REPUBLIC OF KENYA

PARLIAMENT OF KENYA

THE SENATE

THIRTEENTH PARLIAMENT | SECOND SESSION

THE STANDING COMMITTEE ON HEALTH

REPORT ON THE SOCIAL HEALTH INSURANCE BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)

PAPERS LAID
DATE 11/10/2023
TABLED BY Sen. Esther Okenyuri, MP
COMMITTEE Health
CLERK AT THE TABLE Abdirahman

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

OCTOBER, 2023

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ABBREVIATIONS AND ACRONYMS

AKI	-	Association of Kenya Insurers
CHAK	-	Christian Health Association of Kenya
CoG	-	Council of Governors
COTU	-	Central Organization of Trade Unions
FKE	-	Federation of Kenya Employers
IRA	-	Insurance Regulatory Authority
KHF	-	Kenya Healthcare Federation
MOH	-	Ministry of Health
NHIF	-	National Hospital Insurance Fund
RUPHA	-	Rural Private Hospitals Association
SHA	-	Social Health Authority

PRELIMINARIES

A. Establishment and Mandate of the Standing Committee on Health

The Standing Committee on Health is established pursuant to standing order 228 (3) and the Fourth Schedule of the Senate Standing Orders and is mandated to *consider all matters relating to medical services, public health and sanitation.*

B. Membership of the Committee

The Committee is comprised of the following Members:

1. **Sen. Jackson Kiplagat Mandago, EGH, MP** - **Chairperson**
2. **Sen. Mariam Sheikh Omar, MP** - **Vice Chairperson**
3. Sen. Erick Okong'o Mogeni, SC, M
4. Sen. Ledama Olekina, MP
5. Sen. Abdul Mohammed Haji, MP
6. Sen. Hamida Kibwana, MP
7. Sen. Joseph Nyutu Ngugi, MP
8. Sen. Raphael Chimera Mwinzagu, MP
9. Sen. Esther Anyieni Okenyuri, MP

C. Functions of the Committee

Pursuant to Standing Order 228(3), the Committee functions to –

1. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of its assigned ministries and departments;
2. Study the programme and policy objectives of its assigned ministries and departments, and the effectiveness of the implementation thereof;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the success of the ministries and departments assigned to it as measured by the results obtained as compared with their stated objectives;
5. Consider the Budget Policy Statement in line with Committee's mandate;
6. Report on all appointments where the Constitution or any law requires the Senate to approve;
7. Make reports and recommendations to the Senate as often as possible, including recommendations of proposed legislation;
8. Consider reports of Commissions and Independent Offices submitted to the Senate pursuant to the provisions of Article 254 of the Constitution;

9. Examine any statements raised by Senators on a matter within its mandate; and

10. Follow up and report on the status of implementation of resolution within their mandate.

D. Government Agencies and Departments

In exercising its mandate, the Committee oversees the County Governments, the Ministry of Health and its various Semi-Autonomous Government Agencies (SAGAs).

FOREWORD BY THE CHAIRPERSON

Hon. Speaker,

The Social Health Insurance Bill (National Assembly Bills No. 58 of 2023) was published *vide* Kenya Gazette Supplement No. 164 of 11th September, 2023. The Bill seeks to repeal the National Health Insurance Act, No. 9 of 1998, and to put in place a legislative framework to: regulate the provision of social health insurance; promote the implementation of Universal Health Coverage; and, ensure that every Kenyan has access to affordable and comprehensive quality health services.

It was introduced in the National Assembly by way of First Reading on Thursday, 14th September, 2023. The Bill was considered by the National Assembly and passed with amendments on Thursday, 27th September, 2023.

Pursuant to Article 110(4) of the Constitution, the Bill was referred to the Senate where it was introduced by way of First Reading on Tuesday, 3rd October, 2023. It thereafter stood committed to the Standing Committee on Health pursuant to standing order 145.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill.

In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Wednesday, 4th October, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill.

Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill as follows -

a) Government Departments/Agencies

- Ministry of Health (MoH)
- Council of Governors (COG)
- National Health Insurance Fund (NHIF)
- Insurance Regulatory Authority (IRA)

b) Trade Unions

- Central Organisation of Trade Unions (COTU)

c) Private Sector

- Federation of Kenya Employers (FKE)
- Kenya Healthcare Federation (KHF)
- Christian Health Association of Kenya (CHAK)
- Rural Private Health Association (RUPHA)
- Association of Kenya Insurers (AKI)

Further, following the call for submissions, the Committee received written memoranda from various stakeholders, namely: Ministry of Health (MoH); Council of Governors (COG); National Health Insurance Fund (NHIF); Insurance Regulatory Authority (IRA); Central Organisation of Trade Unions (COTU); Federation of Kenya Employers (FKE); Kenya Healthcare Federation (KHF); Christian Health Association of Kenya (CHAK); Rural Private Health Association (RUPHA); Association of Kenya Insurers (AKI); Kenya Union of Clinical Officers (KUCO); Former Parliamentarians Association (FOPA); Pharmaceutical Society of Kenya (PSK); Moi University; Kenya Association of Retired Officers (KARO); Confraternity of Patients Kenya; International Budget Partnership - Kenya (IBP-Kenya); Kenya Faith-Based Health Services Consortium; The Actuarial Society of Kenya (TASK); Association of Kenya Medical Laboratory Scientific Officers (AKMLSO); Health NGOs Network (HENNET); International Commission of Jurists (ICJ); Kenya Dental Association (KDA); Civil Society Organisations (comprising of Kenya AIDS NGOs Consortium (KANCO), Amnesty International Kenya, People's Health Movement (PHM), Institute of Public Finance (IPF), Transparency International Kenya (TI Kenya), Scaling Up Nutrition Civil Society Alliance, Kenya Human Rights Commission (KHRC), Remusi Housing Cooperative Society Ltd, Young Professionals for Development, International Commission of Jurists, Kenya (ICJ Kenya) and Organizations of African Youth – Kenya), Helium Kenya and Kenya Union of Nutritionists and Dietitians (KUNAD).

The Committee proceeded to consider the Bill at the length and held extensive discussions thereon including consultations with key stakeholders. This Report is therefore the product of extensive consultations that have taken place to ensure that we have a good law in place that will stand the test of time.

Hon. Speaker,
May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

Lastly, I wish to thank the stakeholders who submitted written memoranda which greatly aided the Committee in considering the Bill.

Hon. Speaker,
It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Health on The Social Health Insurance Bill (National Assembly Bills No. 58 of 2023)

Signed ..... Date.....11/12/2023.....

SEN. JACKSON MANDAGO, EGH, M.P.

CHAIRPERSON, STANDING COMMITTEE ON HEALTH

ADOPTIO OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH ON THE SOCIAL HEALTH INSURANCE BILL (NATIONAL ASSEMBLY BILLS NO. 58 OF 2023)

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

	Name	Designation	Signature
1.	Sen. Jackson Kiplagat Mandago, EGH, MP	Chairperson	
2.	Sen. Mariam Sheikh Omar, MP	Vice-Chairperson	
3.	Sen. Erick Okong'o Mogeni, SC, M	Member	
4.	Sen. Ledama Olekina, MP	Member	
5.	Sen. Abdul Mohammed Haji, MP	Member	
6.	Sen. Hamida Kibwana, MP	Member	
7.	Sen. Joseph Nyutu Ngugi, MP	Member	
8.	Sen. Raphael Chimera Mwinzagu, MP	Member	
9.	Sen. Esther Anyieni Okenyuri, MP	Member	

CHAPTER ONE

INTRODUCTION

A. Introduction

1) The Social Health Insurance Bill (National Assembly Bills No. 58 of 2023) was published *vide* Kenya Gazette Supplement No. 164 of 11th September, 2023. The Bill seeks to repeal the National Health Insurance Act, No. 9 of 1998, and to put in place a legislative framework to: regulate the provision of social health insurance; promote the implementation of Universal Health Coverage; and, ensure that every Kenyan has access to affordable and comprehensive quality health services.

2) The Bill was introduced in the National Assembly by way of First Reading on Thursday, 14th September, 2023. The Bill was considered by the National Assembly and passed with amendments on Thursday, 27th September, 2023. A copy of the Bill as passed by the National Assembly and referred to the Senate has been attached to this report as ***Annex 2.***

3) Pursuant to Article 110(4) of the Constitution, the Bill was referred to the Senate where it was introduced by way of First Reading on Tuesday, 19th September, 2023, and thereafter stood committed to the Standing Committee on Health pursuant to standing order 145.

4) In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill.

5) In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Wednesday, 4th October, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advert as published has been attached to this report as ***Annex 3.***

6) In addition, the Committee sent invitations to targeted stakeholders including government departments and agencies, private sector, Non-Governmental Organizations/development partners and faith-based organizations. Copies of the letters of invitation to the various stakeholders have been attached to this report under ***Annex 4***.

B. Background

7) Article 43 of the Constitution of Kenya guarantees all citizens the right to the highest attainable standard of health. This includes access to reproductive health care, and emergency medical treatment.

8) The Government of Kenya has committed to accelerating the attainment of Universal Health Coverage (UHC) as a key agenda for enhancing socio-economic development.

9) UHC aims at ensuring that all Kenyans access and receive essential quality health services without suffering financial hardship. These services include promotive, preventive, curative, rehabilitative and palliative health services.

10) Progress towards the attainment of UHC is crucial to addressing the high burden of communicable conditions, a rising burden of non-communicable conditions, and cushioning the health system from emerging and re-emerging disease outbreaks and changing demographic patterns.

11) Out-of-pocket payments (OOP) for health services remain a major financial barrier to accessing health services in Kenya, with many households suffering catastrophic health expenditure.

12) Progress towards UHC will enable Kenya to protect the poor and vulnerable, invest in its human capital and make progress in its overall goal of inclusive human development.

13) The Social Health Insurance Bill seeks to put in place a legislative framework to regulate the provision of social health insurance with a view to promoting the implementation of UHC, and ensuring that all Kenyans have access to affordable and comprehensive quality health services.

C. Objects of the Bill

14) The objects of the Bill are to -

a) provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage;

b) realign healthcare systems, processes and programs for responsiveness, reliability and sustainability of health care in Kenya;

c) enhance the pooling of resources and risks based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all; and

d) promote strategic purchasing of healthcare services.

D. Consequences of the Bill

15) The Bill will have the consequence of: establishing a framework for the management of Social Health Insurance; providing for the establishment of the Social Health Authority; and, giving effect to Article 43(1)(a) of the Constitution which grants every Kenyan the right to the highest attainable standard of health. It further repeals the National Hospital Insurance Act, No. 9 of 1998.

E. Overview of the Bill

16) **PART I** of the Bill contains preliminary provisions that include: the short title; interpretation; and objects of the act.

17) **Part II (Clauses 4-19)** of the Bill establishes the Social Health Authority and provides the Board, its functions, powers, qualification of members and appointment of the Chief Executive Officer among others.

a) Functions of the Social Health Authority

18) The functions of the Social Health Authority shall be to:Social Health Authority Board

a) register the beneficiaries in accordance with this Act;

b) manage the Funds established under this Act;

c) receive all contributions and other payments required by this Act to be made to the Funds;

d) contract health care providers and healthcare facilities upon successful certification by the relevant body;

e) consider and make payments to contracted health care providers and healthcare facilities out of the Funds in accordance to the provisions of this Act;

f) develop guidelines for the operations and implementation of the Funds established under this Act;

g) establish sectoral linkages for effective management and growth of the Funds;

h) monitor and evaluate programs and activities under the Funds;

i) receive and address complaints that may arise from the implementation of this Act;

j) advise the Cabinet Secretary on matters of social health insurance including the formulation of policies;

k) implement all government policies on social health insurance and related functions; and

l) perform any other function conferred on it by this Act or any other written law.

b) Composition of the Board of the Social Health Authority

19) The Board of the Social Health Authority with a term of three years comprises of twelve members as follows:

a) a non-executive Chairperson, appointed by the President;

b) the Principal Secretary in the ministry of Health;

c) the Principal Secretary in the ministry of Finance;

d) the Director-General for Health;

e) the Attorney-General or a designated representative;

f) a representative of the Council of County Governors;

g) a person, not a public officer, appointed by the Cabinet Secretary;

h) 4 representatives of the Kenya Medical Association, the informal sector association, health care providers and the Central Organization of Trade Unions-Kenya, appointed by the Cabinet Secretary; and

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

20) The Chairperson and Members of the Board shall serve for a term of three years and shall be eligible for reappointment for one further term of three years. The appointments afford equal opportunity to men and women, youth, persons with disabilities, minorities and marginalized groups and ensure regional balance.

21) The Bill further sets out the eligibility requirements for appointment as CEO and membership of the Board: The Chairperson and the Members of the Board must be Kenyan Citizens, hold a minimum of a bachelor's degree and have knowledge and experience of not less than ten years in data science, information technology, health governance, health administration, health policy , finance or economics, five of which shall be at managerial level and meets the requirements of Chapter six of the Constitution.

22) It is important to note that a person shall not be eligible for appointment as a member of the Board if they are a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry.

23) The Chairperson and members of the Board shall be paid such remuneration fees, allowances and such other reimbursements as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

24) The Chief Executive Officer of the Authority shall be competitively recruited and appointed by the Board. The Chief Executive Officer shall hold office on such terms as the Board may, on the advice of the Salaries and Remuneration Commission determine.

25) The Bill sets out that the Chief Executive Officer must have a minimum of a master's degree from a university recognized in Kenya and at least ten years' experience in health insurance, health financing, health economics, healthcare administration or any other relevant field and must have served in a management level for a period of at least five years.

26) The CEO shall be responsible for the day to day management of the affairs of the board subject to the board's directions. The CEO shall also be responsible for the administration of the fund and shall—

27)The Bill also provides for a Corporation Secretary to the Authority, who shall be recruited through a competitive process and appointed by the Board, with terms determined by the Board, based on advice from the Salaries and Remuneration Commission.

28) The qualifications for the Corporation Secretary will include:

a) Holding a bachelor's degree in law from a recognized Kenyan university.

b) Being an Advocate of the High Court of Kenya.

c) Having at least five years of experience in a corporation secretary or similar governance role.

d) Being a member in good standing of the Institute of Certified Public Secretaries of Kenya.

e) Meeting the requirements of Chapter Six of the Constitution of Kenya, which likely refers to ethical and integrity standards.

29) The Corporation Secretary's responsibilities shall include:

a) Serving as the Secretary to the Board.

b) Issuing notices for Board meetings in consultation with the Board Chairperson.

c) Keeping custody of records related to the Board's deliberations, decisions, and resolutions.

d) Transmitting the Board's decisions and resolutions to the Chief Executive Officer for execution and implementation.

e) Providing guidance to the Board on matters related to governance and their responsibilities.

c) Powers of the Authority

30)Part II of the Bill also sets out that the Authority shall have all the powers necessary for the performance of its function including—

a) Manage, control and administer the assets of the Authority pursuant to the provisions of the Public Finance Management Act, 2015. The Authority can however not dispose of any immovable property without the prior approval of the National Assembly;

b) Receive any gifts, grants, donations or endowments made to the fund and make disbursements in accordance with the Act;

c) Open a banking Account or banking accounts for the fund with Authorisation from the national treasury; and

d) Enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purpose for which the fund is established.

31) **Part III (Clauses 20-24)** of the Bill provides for **establishment of the Primary Healthcare Fund** and the attendant sources of its funds. The purpose of the Primary Healthcare Fund established in clause 20 is to purchase primary health care services from health facilities. The sources of monies for this Fund include—

a) monies appropriated by the National Assembly;

b) any grants, gifts, donations or bequests;

c) monies allocated for that purposes from fees or levies administered; and

d) monies accruing to or received by the Fund from any other source.

32) The Fund is to be used for expenses related to its established objectives, and its expenditures are limited to the annual budget estimates prepared by the Authority at the start of the financial year. Any revisions to the budget estimates by the Board must be approved by the National Assembly in supplementary budget estimates.

33) The capital of the fund will be sourced from appropriations by the National Assembly or from other sources as provided by the Act.

34) Lastly, regulations for the implementation of the Primary Healthcare Fund will be developed by the Cabinet Secretary in consultation with the Board.

35) **Part IV (Clauses 25-27)** of the Bill provides for **establishment of the Social Health Insurance Fund** and the attendant sources of its funds, registration and membership to the fund and contributions.

36) The purpose of the Social Health Insurance Fund established in clause 25 is to purchase primary health care services from health facilities. The sources of monies for the Fund include—

a) contributions under the Act;

b) monies appropriated by the National Assembly for indigent and vulnerable persons;

c) gifts, grants, innovative financing mechanisms or donations;

d) funds from the national government, county governments and their respective entities for the administration of the compulsory public service employee's insurance benefit scheme; and

e) funds from an employer who is not a national government, a county government or their respective entities, for the administration of employee benefits.

37) Registration to the Fund will be mandatory for all Kenyans. This will be enforced by requiring the proof of registration with the Fund as a precondition of dealing with or accessing public services from the national government, county government or national or county government entities.

38) Non-Kenyan residents who are ordinarily resident in Kenya will also be eligible for registration. Children born after the Act's commencement will be automatically registered as members.

39) Access to healthcare services under Part IV will be contingent on up-to-date and active contributions. Premium financing options will also be provided for non-salaried individuals.

40) Contributions to the fund will also be required from Kenyan households, non-Kenyan residents, national and county governments, and other employers. Contribution methods will vary based on income sources and means testing, including deductions from salaried employment, annual contributions based on household income, and government assistance for those in need.

41) Contributions must be paid at the time of registration. Non-salaried persons will pay contributions annually.

42) Failure to pay contributions on time will result in a penalty of two percent of the overdue amount. The bill further sets out that outstanding contributions and penalties must be settled before resuming access to healthcare services provided under the Act.

43) **Part V (Clauses 28-30)** of the Bill provides for the establishment of the **Emergency, Chronic and Critical Illness Fund** that will defray the costs of management of chronic illness after the depletion of the social health insurance cover, and will cover the costs of emergency treatment. The sources of monies for the Fund includes—

a) monies appropriated by the National Assembly;

b) gifts, grants, donations or endowments; and

c) such monies from any other lawful source.

44) **Part VI (Clauses 31-36)** of the Bill provides for **claims, benefits and empanelment and contracting of health service providers and health facilities and the establishment of the Claims Management Office** within the Authority to review and process the claims.

45) Every beneficiary shall be entitled to an essential healthcare benefits package which shall be prescribed by the Cabinet Secretary in consultation with the Social Health Authority Board.

46) Beneficiaries will not be prohibited from obtaining private health insurance in addition to the benefits provided under the Act.

47) The benefits payable under the Bill shall be based on a tariff as prescribed by the Cabinet Secretary.

48) The Social Health Authority will only make payments out of the Funds to health care providers or health care facilities that are empaneled by the relevant body and contracted by the Authority.

49) Healthcare providers or facilities seeking empanelment will be required to apply to the body responsible for accreditation, with the list of empanelled providers published publicly. The body responsible for accreditation may revoke accreditation, and healthcare providers or facilities can appeal this decision to the Dispute Resolution Tribunal.

50) The Authority will have the mandate to negotiate and enter into contracts with healthcare service providers and facilities that meet the prescribed criteria. Contracted providers and facilities will be required to meet quality standards and display prescribed identification. Contracts will be terminated if providers or facilities fail to meet the criteria.

51) Clause 35 establishes a Claims Management Office whose responsibilities will include -

a) reviewing, processing and validating medical claims from healthcare providers and healthcare facilities;

b) appraising medical claims based on the benefit package;

c) issuing pre-authorizations for access to healthcare services based on the benefit package;

d) developing an e-claims management system;

e) undertaking quality assurance surveillance in respect of claims;

f) establishing systems and controls for detecting and identifying fraud appropriate to the Fund's exposure and vulnerability;

g) sensitizing claimants on the consequences of submitting false and fraudulent claims;

h) collecting and analyzing data for purposes of claim management;

i) preparing quarterly reports on claims for submission to the to the Board and the Cabinet Secretary; and

j) performing any other functions as may be necessary for the better carrying out of its functions under this Act

52) The functions of the Claims Management Office may be delegated to a suitable entity or entities such as a medical insurance provider and/or claim settling agent as defined and licensed by the Insurance Regulatory Authority under the Insurance Act.

53) Payments to contracted healthcare providers or facilities will be made upon the submission of a claim to the Claims Management Office. The Cabinet Secretary is required to make regulations to further specify the implementation of these provisions.

54) **Part VII (Clauses 37-43)** of the Bill provides for **financial provisions** including reporting mechanism, audits and accounts, investment and management of funds by the Board.

55) The financial year of the Authority will be for a period of twelve months, ending on June 30 each year. All funds received by the Authority during the financial year, including earnings and accruals, will be retained by the Authority for the Fund's purposes.

56) The Authority will be required to prepare annual estimates of its revenue and expenditure within three months after the end of each financial year. These estimates will cover expenses such as medical and healthcare claims, staff salaries, retirement benefits, maintenance of buildings and equipment, and the creation of reserve funds for future liabilities.

57) It will be mandatory for the annual estimates to be approved by the Board before the start of the financial year, and any increase in these estimates will require the Board's prior consent. No expenditure will be incurred by the Authority except in accordance with the approved annual estimates.

58) The Authority may use a portion of its finances to cover administrative expenses related to its powers and functions. However, these administrative expenses should not exceed five percent of the annual expenditure of the Fund.

59) The Board will be responsible for maintaining proper books and records of the Authority's income, expenditure, assets, and liabilities. Within three months after the end of each financial year, the Board will submit the accounts, income and expenditure statements, and assets and liabilities statements to the Auditor-General for auditing.

60) The accounts of the Authority will be audited in accordance with the provisions of the Public Finance Management Act, 2012, and the Public Audit Act, 2015. The Board will be required to prepare an annual report detailing the Authority's operations for the previous year within three months after the end of each financial year.

61) The Cabinet Secretary will be responsible for transmitting the annual report to Parliament within three months of receiving it.

62) **PART VIII (Clause 44-46)** of the Bill provides for the establishment of the **dispute resolution tribunal** to hear, and determine complaints, disputes and appeals arising from decisions made under this Act.

63) Individuals who are aggrieved by a decision made under the Act can appeal to the Dispute Resolution Tribunal within one month of the decision. The Tribunal will have the authority to uphold, reverse, revoke, or modify the Board's decision. Further, should a person be dissatisfied with the Tribunal's order, they can further appeal to the High Court within 21 days.

64) The Tribunal consists of a Chairperson appointed by the President (qualified to be a High Court judge) and four other members appointed by the Judicial Service Commission with expertise in various fields. Members of the Tribunal will serve for a period of three years and can be reappointed for an additional three-year term. A meeting of the Tribunal will require the Chairperson and at least two other members to be present.

65) Tribunal members will receive allowances determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission. The Procedures for the functioning of the Tribunal will be prescribed by the Cabinet Secretary.

66) A member's office in the Tribunal will become vacant for reasons including death, resignation, mental or physical incapacity, conviction leading to a six-month or longer prison term, failure to attend three consecutive meetings, and removal due to gross violation of the Constitution or other laws or gross misconduct.

67) **Part IX (Clauses 47-55)** of the Bill sets out the **miscellaneous provisions** and contains provisions for stakeholder engagement in the carrying out of the functions of the Bill.

68) It also provides for the mandatory requirement of digitization of all processes and services under this Act, including: registration of members, identification, contributions to the Fund, empanelment of facilities, execution of contracts, notification and preauthorization; claims management and settlement of claims.

69) Every Kenyan will be required to have a unique identifier for purposes of accessing the provision of services under the act.

70) Failure to pay contributions, misappropriation of funds, making false statements, and impersonation will be offenses under the Act with penalties including fines and imprisonment.

71) Courts can order individuals convicted of offenses under the Act to repay contributions unlawfully obtained, along with any penalties. Debts to the Authority will be recoverable as civil debts.

72) The Cabinet Secretary, in consultation with the Board, will make regulations on contributions, healthcare benefits, claims and provider enrolment.

73) This Act will prevail in case of inconsistency with other legislation related to social health insurance. Provisions of the Insurance Act will also apply to the Authority for claims administration services.

74) The Act repeals the National Health Insurance Fund Act, 1998. In case of the winding up of the Funds established under this Act, cash balances go to the Exchequer, while other assets transfer to the National Treasury.

75) The **First Schedule** to the Bill details the **transitional provisions** that will take effect on the date that the Social Health Insurance Act, 2023, is enacted -

a) All funds, assets, and property held by the National Health Insurance Fund Board on behalf of the Fund will automatically transfer to the Authority.

b) Relevant public officers will assist in transferring property titles to the Authority without charge.

c) All rights, powers, liabilities, and duties previously held by or against the Government on behalf of the Fund will transfer to the Authority.

d) Any ongoing legal actions involving the Government on behalf of the Fund will continue under the Authority.

e) The National Health Insurance Fund will no longer provide enhanced benefits schemes and packages after the appointed day.

f) Existing enhanced benefits schemes and packages will transfer to the Authority until the expiration of existing contracts.

g) The National Health Insurance Fund Board is required to wind up the Fund within one year of the appointed day, transferring cash and assets to the Authority.

h) The Authority will recruit its staff under specified conditions.

i) Staff of the Fund can apply for positions with the Authority and may be considered if qualified.

j) The Authority will prioritize qualified staff of the Fund in appointments.

k) Un-appointed Fund staff may choose to retire or be redeployed within the public service

l) The annual estimates for the Fund's financial year when the appointed day occurs will become the annual estimates for the Authority for the rest of that year, with possible variations approved by the Cabinet Secretary.

76) **The Second Schedule** to the Bill details the provisions relating to the conduct of business and the affairs of the Board.

CHAPTER TWO

PUBLIC PARTICIPATION ON THE BILL

77) Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Standing Committee on Health invited interested members of the public to submit submissions on the Bills.

78) An advertisement requesting for submission of memoranda from members of the public was made in the Daily Nation and Standard Newspapers on Wednesday, 4th October, 2023. Receipt of memoranda on the Bill was closed on Saturday, 7th September, 2023.

79) Further to the above, correspondence was dispatched to targeted stakeholders requesting for submission of memoranda and inviting them to appear before the Committee as indicated below -

a) Government Departments/Agencies

- Ministry of Health (MoH)
- Council of Governors (COG)
- National Health Insurance Fund (NHIF)
- Insurance Regulatory Authority (IRA)

b) Trade Unions

- Central Organisation of Trade Unions (COTU)

c) Private Sector

- Federation of Kenya Employers (FKE)
- Kenya Healthcare Federation (KHF)
- Christian Health Association of Kenya (CHAK)
- Rural Private Health Association (RUPHA)
- Association of Kenya Insurers (AKI)

80) Further, following the call for submissions, the Committee received written memoranda from various stakeholders, namely: Ministry of Health (MoH); Council of Governors (COG); National Health Insurance Fund (NHIF); Insurance Regulatory Authority (IRA); Central Organisation of Trade Unions (COTU); Federation of Kenya Employers (FKE); Kenya Healthcare Federation (KHF); Christian Health Association of Kenya (CHAK); Rural Private Health Association (RUPHA); Association of Kenya Insurers (AKI); Kenya Union of Clinical Officers (KUCO); Former Parliamentarians Association (FOPA); Pharmaceutical Society of Kenya (PSK); Moi University; Kenya Association of Retired Officers (KARO); Confraternity of Patients Kenya; International Budget Partnership - Kenya (IBP-Kenya); Kenya Faith-Based Health Services Consortium; The Actuarial Society of Kenya (TASK); Association of Kenya Medical Laboratory Scientific Officers (AKMLSO); Health NGOs Network (HENNET); International Commission of Jurists (ICJ); Kenya Dental Association (KDA); Civil Society Organisations

(comprising of Kenya AIDS NGOs Consortium (KANCO), Amnesty International Kenya, People's Health Movement (PHM), Institute of Public Finance (IPF), Transparency International Kenya (TI Kenya), Scaling Up Nutrition Civil Society Alliance, Kenya Human Rights Commission (KHRC), Remusi Housing Cooperative Society Ltd, Young Professionals for Development, International Commission of Jurists, Kenya (ICJ Kenya) and Organizations of African Youth – Kenya), Helium Kenya and Kenya Union of Nutritionists and Dietitians (KUNAD).

81) A matrix with a summary of the submissions from the various stakeholders has been attached to this report as ***Annex 6.***

82) Further to the above, on Friday, 6th October, 2023, the Committee held a stakeholder engagement meeting with various government departments and agencies, private sector groups and faith-based organizations as indicated above (see paragraph '79').

83) The **Ministry of Health** submitted that it supported the Bill in its entirety, and that most areas of contention with the Bill as raised by various stakeholders had been addressed by the amendments passed by the National Assembly.

84) The **Council of Governors** made the following submissions -

a) The Bill failed to legislate on principles such as acceptability, affordability, accessibility, equity, transparency, accountability, efficiency and sustainability that underscored it. These principles were vital for establishing the foundation of the law and institutional framework.

b) That Clause 26 failed to cover all demographics, necessitating reconsideration of the definition of contributor, household, indigent, and vulnerable persons to allow for populations like children in childcare facilities, and old people in homes.

c) The Bill failed to specify in Clauses 20, 23, and 25 how the three Funds would interact and provide for separation of premium collection and funds vis-a-vis reimbursement and payment.

d) While the Bill sought to reform the health financing framework, it failed to comprehensively address other key components in health such as leadership, governance, service delivery, health information systems, health workers, and medical products.

e) The provision of the Primary Healthcare Fund from Section 20 to 24 was inadequate and left many questions unanswered, including the pathways of accessing resources in the fund.

f) The Bill lacked a specified timeframe for the development of Regulations, posing implementation challenges. Additionally, it was unclear if existing regulations would be preserved.

g) Clause 44 of the Bill lacke clarity on whether the Dispute Resolution Committee was executive or non-executive and whether it was established as a quasi-judicial structure.

h) The First Schedule did not provide clarity on whether the transition of NHIF and its assets would be to all three Funds or just one of them.

i) The Bill needed to address key concerns relating to NHIF, including its officers, assets, liabilities, the NHIF Board, and the protection of NHIF staff, particularly their pension.

j) It was unclear which jurisdiction with a similar social, economic, and political environment had informed the policy and institutional proposals in the Bill.

k) The Bill needed to be cognizant of how Public Funds are established, as its provisions may conflict with the Public Finance Management Act (No. 18 of 2012). They noted that a Fund created under the Social Assistance Act, 2013, faced implementation issues due to its establishment method.

l) Amend the Bill to include County Governments as key stakeholders in health financing.

85) The **National Health Insurance Fund** submitted that they fully supported the Bill, and proposed the following amendments -

a) Amend the definition of "household' in Section 2 to clarify it as a nuclear unit compromising a contributor, their declared spouse and children. A misinterpretation of this unit would impact resources allocated or generated by the contributor.

b) Amend Section 5(a) to read "register contributors and beneficiaries in the accordance with the Act". The registration was necessary to enable the Authority to track contributions.

c) Revise clause 8(1)(c) on employment requirements to include a wide range of expertise other than health and ICT, as such clauses limit the appointing authorities' discretion.

d) Delete clause 8(2)(e) as its provisions overlapped with clause 8(2)(a), which addressed violations of Chapter six of the Constitution through criminal convictions.

e) Amend Clause 12 to stipulate that the quorum for Board meetings should be two-thirds of the total membership, aligning with best governance practices.

f) Amend Clause 25 to include 'investment income, including but not limited to rental income,' to exempt the Authority's income from taxes, as it would be used to pay benefits.

g) Specify that the Cabinet Secretary must consult the Board of the Social Health Authority in matters of registration, regulations for the Emergency, Chronic, and Critical Illness Fund, claim settlement, and stakeholder engagement as outlined in clause 26(4), clause 30, clause 36, and clause 47(2), and to consider the Board's Day to day operational needs in these areas.

h) Amend Clause 28 to establish the eligibility criteria for accessing the Emergency, Chronic, and Critical Illness fund, with detailed modalities to be addressed in the regulations. This would help prevent misuse of the funds, as Clause 28 failed to provide the eligible criteria for access to the Fund.

i) Delete Clauses 33(2) and 34(4) to make the Board responsible for the enrolment of providers into the panel and contracting of the services.

j) Include a provision in Clause 34(6) that allows the Authority to publish termination of contract terminations on their website to inform the public, which aligns with the provision for gazettement upon empanelment.

k) Amend Clause 35(1) to clarify that the Claims Management Office operates under the Authority's direction and the functions of the Claims management are under the Authority's purview. Additionally, ensure that regulations under Clause 35 are in place within 6 months after the commencement of the Act for a smooth transition.

l) Amend Clause 36(2) to enable the Cabinet Secretary, in consultation with the Board, to make regulations for the better execution of this section, which shall ease the Authority's day-to-day operations.

m) Include a Clause 40(g) specifying that the Authority must establish reserves to address future or contingent liabilities, guided by an Actuary's advice. This is essential for fund sustainability and tariff review.

n) Amend Clause 41(2) to read, 'the administrative expenses referred to under subsection (1) shall not exceed ten percent of the annual expenditure of the Fund.' This aligns with best practices, which allow for a margin between 10% and 15% for administrative expenses.

o) Clarify on Clause 44(2) on whether the appropriate title Committee or Tribunal. If it is an independent body, who will fund its operations and how its decisions will be enforced.

p) Delete Clause 47(5), as it pertains to an operational matter that falls within the purview of the Authority's day-to-day functions and does not require regulations.

q) Revise Clause 49(5) on the fine for health facilities/healthcare providers upon conviction to include full reimbursement of unlawfully obtained amounts and a fine not exceeding Kshs. 5,000,000. This adjustment will enhance the deterrent effect of convictions for fraudulent activities.

r) Delete paragraph 2(2) in the First Schedule, as asset disposal shall be guided by the provisions of the Public Procurement and Asset Disposal Act, No. 33 of 2015.

s) Amend paragraph 6(1) in the First Schedule to extend the transition period to two years, as one year is insufficient to complete the entire transition process, including the winding up of contracts.

86) The **Insurance Regulatory Authority** made submissions as follows-

a) Redraft the definition of the term "household" to remove ambiguity and enhance clarity.

b) Define the term 'primary health care' and specify that levels 1, 2, and 3 of health services correspond to those defined under the Health Act, 2017.

c) Replace the phrase 'premium' with 'contribution' in Clause 27(5) as the term is not defined under Clause of the Bill.

d) Amend Clause 34(4) to include termination of a contract on the grounds of revocation of accreditation as provided under Clause 33(4). Currently, the only ground for termination is the failure to meet quality standards set by the Cabinet Secretary.

e) Define the term 'claim' in Clause 35 to provide clarity in the context of the Social Health Insurance Bill.

f) Delete Section 52 as there is no provision on claims administration services under the Bill.

g) Insert a provision for regulation and supervision of the social health insurance authority. Considering that the Authority will be collecting funds from the public, it is important to have an oversight body to ensure proper prudential management and market conduct.

87) The **Central Organization of Trade Unions (Kenya)** made the following submissions-

a) Amend Clause 7(1)(h)(iv) to include two representatives, as per the previous NHIF Act. Additionally, for a quorum to be constituted, at least one of the two representatives of COTU(K) should be present.

b) Addition of a new Clause after Clause 17 to facilitate transition of NHIF staff to the Social Health Authority.

c) Amend Clause 35(3) to assign the Fund's Authority the core responsibilities of claim management rather than outsourcing them to other entities. Outsourcing such services, including fund collection and benefit management, could disrupt the authority's operations.

88) The **Federation of Kenya Employers (FKE)** made the following submissions-

a) Delete Clause 5(j) to allow the Cabinet Secretary to consult the Authority but not be bound by any advice given by the Authority.

b) Include FKE under Clause 7(1)(h) to ensure complete representation in the labor sector, which includes government, workers, and employers.

c) Delete "or levies" in Part III and replace it with "monies allocated for those purposes from the fees administered" to prevent double payment and reduce costs for businesses.

d) Delete "compulsory public service employee's insurance benefit scheme" in Clause 25(d) and replace it with a new clause: "Funds from the national government, county governments, and their respective entities for the administration of employees' benefits." This avoids discrimination and ensures a more efficient management approach.

e) Add the definition of "social unit" and "person" in Clause 27(1) for clarity.

f) Specify the applicable rates in Clause 2(a) to align with the Bill for clarity and consistency.

g) Make provisions for refugees as many of them have resided in the country for extended periods and may qualify for citizenship through naturalization.

h) Provide clarity on whether the ten percent is a one-time, monthly, or annual contribution and offer more general clarification on penalties.

i) Prescribe essential healthcare benefits in Clause 31(1) to clearly define the essential benefits.

j) Provide clear linkage between the Authority (Funds) and the primary health care services in Clause 34.

k) Reduce the cap of administrative expenses from 5% to 2% in line with NSSF, ensuring it does not exceed 2% of the audited financial statement in Clause 41(2).

l) Insert the words "as amended from time to time" in Clause 48(4) to align with the provisions of the Data Protection Act, 2018 and maintain consistency with existing law.

m) Increase the fine in Clause 49(1) to not exceeding one million to align it with similar provisions. Additionally, separate subclauses (b) and (c) as they deal with service providers, distinct legal entities from staff, to standardize the fines.

n) Replace "Despite the generality" with "Subject to subsection (1)" in Clause 50(2) to clarify that consultation with the Board in making regulations is mandatory, not optional.

o) Add a new principle in Clause 50(4) (e) for meaningful public participation specified under article 10(2)(a) of the constitution in the regulations making process to conform to the constitutional requirement of public participation.

p) Absorb NHIF staff following due process provided by applicable labor laws in paragraph 6(2) of the First Schedule for a seamless transition and to protect jobs and households.

q) Include an automatic "saving" provision in Clause 6(2) to transition all NHIF staff to the new Authority without requiring them to reapply, addressing concerns of unfair labor practices.

89) The **Confraternity of Patients (COFPAK)** made the following submissions-

a) Amend Clause 27(1)(b) to allow for monthly contributions instead of annual contributions to accommodate unemployed individuals who depend on daily wages.

b) Provide a definition for 'emergency treatment' in Clause 28 and its eligibility criteria that align with the provisions of the Kenyan Constitution under Article 43(2).

c) Define the phrase "essential healthcare benefit packages and timings' in Clause 31(1) as it lacks clarity regarding the healthcare package for beneficiaries.

d) Inclusion of Patients Organization (COFPAK) in Clause 45(b) to represent the patient's views in the Dispute Resolution Committee.

e) Employers continue paying for the social health insurance for the former/retired staff.

f) Patients should access healthcare services in any facility in the country (whether private, public, or faith-based) without necessarily selecting facilities as a prerequisite without any extra payments.

90) The **Kenya Healthcare Federation** made the following submission-

a) That the bill/act to be referred as the Social Health Protection Act

b) Amend structures of the social health insurance to include two arms Social Health Insurance and Social Health Assistance that goes beyond traditional diseases.

c) Amend definitions of a child, mature minor, chronic illness, emergency treatment, and tariff in Clause 2.

d) Amend Clause 5(d) to define relevant bodies allowing accreditation to be defined and to include KMPDC, PPB, Nursing Council or any other relevant professional body that is mandated by the law to license service providers.

e) Inclusion of the words "healthcare background" in the list of qualifications in Clause 7(1)(f).

f) Deletion of the word "not being a public officer" and addition of the word "healthcare background" in the list of qualifications Clause 7(1)(g) to avoid discrimination against other public officers.

g) Amend Clause 7(1)(h) to include Kenya Healthcare Federation as a for private sector representation in the Authority's Board.

h) Remove the phrase 'sentenced to a term of imprisonment exceeding six months' from Clause 8(2). Criminals convicted of any offense should be ineligible for public office.

i) Clarify on the remuneration and quantifications of the CEO by the Authority's board in Clause 13(1) for accountability and to prevent blame shifting.

j) Amend Clause 14(1) to require a master's degree for the CEO instead of a bachelor's degree, and ensure trained individuals are not excluded from the qualification list

k) Clauses 21(a), 25(1)(b), and 29(a) specify the percentage (%) of funds allocated by the National Assembly to Primary Healthcare Fund, Social health Insurance Fund, Emergency, Chronic and Critical Illness Fund for transparency and accountability purposes.

l) Addition of new Clause after Clause 23 to read, "PHC Fund promotion shall be deployed and publicized by Community Health Promoters to ensure continued membership subscription and membership education on benefits of SHIF triple funds."

m) Amend Clause 26(5) to remove the requirement to produce proof of registration as a precondition of accessing any public services from national and county governments.

n) Amend Clause 27(20)(c) to include the population not in a household, that is, street children, people in elderly homes, mature minors (persons/families and children affected by teenage pregnancies.

o) Deletion of the word "government" in Clause 27(5) and replace it with "Social Health Authority".

p) Addition of a Clause after Clause 27(5) to make provision for persons who lose formal employment to allow transition into other forms of contribution into the fund.

q) Amend clause 28(b) to define the term "emergency" and provide a list of emergency treatments/conditions to be covered.

r) Amend Clause 30 to include a penalty for denial; of emergency services by health providers and facilities.

s) Amend Clause 31(1) to define essential healthcare benefits package components.

t) Addition of new Clause after Clause 48(4) to make provision for good communication, accountability, and transparency.

u) Addition of a new Clause after Clause 49(1) to protect employees whose contributions fail to be paid by an employer.

v) Amend Clause 35(4) to include medical practitioners in the decision on the appropriateness of a procedure where the medical service provider is seeking a pre-authorization.

w) Amend Clause 36(1) to provide for minimum timelines for claims settlements and provide recourse on delayed payments.

x) Amend Clause 38(1) to provide for the maximum percentage of funds that can be placed on investment without the disruption of SHA operations.

y) Amend Clause 52 to grant the Insurance Regulatory Authority (IRA) regulatory authority over the Social Health Insurance Authority and apply provisions of the Insurance Act to all aspects of insurance business carried out by the authority.

91) The **Rural Private Hospitals Association of Kenya (RUPHA)** submitted as follows:

a) Amend the definition of 'empanelment' in Clause 2 by removing 'approved by the board' to avoid granting the SHA Board the power to usurp the functions of another government agency, the 'accrediting body' referred to in Clause 33(2).

b) Amend the definition of "health care provider" and "health care facility" for clarity and alignment with the Health Act, 2017.

c) Provide clarity on whether the term Social Health Authority and National Social Health Authority are to be used interchangeably in the Bill.

d) Define the term 'essential health care' to demarcate the scope of primary healthcare and align the Bill with the objectives as outlined in Clause 3(b) and (d).

e) Redraft Clause 5(f) to differentiate guidelines, which are advisory and non-binding, from regulations, which carry the force of law and are enforceable.

f) Redraft Clause 7(1)(h)(iii) to specify the inclusion of 'private healthcare facilities' in the Bill's representation. The change will also align with the definition assigned by the Health Act, 2017.

g) Include 'monies appropriated by the National Assembly for the provision of Primary Health Services to indigent and vulnerable persons' in Clause 21.

h) Amend Clause 24 to read as follows, "In consultation with the Cabinet Secretary, the National Social Health Authority Board shall make regulations for the Primary Healthcare Fund", as the Board will be responsible for implementing the Regulations published by the Cabinet Secretary.

i) Make a provision in Clause 25(1) that states the purpose of the Social Health Insurance Fund (SHIF), provides clarity, and limits any misappropriation of the monies that will be paid to SHIF.

92) The **Kenya Faith-Based Health Services Consortium (KCCB, CHAK, MEDS & SUPKEM)** made the following submissions-

a) Make provision for a time frame for meaningful public participation in Clause 46.

b) The First Schedule to allow NHIF or dispute resolution committee to settle claims, and liabilities before transition.

c) Amend Clause 27(2)(a) to allow 1.5 % deduction and a cap of Kes 5,000 to caution employee and employer, instead of the proposed 2.75% of the salaried contributions.

d) Amend Clause 7 to include Faith Based Organizations (FBO) in the Board, since they provide 40% of healthcare services.

e) Inclusion of a provision in Clause 13 for recruitment to commence 6 months prior to the end of the CEO's contract and hiring to occur 3 months before the exit to avoid the need for acting appointments.

f) The Bill in Clause 35 should refrain from legislating operational aspects such as outsourcing, single sourcing or syndicated procurement to prevent potential fraud and conflicts of interest involving private entities responsible for claim management.

g) That if insurance brokers are entrenched in Clause 36, they should not be allowed to handle funds, and all funds to remain under the control of the Authority.

h) The planned transition in First Schedule should adhere to the existing legislation on labor laws and rights of employees, is fair, sensitive to employee concerns and free from discrimination, punitive measures or regressive actions.

i) Clarify on Clause 16(3) to establish regulations that ensure proper order and chain of command within the Board to safeguard the CEO'S role and prevent other members from sidelining them.

93) **International Budget Partnership Kenya (IBP-Kenya)** made the following submissions -

a) That Clause 27(2)(b) should specify when unsalaried Kenyans without monthly income should make their contributions to allow for better planning. Requiring annual lump sum payments may lead to widespread defaults and pose challenges to the Government.

b) That the Bill should clarify whether both the national and county governments are responsible for paying the premiums as stated in Clause 27(2)(c).

c) That Clause 20 lacks clarity regarding the claims process for public health facilities, which could impact healthcare services in county health facilities. National legislation related to healthcare in county facilities, as per the Fourth Schedule of the Constitution, should ensure a balance of functional responsibilities and finances. Counties should be given the opportunity to be creative and manage primary healthcare with adequate resources.

d) That the Senate should clarify if the separation of the NHIF into the separate funds will not create an additional layer of bureaucracy in the management of social health insurance schemes.

e) Amend Section 35 as the proposal could increase the Fund operating costs, contradicting the Bill's goals to keep administrative cost below 5%. The Section could also create conflict of interest with private health insurers who compete with NHIF and the proposed Authority.

f) Clarify in Clauses 26 and 27 whether penalties apply to the vulnerable and poor for late premium payments. Specifically, Clause 27(c) should define the government's role in providing social protection for the poor instead of mandating them to seek credit for healthcare expenses.

94) The minutes of the Committee meetings on the Bill have been attached to this report as ***Annex 1***. In addition, a schedule of the meetings held with the aforementioned stakeholders has been attached to this report as ***Annex 5.***

95) The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this report as ***Appendix 6.***

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

A. Committee Observations

96) Having considered the Social Health Insurance Bill, 2023, National Assembly Bill No. 58 of 2023 and submissions from stakeholders, the Committee made the following observations -

a) Article 43 of the Constitution of Kenya guarantees all citizens the right to the highest attainable standard of health. This includes access to reproductive health care, and emergency medical treatment.

b) The Government of Kenya has committed to accelerating the attainment of Universal Health Coverage (UHC) as a key agenda for enhancing socio-economic development. UHC aims at ensuring that all Kenyans access and receive essential quality health services without suffering financial hardship. These services include promotive, preventive, curative, rehabilitative and palliative health services.

c) Progress towards the attainment of UHC is crucial to addressing the high burden of communicable conditions, a rising burden of non-communicable conditions, and cushioning the health system from emerging and re-emerging disease outbreaks and changing demographic patterns.

d) Out-of-pocket payments (OOP) for health services remain a major financial barrier to accessing health services in Kenya, with many households suffering catastrophic health expenditure. Social health insurance will enable Kenya to protect the poor and vulnerable, invest in its human capital and make progress in its overall goal of inclusive human development.

e) The Social Health Insurance Bill seeks to put in place a legislative framework to regulate the provision of social health insurance with a view to promoting the implementation of UHC, and ensuring that all Kenyans have access to affordable and comprehensive quality health services.

f) The Bill provides for the promotion of preventive and promotive health care through the establishment of the Primary Healthcare Fund which will primarily purchase primary healthcare services from county health facilities.

g) The Bill provides for the coverage of costs of emergency treatment, critical illness and chronic illness through the establishment of the Emergency, Chronic and Critical Illness Fund. This Fund is premised on the Constitution of Kenya, 2010 which provides that a person shall not be denied emergency medical treatment.

h) The Bill promotes the attainment of Universal Health Coverage in the country as it seeks to ensure that all Kenyans have access to affordable and comprehensive quality health services through the establishment of the Social Health Insurance Fund. The Fund will provide health cover for older persons, indigents and other vulnerable persons in society including persons in lawful custody. The Bill is therefore aligned to the Constitution of Kenya, 2010 which requires the government to provide appropriate social security to persons who are unable to support themselves and their dependents.

i) The Bill repeals the National Health Insurance Fund Act, No. 9 of 1998 and seeks to promote transparency and establish checks and balances in the delivery of social health insurance through the separation of key functions such as registration, claims management, empanelment and dispute resolution. This separation is expected to enhance efficiencies, and effectiveness of the Fund.

j) The Bill also makes the Social Health Authority a strategic purchaser compared to the National Health Insurance Fund which was a passive purchaser: It provides for the active identification of the package of healthcare to which the population is entitled; selection of healthcare providers from whom services will be purchased; contracting of the services to be purchased, including contractual arrangements and mechanisms of paying providers. With this, the Social Health Authority is expected to enhance responsiveness to the health needs of Kenyans as contemplated in the Kenya Universal Health Coverage Policy, 2020-2030.

k) The Bill seeks to enhance efficiency in the delivery of social health insurance by limiting administrative expenses to 5 percent of the annual expenditure of the Fund.

l) The Bill seeks to address the chronic challenge of reverse subsidization of health care: For example, the Committee found that, cumulatively, so far, the Government has spent close to KShs. 100 Billion on enhanced schemes for teachers, police officers and other civil servants. Owing to high utilization, funds from the normal NHIF cover have been used to sustain the enhanced schemes, leading to a reverse subsidy in which the poor pay for health services rendered to the more fortunate. Further, the Committee found that contracts for the enhanced schemes were often outsourced to private service providers leaving NHIF with liquidity challenges.

m) The Bill is further aligned to the Kenya Health Financing Strategy, 2020-2030 whose goal is to ensure adequacy, efficiency and fairness in the financing of health services in a manner that guarantees all Kenyans access to essential high quality health services they require. The Strategy calls for the prioritization of mechanisms to pool resources in a manner

that ensures efficiency and equity through the creation of several pools of funds including the social health pool to meet the costs of health services in Kenya. In furtherance of this, the Strategy recommends the establishment of a functional and autonomous Kenya Social Health Insurance Fund for the management of the mandatory-pooled health revenues needed for curative and rehabilitative essential services. The strategy further recognizes that a single social health insurance fund, governed by an independent board and supported by competent management, is the preferred institutional mechanism for mandatory insurance, as it limits administrative expenses, which are usually high with multiple social health insurance funds.

n) Majority of the concerns raised by stakeholders with regards to the Bill during public participation had already been addressed in the amendments passed the National Assembly. For example, concerns raised regarding the fate of staff at NHIF once the NHIF Act is repealed. The Bill as passed by the National Assembly allows for qualified staff to be absorbed by the Authority. It further provides for the option of early retirement, or redeployment within the public services.

o) It was further the observation of the Committee that, considering the paradigm shift represented by the Bill, concerns raised by stakeholders during public participation regarding novel challenges that were likely to arise during implementation would be more appropriately addressed through regulations, rules and guidelines.

B. Committee Recommendations

97) The Committee therefore recommends that the Senate **passes the Bill without amendments.**