council shall not increase annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Council except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.

**43.** (1) The Council shall cause to be kept all proper books of records of accounts of the income, expenditure, assets and liabilities of the Council.

Accounts and  
audit

(2) The accounts of the Council shall be audited and reported upon in accordance with the provisions of the Public Audit Act

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(3) The Council shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Council together with —

- (a) a statement of income and expenditure during the year;
- (b) a statement of the assets and liabilities of the Council as of the last day of that year;
- (c) a cash flow statement for the financial year; and
- (d) any other statements and accounts that may be necessary to fully disclose the financial position of the Council.

44. The Council may, subject to the approval of the Cabinet Secretary for the time being responsible for matter relating to finance invest any of the funds of the Council in securities in which, for the time being, trustees may by law invest funds or any other securities which the Treasury may, from time to time approve for that purpose.

Investment of funds.

#### **PART VI—ESTABLISHMENT OF THE KENYA HEALTH PROFESSIONS OVERSIGHT AUTHORITY**

45. (1) There is established an Authority known as the Kenya Health Professions Oversight Authority.

Establishment of the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall in its corporate manne be capable of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may be lawfully done by a body corporate.

46. (1) The Authority shall be administered by a Board which shall consist of—

Board of the Authority.

- (a) a chairperson appointed by the Cabinet Secretary who shall be a health professional who meets the requirements of Chapter six of the Constitution of Kenya;
- (b) the Principal Secretary in the Ministry for the

- time being responsible for health or a designated representative;
- (c) the Director-General for health or a designated representative;
  - (d) the Attorney General or a designated representative;
  - (e) two representatives nominated by the health regulatory bodies established under an Act of Parliament;
  - (f) two representatives nominated by the Council of Governors;
  - (g) two representatives nominated by the health professional associations registered by the Registrar of Societies who are not regulated or registered by any regulatory body;
  - (h) one representative from the private sector appointed by the Cabinet Secretary;
  - (i) one representative from consumer rights bodies appointed by the Cabinet Secretary; and
  - (j) the Chief Executive Officer, appointed by the Authority, through a competitive process and who shall be an ex officio member and the secretary to the Authority.

(2)The Authority shall be supported by a Secretariat which shall be headed by the Chief Executive Officer.

(3)The powers of the Authority shall be vested in the advisory Board.

(4)The business and affairs of the Authority shall be conducted in accordance with the Second Schedule.

**47.** The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, shall have power to—

Powers of the Board.

- (a) control, supervise and administer the assets of the Authority in such manner and for such

- purpose as best promotes the purposes for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserve of the Authority;
- (c) receive any grants, gifts, donations, or endowments and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organizations within and outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established.
- (e) open a banking account or banking accounts for the funds of the Authority; and
- (f) invest any funds of the Authority not immediately required for its purposes as provided under section 59.

48. The functions of the Authority shall be to—

Functions of the Authority.

- (a) maintain a duplicate register of all health professionals working within the national and county health system;
- (b) promote and regulate inter-professional liaison between statutory regulatory bodies;
- (c) coordinate joint inspections with all regulatory bodies;
- (d) receive and facilitate the resolution of complaints from patients, aggrieved parties and regulatory bodies;
- (e) monitor the execution of respective mandates and functions of regulatory bodies recognised under an Act of Parliament;
- (f) arbitrate disputes between statutory regulatory bodies, including conflict or dispute resolution amongst Boards and Councils; and
- (g) ensure the necessary standards for health professionals are not compromised by the

regulatory bodies.

(2) The Cabinet Secretary shall, in consultation with the Authority make regulations generally for the better carrying out of the provisions of this section and without limiting the generality of the foregoing, the Cabinet Secretary shall make regulations to prescribe—

- (a) the manner and form of coordinating joint inspections with all regulatory bodies;
- (b) the procedure for receipt and facilitation of the resolution of complaints from patients aggrieved parties and regulatory bodies;
- (c) the manner of monitoring the execution of respective mandates and functions of regulatory bodies recognized under an Act of Parliament;
- (d) the mechanisms for arbitration of disputes between statutory regulatory bodies, including conflict or dispute resolution amongst Boards and Authorities; and
- (e) mechanisms to ensure that the necessary standards for health professionals are not compromised by the regulatory bodies.

49. (1) The Public Service Commission shall, through an open and transparent process, recruit a Chief Executive Officer who shall be appointed by the Authority.

Chief Executive  
Officer.

(2) A person is qualified for appointment as the Chief Executive Officer to the Authority if the person—

- (a) is a health practitioner registered by the respective regulatory body;
- (b) has at least ten years' experience in the practice of medicine, five of which shall be experience at a senior management level; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall serve the Authority for a term of five years and shall be eligible, subject to satisfactory performance of his or her functions,

for re-appointment for one further term.

(4) A person shall not be appointed as the Chief Executive Officer or an officer of the Authority if such person has any direct or indirect interest in the health sector.

(5) The Chief Executive Officer may be removed from office for gross misconduct, violation of the Constitution or any other law or any other ground as may be provided for in the contract of employment.

(6) The Chief Executive Officer shall be responsible to the Board for the day to day operations of the Authority.

**50.** (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Third Schedule.

Conduct of business and affairs of the Authority.

(2) Except as provided in the Third Schedule, the Authority may regulate its own procedure.

**51.** The Authority may, by resolution generally or in any particular case, delegate to any committee of the Authority or to a member, officer, employee or any agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.

Delegation by the Authority.

**52.** (1) The Board may competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Board.

Staff of the Authority.

(2) In appointment of the staff of the Board, the Board shall comply with the values and principles set out in the Constitution and in particular—

- (a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;
- (b) exercise transparency in the recruitment process; and
- (c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

**53.** The staff of the Board shall serve the Board on

Terms and conditions of

such terms of service as the Board, on recommendation of the Salaries and Remuneration Commission may determine.

service.

54. (1) A member of the Board, or an officer, employee or agent of the Authority or any person acting under their direction is not liable for any matter or things if that matter or thing is done in good faith for executing the functions, powers or duties of the Authority.

Protection from liability.

(2) Despite subsection (1), the Board shall not be relieved of its liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interest caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

55. The funds of the Authority shall comprise—

Funds of the Authority.

- (a) such funds as may be appropriated by Parliament.
- (b) such monies or assets as may accrue to or vest in the Authority in the performance of its functions or the exercise of its powers under this Act or any other written law; and
- (c) All monies from any other source provided for, donated or lent to the Authority.

56. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in every year.

Financial year.

57. (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.

Annual estimates.

(2) The annual estimates shall make provision for the estimated expenditure of the Authority for the financial year concerned and in particular shall provide for—

- (a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Authority;
- (b) payment of pensions, gratuities and other

charges in respect of members and other staff of the Authority;

- (c) proper maintenance of buildings and grounds of the Authority;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (e) funds to meet future or contingent liabilities in respect of retirement benefits insurance or replacement of buildings or equipment, or in respect of such other matter as the Authority may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Authority shall not increase annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.

**58.** The Board may, subject to the approval of the Cabinet Secretary for the time being responsible for matter relating to finance invest any of the funds of the Authority in securities in which, for the time being, trustees may by law invest funds or in any other securities which Treasury may, from time to time approve for that purpose.

Investment of funds.

**59.** (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

Accounts and Audit

(2) The Accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

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(3) The Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the



- Authority together with —
- (a) a statement of income and expenditure during the year;
  - (b) a statement of the assets and liabilities of the Authority as of the last day of that year;
  - (c) a cash flow statement for the financial year; and
  - (d) any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.
- 60.** (1) The obligation to inspect, monitor and evaluate and professionals engaged in the health sector, both public and private shall be undertaken by the respective regulatory bodies provided that they are not in conflict with the functions of the Authority as stipulated in this Act or under any other written law.
- (2) For the avoidance of doubt the regulatory bodies referred to in subsection (1) shall include—
- (a) the Clinical Officers Authority established under the Clinical Officers Act;
  - (b) the Nursing Council of Kenya established under the Nurses Act;
  - (c) the Kenya Medical Laboratory Technicians and Technologists Board established under the Medical Laboratory Technicians and Technologists Act;
  - (d) the Medical Practitioners and Dentists Board established under the Medical Practitioners and Dentists Act;
  - (e) the Radiation Protection Board established under the Radiation Protection Act;
  - (f) the Pharmacy and Poisons Board established under the Pharmacy and Poisons Act;
  - (g) the Council of Institute of Nutritionists and Dieticians established under the

Relationship with other regulatory bodies

Nutritionists and Dieticians Act;

- (h) the Public Health Officers and Technicians Council established under the Public Health Officers ( Training, Registration and Licensing) Act; and
- (i) any other body as may be prescribed by the Cabinet Secretary under this Act.

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61. Any health professionals seeking to form a professional regulatory body must adhere to the criteria prescribed by the Cabinet Secretary in consultation with the Authority.

Formation of professional bodies.

#### **PART VII—REGULATION OF HEALTH PRODUCTS AND HEALTH TECHNOLOGIES**

62. There shall be established by an Act of Parliament, a single regulatory body for regulation of health products and health technologies.

Establishment of a single regulatory body for health products and technologies.

63. (1) The regulatory body shall —

Functions of the regulatory body.

- (a) licence health products and health technologies;
- (b) licence manufacturers and distributors of health products;
- (c) conduct laboratory testing and inspection of manufacturing, storage and distribution facilities of health products and technologies;
- (d) control of clinical trials;
- (e) conduct advertising and promotion, post marketing surveillance for quality, safety and disposal of health products and health technologies ;
- (f) regulate contractors for medical devices and physical security for products including radioactive material and biological products.

(2) The classes of products governed by legislation shall extend to therapeutic feeds and nutritional formulations.

64. Legislation under section 62 shall provide for the granting of marketing approval only by a technically competent body after appropriate assessment has

Conditions.

established that such a product meets generally recognized standards and approval may be made subject to conditions, notably with respect to the conduct and content of promotion and advertising.

65. (1) No person, firm or institution may engage in one or more of the activities specified in section 63(1) whether by way of trade or otherwise, unless one has a valid licence granted by the single regulatory body established under this Part.

Licences.

(2) Any person, firm or institution in the possession of such a licence shall display the same at a conspicuous place and shall produce the same for inspection when required to do so by any officer from the single regulatory body established under this Act.

66. Any medicine, vaccine or other health product and technology intended for sale to members of the public shall be eligible for licensing only if-

Standards.

- (a) after due assessment, it is found to achieve the therapeutic or the intended effect it claims to possess or which may reasonably be attributed to it;
- (b) it is sufficiently safe under the normal conditions of use;
- (c) it is made and packaged according to satisfactory standards.

67. (1) The procurement for the public health services of health products and technologies shall be undertaken in line with the Public Procurement and Disposal Act as well as the inter-governmental arrangements for medicine and medical products agreed upon.

Procurement of health products and technologies.

(2) The classes of products procured by Kenya Medical Supplies Authority shall extend to therapeutic feeds and nutritional formulations.

(3) The Kenya Medical Supplies Authority may be the point of first call for procurement of health products at the county referral level and it shall endeavor to establish branches within each county at such locations as it may determine.

(4) The national government shall provide guidelines for the procurement, distribution and management of health products and technologies including essential medicines,

laboratory chemicals and reagents and non-pharmaceuticals at all levels of the national health system.

**PART VIII—PROMOTION AND  
ADVANCEMENT OF PUBLIC AND  
ENVIRONMENTAL HEALTH**

68. (1) The National health system shall devise and implement measures to promote health and to counter influences having an adverse effect on the health of the people including—

Public and  
environmental  
health.

- (a) interventions to reduce the burden imposed by communicable and non-communicable diseases and neglected diseases, especially among marginalized and indigent population;
- (b) interventions to promote healthy lifestyle including physical activity, counter the excessive use of alcoholic products and the adulteration of such products, reduce the use of tobacco and other addictive substances and to counter exposure of children and others to tobacco smoke;
- (c) the promotion of supply of safe foodstuffs of sufficient quality in adequate quantities and the promotion of nutritional knowledge at all population levels;
- (d) general health education of the public; and
- (e) a comprehensive programme to advance reproductive health including—
  - (i) effective family planning services;
  - (ii) implementation of means to reduce unsafe sexual practices;
  - (iii) adolescence and youth sexual and reproductive health;
  - (iv) maternal and neo-natal and child health;
  - (v) elimination of female genital mutilation; and
  - (vi) maternal nutrition and micro nutrient supplementation.

(2) The national health system shall ensure that measures for managing environmental risk factors to curtail occurrence and distribution of diseases are put in

place and implemented. In particular such measures shall target—

- (a) the reduction of disease burden arising from poor environmental hygiene, sanitation, occupational exposure and environmental pollution;
- (b) the reduction of morbidity and mortality of waterborne, foodborne and vector transmitted diseases, and mitigate the health effects of climate change;
- (c) the reduction of morbidity, mortality, prolonged hospital stays, long-term disabilities, antibiotic resistance that emanate from health care acquired infections;
- (d) the strengthening of national and county capacity to address or forestall transmission of diseases of international concern; and
- (e) building community capacity in providing solutions to public health challenges.

**69.** (1) Pursuant to meeting the objects set out in section 68, the national government department of health shall formulate national strategic and operation policies that shall provide for measures that include—

Policies.

- (a) ensuring and promoting the provision of quarantine especially in ports, borders and frontiers health services;
- (b) ensuring that food and water available for human consumption are hygienic and safe;
- (c) ensuring houses, institutions, hospitals and other public places maintain environment to the highest level of sanitation attainable to prevent, reduce or eliminate environmental health risks;
- (d) developing risk-based, sustainable, integrated food safety systems, occupational health practices, water safety systems, appropriate housing, and vector and vermin control;
- (e) strengthening infection prevention and control systems including health care waste management in all health facilities; mobilizing

resources including human resources for action;

- (g) public education and participation;
- (h) promoting the public health and the prevention, limitation or suppression of preventable diseases including communicable and non-communicable, diseases neglected within Kenya;
- (i) ensuring provision of environmental health and sanitation mechanisms to prevent and guard against the introduction of infectious disease into Kenya from outside;
- (j) dissemination of public health guidelines to counties in regard to matters affecting the public health from the environment and sanitation;
- (k) promoting disease surveillance in connection with the prevention of environmental, food, water and sanitation related diseases; and
- (l) addressing all issues pertaining to environmental hygiene and sanitation.
- (m) developing guidelines for the conduct of health impact assessment.

70. The Public Health Act is amended by deleting the expression “Director of Medical Services” and substituting therefor the expression “Director-General for health”, wherever it appears.

Amendment of  
Cap. 242.

71. (1) All employers shall in the workplace establish lactation stations which shall be adequately provided with necessary equipment and facilities including hand washing equipment, refrigerates or appropriate cooling facilities, electrical outlets for breast pumps, a small table, comfortable seats the standard of which shall be defined by the Ministry responsible for matters relating to health.

Lactation stations  
in the workplace.

(2) The lactation station shall not be located in the rest rooms.

(3) All employers shall take strict measures to prevent any direct or indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the

lactation stations.

72. (1) An employer shall grant all nursing employees break intervals in addition to the regular times off for meals to breastfeed or express milk.

Provision of break intervals for nursing employees.

(2) The time intervals referred to in sub section (1) shall include the time it takes an employee to get to and from the lactation station and shall be counted as compensable hours worked provided that such intervals shall not be more than a total of one hour for every eight hour working period.

### PART IX—MENTAL HEALTH

73. There shall be established by an Act of Parliament, legislation to—

Mental health.

- (a) protect the rights of any individual suffering from any mental disorder or condition;
- (b) ensure the custody of such persons and the management of their estates as necessary;
- (c) establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country at the national and county levels;
- (d) advance the implementation of other measures introduced by specific legislation in the field of mental health; and
- (e) ensure research is conducted to identify the factors associated with mental health.

### PART X—TRADITIONAL AND ALTERNATIVE MEDICINE

74. (1) The national government department of health shall formulate policies to guide the practice of traditional and alternative medicine.

Promotion of practice.

(2) The county executive department for health shall ensure implementation of any policies thereto.

75. (1) There shall be established regulatory body by an Act of Parliament, to regulate the practice of traditional medicine and alternative medicine.

Regulation of practice on traditional medicine.

(2) The regulatory body shall, maintain a register at

both the national and county levels.

(3) The regulatory body in consultation with the National government department for health shall set the minimum standards of practice for traditional medicine and alternative medicine.

(4) The regulatory body shall be responsible for registration, licensing and standards compliance of practice in traditional and alternative medicine.

76. The regulatory body shall institute measures for documentation and mapping of traditional and alternative medicine practice and the county executive departments for health shall facilitate the mapping of traditional and alternative medicine.

Documentation and mapping.

77. The national government department for health shall, in consultation with key stakeholders develop policies for standardization of traditional and alternative medicine practice.

Standardization.

78. The charges levied on the practice of traditional medicine shall be approved by the Authority in consultation with statutory bodies.

Charges.

79. The national government department of health shall develop policy guidelines for referral mechanisms and a system of referrals from practitioners of traditional and alternative medicine to conventional health facilities and may prescribe regulations for incidental and connected purposes which shall be implemented by county departments.

Referral.

**PART XI—HUMAN ORGANS, HUMAN BLOOD, BLOOD PRODUCTS, OTHER TISSUES AND GAMETES**

80. (1) No person shall remove tissue or gametes from a human being for transplantation in another human being or carry out the transplantation of such tissue or gametes except—

Human organs transplantation.

(a) in a duly authorized health facility for that purpose; and

(b) on the written authority of—

(i) the medical practitioner in charge of clinical services in that health facility or



any other medical practitioner authorized by him or her; or

- (ii) in the case where there is no medical practitioner in charge of the clinical services at that health facility, a medical practitioner authorized by the person in charge of the hospital; or
- (iii) the person from whom the tissue or gametes are removed, in the prescribed manner.

(2) The medical practitioner mentioned in subsection (1) (b) shall not be the lead participant in a transplant for which he or she has granted authorization under that subsection.

(3) The Cabinet Secretary shall prescribe through regulations—

- (a) the criteria for the approval of organ transplant facilities; and
- (b) the procedural measures to be applied for such approval.

(4) (a) Any person who contravenes the provision of this section or fails to comply therewith or who charges a fee for a human organ commits an offence.

- (b) Any person convicted of an offence under paragraph (a) is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding ten years or to both a fine and imprisonment.

**81.** (1) (a) A person who is competent to make a will may—

Making of wills.

- (i) in the will; or
  - (ii) in a document signed by him or her in the presence of at least two competent witnesses who are present when he or she signs and signed by them in his or her presence; or
  - (iii) in an oral statement made in the presence of at least two competent witnesses,
- donate his or her body or any specified tissue thereof

to be used after his or her death, or give consent to the post mortem examination of his or her body, for any purpose provided for in this Act.

(b) A person who makes a donation as contemplated in paragraph (a) must nominate an institution or a person contemplated under this Act.

(c) If no donee is nominated in terms of paragraph (b), the donation shall be null and void.

(d) Paragraph (b) does not apply in respect of an organ donated for the purposes contemplated in section 80(1) and the donee of such organ must be determined as provided in section 80(2).

(2) In the absence of a donation under subsection (1) (a) or of a contrary direction given by a person whilst alive and upon death the person's body remains unclaimed under any other law, the spouse or spouses, elder child, parent, guardian, eldest brother or sister of that person, in the specific order mentioned, may, after that person's death, donate the body or any specific tissue of that person to an institution or a person contemplated in this subsection.

(3) (a) The Cabinet Secretary may, after the death of a person and if none of the persons contemplated in subsection (2) can be located, donate the body or part or any specific tissue of that person to an institution or a person contemplated in section 81(2).

(b) The Cabinet Secretary shall only allow the donated tissue to be used if all the prescribed steps have been taken to locate the persons contemplated in subsection (2).

82. (1) A donation under section 83 may only be made for—

Donation purposes.

- (a) the purposes of the training of students in health sciences;
- (b) the purposes of health research;
- (c) the purposes of the advancement of health sciences;
- (d) therapeutic purposes, including the use of tissue in any living person; or
- (e) the production of a therapeutic, diagnostic or

prophylactic substance.

- (2) This Part does not apply to the—
- (a) preparation of the body of a deceased person for the purposes of embalming;
  - (b) making of incisions in the body for the infusion thereof by a preservative; or
  - (c) restoration of any disfigurement or mutilation of the body before its burial.

**83.** A donor may, prior to the transplantation of the relevant organ into the donee, revoke a donation in the same way in which it was made or, in the case of a donation by way of a will or other document, also by the intentional destruction of that will or document.

Revocation.

**84.** (1) Subject to subsection (2), a post mortem examination of the body of a deceased person may be conducted if -

Postmortem.

- (a) the person when alive gave consent thereto;
- (b) the spouse(s), child, guardian, brother or sister of the deceased, in the specific order mentioned, gave consent thereto; or such an examination is necessary for determining the cause of death.

(2) A post mortem examination may not take place unless—

- (a) the medical practitioner in charge of clinical services in the hospital or authorized institution or of the mortuary in question, or any other medical practitioner authorized by such practitioner; or
- (b) in the case where there is no medical practitioner in charge of clinical services, a medical practitioner authorized by the person in charge of such hospital or authorised institution, authorizes the post mortem examination in writing and in the prescribed manner.

**85.** (1) There shall be established by an Act of Parliament, a body to be known as the Kenya National Blood Transfusion Service.

Kenya National  
Blood Transfusion  
Service.

(2) The legislation contemplated under subsection (1) shall provide for among other things, the institutional organization of blood transfusion service within the Republic of Kenya.

(3) The Service shall be charged with the mandate of developing a comprehensive and coordinated national blood service based on voluntary non remunerated blood donations so as to guarantee availability of adequate and safe blood.

(4) The Service shall establish settings and mechanisms that will enable it superintend, regulate and provide blood transfusion services in the Republic of Kenya as required by this Act or any other written law.

(5) Any person who contravenes the provisions of this section or who fails to comply therewith is guilty of an offence and is liable on conviction to a fine not exceeding one million Shillings or to imprisonment for a term not exceeding five years or to both fine and imprisonment.

#### **PART XII—HEALTH FINANCING**

86. (1) The department of health shall ensure progressive financial access to universal health coverage by taking measures that include—

Health finance.

- (a) developing mechanisms for an integrated national health insurance system including making provisions for social health protection and health technology assessment;
- (b) establishing in collaboration with the department responsible for finance oversight mechanism to regulate all health insurance providers;
- (c) developing policies and strategies that ensure realization of universal health coverage;
- (d) determining, during each financial period and in consultation with individual county authorities, cost sharing mechanisms for services provided by the public health system without significantly impeding the access of a particular population groups to the system in the areas concerned;
- (e) defining in collaboration with the department

responsible for finance, public financing of health care framework, including annual allocations towards reimbursing all health care providers responding to disasters and emergencies as contemplated under this Act.

- (f) ensuring, that all pharmaceutical and non-pharmaceutical products correspond to Kenya Medical Supplies Authority market prices; and
- (g) defining in collaboration with the department responsible for finance, a standard health package financed through prepayment mechanisms including last expense.

(2) The Ministry of health shall, in consultation through the established inter-governmental relations mechanisms—

- (a) provide a framework for collaboration with the ministries responsible for finance, planning and any other relevant department to secure health care for vulnerable groups and indigents;
- (b) provide a framework for examining means of optimizing usage of private health services as a result of relieving the burden carried by the publicly financed system; and
- (c) provide a framework for establishing a harmonized common mechanism for coordinating planning and financing and monitoring and evaluation within the health sector.

87. (1) The National Treasury shall, facilitate the opening and maintenance of bank accounts by the county treasuries, for purposes of operationalizing disbursements of conditional grants, donation and any other monies designated for health as may be prescribed, in accordance with the provisions of the Constitution and the Public Finance Management Act.

Bank account.

Act No. 18 of  
2012

(2) Funds identified and designated for health in subsection (1) shall not be appropriated for any other purpose.

### **PART XIII—THE PRIVATE SECTOR PARTICIPATION**

**88.** (1) The Cabinet Secretary shall pursue strategies conducive to the development and regulation of private health services and their attunement to the needs of the population.

Private health services.

(2) The public and private health services and facilities shall complement each other in the provision of comprehensive and accessible health care to the people.

**89.** (1) Private entities shall be permitted to operate hospitals, clinics, laboratories and other institutions in the health sector, subject to licensing by the appropriate regulatory bodies.

Licensing of private entities to operate hospitals, clinics, etc.

(2) The standards to be met in order to qualify for the issue of an operational licence under this section and the conditions that may be attached to such a licence shall be as defined in regulations issued under this Act by the Cabinet Secretary.

**90.** Private health workers appropriately qualified to practice any health profession shall similarly be entitled to practice their profession in Kenya, subject to licensing by the appropriate regulatory bodies

Private health workers.

**91.** (1) Institutions licensed under section 88 and private health workers licensed under section 89 shall irrespective of any specific conditions attached to such a licence be bound—

Duty of licensees.

- (a) to permit and facilitate inspection at any time by the Authority and regulatory bodies;
- (b) to provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.

(2) Institutions and private health workers shall nevertheless be entitled to compensation under similar terms as contemplated under this Act.

Act No. 15 of 2013

**92.** (1) Where appropriate, and subject to the provisions of the Public Private Partnerships Act, the Cabinet Secretary and the County Governors shall be entitled to enter into partnership agreements with companies operating in the private sector in order to develop specific services or facilities that will serve the

Partnership agreements.

Act No 15 of 2013.

needs of public health.

(2) Counties or individual facilities may similarly enter into agreements of this type with the private sector subject to the provisions of the Public Private Partnerships Act.

No. 15 of 2013

#### **PART XIV—PROMOTION AND CONDUCT OF RESEARCH FOR HEALTH**

**93.** (1) There shall be established by the Cabinet Secretary, a National Health Research Committee which shall be a technical committee.

Establishment of the National Health Research Committee.

(2) The membership of the Committee shall be as provided for under section 94 and shall consist of not more than eleven members appointed by the Cabinet Secretary.

**94.** (1) The membership of the Committee established under this section shall as much as possible reflect ethnic, gender, county and regional balance and shall include membership drawn from the following —

Membership.

- (a) the chairperson who shall be a distinguished health researcher and renowned in a health discipline;
- (b) one representative from Kenya Medical Research Institute;
- (c) one representative from the National Commission for Science, Technology and Innovation;
- (d) head of the directorate of the Ministry of health responsible for research and development;
- (e) one representative from the Authority;
- (f) two representatives from public universities;
- (g) one representative from private universities
- (h) one research expert with orientation to traditional and alternative medicine;
- (i) one research expert with orientation in clinical trials; and
- (j) one distinguished bio-medical science researcher.

95. (1) The term of office of the Chairperson shall be five years, renewable for one further term of five years.

Term of office.

(2) The chairperson may resign through a letter addressed to the Cabinet Secretary.

(3) A member of the Committee shall hold office for a term of three years, renewable for one further term of three years.

(4) A member of the Committee may resign through a letter addressed to the Cabinet Secretary.

96. (1) The Committee shall make recommendations on the development on the national research for health policy and on the various priorities to be accorded in the area of research for health in the light of current knowledge and needs, recognized priorities and economic resources.

Functions of the Committee.

(2) In identifying research for health priorities, the Committee shall give due regard to—

- (a) the burden of disease;
- (b) the cost-effectiveness of interventions aimed at reducing the burden of disease;
- (c) the availability of human and institutional resources for the implementation of an intervention at the level closest to the affected communities;
- (d) the health needs of vulnerable groups such as women, older persons, children and people with disabilities;
- (e) the health needs of communities;
- (f) national security; and
- (g) emerging issues on health.

(3) The Committee shall have the responsibility to –

- (a) determine the extent of research for health to be carried out by public and private health authorities whether national or international;
- (b) ensure that research for health agenda and research resources focus on priority health problems;
- (c) develop and advise the Cabinet Secretary on



the application and implementation of an integrated national policy and strategy for health research;

- (d) ensure that the intellectual property benefits arising from any health research conducted in the country are commensurately enjoyed by all involved parties;
- (e) ensure resource mobilization or budget allocation for the National Research Fund for the established research for health priorities;
- (f) create a framework for linking research outcomes into policy and legislation
- (g) set up a national research database; and
- (h) enhance capacity building and strengthening in the research for health activities.

(4) The Committee shall execute its functions through the head of the directorate of the Ministry of health responsible for research and development who shall be its secretary.

**97.** (1) The Kenya Medical Research Institute established under the Science and Technology Act shall review its programmes to optimally attune to the health interests of the population and the overall programme of health research.

Institute.  
Cap. 250

(2) The Committee shall collaborate with other research organizations to make recommendations for the formulation of the national health policy.

**98.** Except as may be provided in the Fourth Schedule, the Committee may regulate its own procedure.

Procedures.

**99.** (1) Where medical and scientific research is to be conducted on human subjects, details shall in all cases be submitted as per the regulations articulated under the Commission for Science, Technology and Innovation established under the Science and Technology Act.

Research  
Approval.

Cap. 250

(2) The Committee shall set standards for ethical clearance on health research approvals.

**100.** (1) Where research or experimentation is to be conducted on a minor for a therapeutic purpose, the

Minors.

research or experimentation may only be conducted—

- (a) if it is in the best interest of the minor;
- (b) in such manner and on such conditions as may be prescribed; and
- (c) with the informed written consent of the parent or guardian of the minor.

(2) Where research or experimentation is to be conducted on a minor for a non-therapeutic purpose, the research or experimentation may only be conducted —

- (a) in such manner and on such conditions as may be prescribed by the Committee; and
- (b) with the informed written consent of the parent or guardian of the minor.

(3) Parliament shall enact legislation to give full effect to the provisions of this Part.

**101.** Having regard to the necessity of both scientific and policy research in the field of health in Kenya, a portion of not less than thirty per cent of the National Research Fund shall be allocated for health research.

Research budget.

**102.** Notwithstanding the responsibility of national government under section 92 of this Act, non-governmental and international organizations may cooperate with research institutions including the Kenya Medical Research Institute, universities and health institutions with approval from the Committee in providing support for promotion and conduct of health research.

Donor support and collaborative arrangements

#### **PART XV—E—HEALTH**

**103.** E- Health shall be a recognized mode of health service.

E-health.

**104.** The Cabinet Secretary shall, within three years of the operation of this Act, ensure the enactment of legislation that provides for among other things-

E-legislation.

- (a) administration of health information banks including interoperability framework, data interchange and security;
- (b) collection and use of personal health information;

- (c) management of disclosure of personal health information;
- (d) protection of privacy;
- (e) business continuity, emergency and disaster preparedness;
- (f) health service delivery through M-health, E-learning and telemedicine;
- (g) E-waste disposal; and
- (h) health tourism.

**105.** (1) The Ministry of health shall facilitate the establishment and maintenance of a comprehensive integrated health information system.

Health  
information  
system.

(2) The Cabinet Secretary in consultation with the Director General may, for the purpose of creating, maintaining or adapting databases within the national health information system desired in subsection (1), prescribe categories or kinds of data for submission, collection and the manner and format in which and by whom the data is to be compiled or collated and submitted to the Ministry of health.

(3) The Cabinet Secretary shall, in consultation with the Director General, prescribe policy guidelines for establishment of an integrated comprehensive health information management system, which shall include—

- (a) an integrated comprehensive health information system relating to the national government health functions;
- (b) an integrated comprehensive health information system relating to every county and in respect of county functions;
- (c) the consolidation and harmonization of health information obtained under paragraph (a) and paragraph (b);
- (d) the minimum standards applicable for establishment and maintenance of health information systems;
- (e) a guide on the minimum indices to be captured by each county health information

system;

- (f) the mechanism for ensuring inter-connectivity between each county information system and the national system;
- (g) the guiding principles for management and administration of health information banks; and
- (h) any other information on health services, including sources of health financing, human resources available in health sector.

(4) All health care providers shall—

- (a) establish and maintain a health information system as part of the health information system as specified under subsection (1); and
- (b) ensure compliance with the provision of paragraph (a) as a condition necessary for the grant or renewal of annual operating licenses.

(5) Any health care provider that neglects or fails to comply with the provision of subsection (3)(a) of this section commits an offence and on conviction shall be liable to imprisonment for a term of six months or a fine of five hundred thousand shillings or to both.

(6). Nothing in the foregoing precludes a county government from making laws with regards to health information system for that county and the city, urban and municipal areas within that county.

#### **PART XVI—INTER-DEPARTMENTAL COLLABORATION**

**106.** (1) While the Cabinet Secretary responsible for health shall bear primary responsibility for this Act, the respective levels of government and other agencies of government shall collaborate, consult and enter into agreements for the better carrying out of the provisions of this Act.

Collaboration.

(2) Without prejudice to sub section (1), the respective levels of government shall collaborate in the implementation of this Act, development or regulations and

where necessary in the adaptation of legislation.

**107.** (1) The establishment, management and maintenance of institutions for the training of all categories of health professionals shall be the subject of national policy providing for collaboration, consultation and cooperation between the state department responsible for education, science, technology and innovation and the Commission for Higher Education.

Training.

(2) The Cabinet Secretary shall issue administrative guidelines and regulations on professional post basic training of all health workers for implementation in line with the national training policy for health professionals.

(3) All specialists shall be treated as a national asset in order to sustain internship training and specialist services to ensure standards and equity.

(4) Regulatory bodies shall ensure that the training of health professionals meet the set standards and quality.

**108.** Subject to section 106, the fields in which the need for collaboration, consultation and cooperation shall be necessary include, though not exclusively, those that deal with matters relating to—

Fields of collaboration.

- (a) health workers welfare;
- (b) health aspects of environmental protection;
- (c) issues of animal health;
- (d) professional education and training;
- (e) public education;
- (f) financing of health services; and
- (g) bio-medical sciences.

#### **PART XVII—TRANSITIONAL AND MISCELLANEOUS PROVISIONS**

**109.** (1) Except to the extent that this Act expressly provides to the contrary, all rights and obligations, however arising, of the Government and subsisting immediately before the effective date shall continue as rights and obligations of the national and county governments as assigned under this Act.

Existing laws.

(2) All law in force immediately before the effective

date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Act.

(3) If, with respect to any particular matter—

(a) a law that was in effect immediately before the effective date assigns responsibility for that matter to a particular State organ or public officer; and

(b) a provision of this Act that is in effect assigns responsibility for that matter to a different State organ or public officer,

the provisions of this Act shall prevail to the extent of the conflict.

**110.** (1) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is serving under the National Government and in a county before the constitution of that county government shall be deemed to be in the service of the county on secondment from national government with their terms of service as at that date.

Public service.

(2) The officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage but to his or her advantage.

(3) The officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal.

(4) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is providing health services assigned to county government under the Fourth Schedule of the Constitution and is serving in a county on the date of the constitution of that county government shall be deemed to be in the service of the county government with their terms of service as at that date and—

(a) the officer's terms of service including

remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage but only to his or her advantage; and

- (b) the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal.

(6) Every public officer holding or acting in a public office to which the commission had appointed the officer as at the date of the establishment of the county government shall discharge those duties in relation to the relevant functions of the county government or national government as the case may be.

(7) The Authority acting in consultation with the Public Service Commission, the County Public Service Board and the National Ministry and county executive department responsible for health shall facilitate the redeployment, transfers and secondment of staff to the national and county governments.

(8) The provision under subsection (7) shall not preclude the County Public Service Board or other lawful body from promoting or appointing the officer to another position.

(9) The period of secondment under subsection (1) shall cease upon the transfer of a public officer from the national government to a county government or upon the release of an officer by the county government to the national government.

(10) Appointment of a public officer by the Public Service Commission includes appointment of a public officer on powers delegated by the Public Service Commission.

111.(1) A person convicted of an offence under this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term of three months, or both,

General penalty.

- (2) An act or commission which is an offence under

this Act or any regulations made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless proved that the offence was committed without consent or connivance of the director, secretary or manager and that he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and circumstances of the case.

(3) If an offence under this Act or any regulations made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence, unless there is proof that the offence was committed without the consent or connivance of the partner and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

**112.** The Cabinet Secretary in consultation with the Director General shall make regulations generally for the better carrying out of the provisions of this Act and without limiting the generality of the foregoing, the Cabinet Secretary may make regulations for—

Regulations.

- (a) the fees to be paid to access services in a public health facility;
- (b) the norms and standards for health service delivery;
- (c) specified types of protective clothing and the use, cleaning and disposal of such clothing;
- (d) co-operation and interaction between private health care providers and private health establishments on the one hand and public health care providers and public health establishments on the other;
- (e) returns, registers, reports, records, documents and forms to be completed and kept by national referral institutions and county health institutions, public health facilities and private health facilities;



- (f) communicable and non-communicable diseases;
- (g) notifiable medical conditions;
- (h) rehabilitation;
- (i) emergency medical services and emergency medical treatment;
- (j) health nuisances and medical waste;
- (k) the import and export of pathogenic micro-organisms;
- (l) health research;
- (m) health technology;
- (n) the national health information system;
- (o) the documentation of traditional medicines and a database of herbalists;
- (p) the rendering of forensic pathology, forensic medicine and related laboratory services, including the provision of medico-legal mortuaries and medico-legal services;
- (q) the procurement of health products and health technologies;
- (r) grading of health facilities in consultation with the county governments; and
- (s) anything which may be prescribed under this Act.

**FIRST SCHEDULE (s. 25)**

**TECHNICAL CLASSIFICATION OF LEVELS OF HEALTHCARE DELIVERY**

**LEVEL 1: COMMUNITY HEALTH SERVICES**

Functions—

- (a) Facilitates individuals, households and communities to carry out appropriate healthy behaviours;
- (b) Provides agreed health services;
- (c) Recognizes signs and symptoms of conditions requiring referral;
- (d) Facilitates community diagnosis, management and referral.

**Note:** The In-charge is the community health extension worker.

**LEVEL 2: DISPENSARY/CLINIC**

Functions-

- (a) This is a health facility with no in-patient services and provides consultation, treatment for minor ailments;
- (b) Provides rehabilitative services;
- (c) Provision of preventive and promotive services.

**Note:** The In-charge is a nurse or clinical officer.

**LEVEL 3: HEALTH CENTRE**

Functions—

- (a) It provides out-patient care;
- (b) Provision of limited emergency care;
- (c) Maternity for normal deliveries;
- (d) Laboratories, oral health and referral services;
- (e) Provision of preventive and promotive services;
- (f) In-patient observations.

**Note:** The In-charge is the clinical officer or medical officer with at least two years managerial experience.

**LEVEL 4: PRIMARY HOSPITAL**

Functions-

- (a) Clinical supportive supervision to lower level facilities;
- (b) Referral level out-patient care;
- (c) In-patient services;
- (d) Emergency obstetric care and oral health services;
- (e) Surgery on in-patient basis;
- (f) Client health education;
- (g) Provision of specialized laboratory tests;
- (h) Radiology service;
- (i) Proper case management of referral cases through the provision of four main clinical specialties (i.e internal medicine, general surgery, gynaecobstetrics and paediatrics) by general practitioners backed by appropriate technical devices;
- (j) Proper counter referral;
- (k) Provision of logistical support to the lower facilities in the catchment area;
- (l) Coordination of information flow from facilities in the catchment area.

**Note:** The In-charge is a registered medical practitioner with a Master's degree in a health related field.

**LEVEL 5: SECONDARY HOSPITAL**

Functions—

- (a) Provision of specialized services including general and county specific specialized services;
- (b) Training facilities for cadres of health workers who function at the primary care level (paramedical staff);
- (c) Serves as an internship centre for all staff, up to medical officers;
- (d) Serves as a research centre, that provides research services for issues of county importance;

**Note:** The In-charge is a registered medical practitioner with a Masters degree in a health related field.

**LEVEL 6: TERTIARY HOSPITAL**

Functions—

- (a) Provides highly specialized services. These include-
  - (i) general specialization;
  - (ii) discipline specialization; and
  - (iii) geographical/regional specialization including highly specialized healthcare for area/regional specialization;
- (b) Research centre, provides training and research services for issues of national importance.

**Note:**

1. The In-charge is a registered medical practitioner with a Masters degree in a health related field and with training and experience of over ten (10) years in senior management.

2. Level 6 shall be National Referral Hospitals and established in every County.

3. Facilities from levels 2-5 can be upgraded or downgraded by the Director-General based on a set criteria.

**SECOND SCHEDULE** **(S. 34)**  
**PROVISIONS RELATING TO THE CONDUCT OF  
BUSINESS AND AFFAIRS OF THE COUNCIL**

1. A member other than an *ex-officio* member may— Vacation of office
- (a) At any time resign from office by notice in writing, in the case of the Chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;
  - (b) Be removed from office by the President or the Cabinet Secretary, as the case may be, if the member—
    - (i) has been absent from three consecutive meetings of the Council without the permission of the Council;
    - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
    - (iii) is convicted of an offence involving dishonesty or fraud;
    - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
    - (v) is incapacitated by prolonged physical and mental illness;
    - (vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
    - (vii) fails to comply with the provisions of this Act relating to disclosures; or
    - (viii) is otherwise unable or unfit to

discharge his or her functions as a member of the Council.

1. (1) The Council shall hold at least four meetings in every financial year and not more than four months will lapse between one meeting and the next. Meetings.

(2) Meetings shall be convened by the Chairperson or in his or her absence by the vice-chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days; notice of a meeting shall be given to every member.

(4) The Chairperson shall preside over all the meetings of the Council or in his or her absence, the meetings shall be presided over by the vice-chairperson or in both of their absences, by a person elected by the Council at the meeting for that purpose.

(5) A decision of the Council shall be by a majority of the members present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote.

(6) The first order of business of the Council shall be to elect a Vice Chairperson.

3. The quorum for the conduct of business of the Council shall be half of the members, unless a unanimous decision is reached, decisions shall be by a majority vote of members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote. Quorum.

4. Minutes of all meetings shall be kept and entered in books kept for that purpose. Minutes.

5. (1) If a member is directly or indirectly interested in any matter before the Council and is present at the meeting of the Council at which the matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded at the meeting at which the member is being considered. Disclosure of interest.

(2) A disclosure of interest made under this

section shall be recorded in the minutes of the meeting at which it is made.

6. The Chairperson and members of the Council shall be paid such allowances as the Cabinet Secretary in consultation with the Salaries and Remuneration Commission shall determine.

Allowances of the Council.

7 (1) The Council shall operate under the supervision of the Cabinet Secretary.

Powers of the Cabinet Secretary.

(2) Where the Council fails to maintain any prescribed standard in the fulfilment of its functions under this Act, the Cabinet Secretary may give general or special directions to the Council describing the extent of the failure and stating the steps required to remedy the situation.

### **THIRD SCHEDULE (s. 50)**

#### **PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY**

1. (1) The Authority shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.

Meetings.

(2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.

(4) A meeting shall be presided over by the Chairperson, or in his absence by the vice-chairperson or in their absence, by a person elected by the Board at the meeting for that purpose.

(5) A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(6) The first order of business of the Board shall be to elect a vice-chairperson.

have a second or casting vote.

(6) The first order of business of the Committee shall be to elect a vice-chairperson.

2. The quorum for meeting shall be five members.

Quorum.

3. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Minutes.

4. A member of the Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the Committee shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Committee.

Conflict of interest.

5. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Committee and the member shall not be present while that matter is being dealt with by the Committee and shall not take part in any deliberations or vote relating to the matter.

Disclosure of interest by members of the Committee.

6. The Committee shall pay the members of the Committee such allowances and expenses as shall be determined by the Cabinet Secretary.

Remuneration of Committee members.



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| <p>2. The quorum for meeting shall be five members.</p>   | <p>Quorum.</p>   |
| <p>3. Minutes of all meetings shall be kept and entered in books kept for that purpose.</p>   | <p>Minutes.</p>  |
| <p>4. A member of the Authority who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board.</p> | <p>Conflict of interest.</p>                           |
| <p>5. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Board and the member shall not be present while that matter is being dealt with by the Board and shall not take part in any deliberations or vote relating to the matter.</p>                                       | <p>Disclosure of interest by members of the Board.</p> |
| <p>6. The Authority shall pay the members of the Board such allowances and expenses as are determined by the Cabinet Secretary.</p>   | <p>Remuneration of members of the Board.</p>           |

**FOURTH SCHEDULE (s. 98)**

**PROVISIONS AS THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

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| <p>1. (1) The Committee shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.</p> <p>(2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.</p> <p>(3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.</p> <p>(4) The Chairperson shall preside over all the meetings of the Committee or in his absence, the meetings shall be presided over by the vice-chairperson or in both their absences, by a person elected by the Committee at the meeting for that purpose.</p> <p>(5) A decision of the Committee shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall</p> | <p>Meetings.</p> |
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