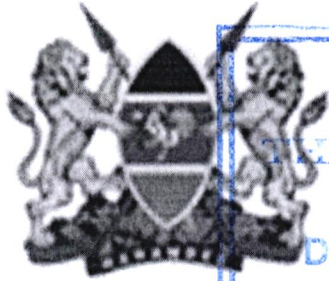
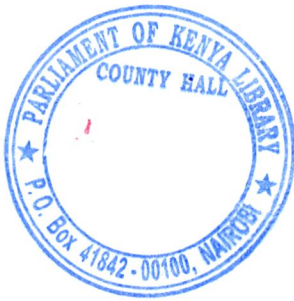


Approved for tabling in the House.

Pen SWA  
13/2022

REPUBLIC OF KENYA



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| THE NATIONAL ASSEMBLY |  |
| DATE: 01 MAR 2022     |  |
| DAY: TUESDAY          |  |
| TABBED BY:            | Vice-chair, Health<br>Hon. Joshua Kutuny |
| THE TABLE:            | Gr. Chebet.                              |

THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – (SIXTH SESSION)

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**THE DEPARTMENTAL COMMITTEE ON HEALTH  
REPORT ON THE MENTAL HEALTH (AMENDMENT) BILL, (SENATE BILL NO. 28  
OF 2020)**

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**DIRECTORATE OF COMMITTEE SERVICES  
THE NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI**

**MARCH, 2022**

|  |    |
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| <b>TABLE OF CONTENTS</b>   |    |
| <b>ABBREVIATIONS</b> .....   | 4  |
| <b>LIST OF ANNEXURES</b> .....   | 5  |
| <b>CHAIRPERSON’S FOREWORD</b> .....  | 6  |
| <b>PART I</b> .....  | 8  |
| <b>1.0 PREFACE</b> .....   | 8  |
| <b>1.1 Establishment and Mandate of the Committee</b> .....  | 8  |
| <b>1.2 Oversight</b> .....   | 8  |
| <b>1.3 Committee Membership</b> .....  | 9  |
| <b>1.4 Committee Secretariat</b> .....   | 10 |
| <b>PART II</b> .....   | 11 |
| <b>2.0 OVERVIEW OF THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILL NO. 28 OF 2020)</b> .....               | 11 |
| <b>2.1 CLAUSE ANALYSIS OF THE MENTAL HEALTH (AMENDMENT) BILL</b> .....                                     | 11 |
| <b>PART III</b> .....  | 17 |
| <b>3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION ON THE MENTAL HEALTH (AMENDMENT) BILL, 2020</b> ..... | 17 |
| <b>3.1 COUNSELLORS AND PSYCHOLOGISTS SOCIETY OF KENYA (CPS-K)</b> .....                                    | 17 |
| <b>3.2 MINISTRY OF HEALTH</b> .....  | 22 |
| <b>3.3 SUBMISSIONS BY THE TRUE NORTH SOCIETY</b> .....   | 31 |
| <b>PART IV</b> .....   | 33 |
| <b>4.0 COMMITTEE RECOMMENDATION</b> .....  | 33 |
| <b>PART V</b> .....  | 34 |
| <b>5.0 SCHEDULE OF PROPOSED AMENDMENTS</b> .....   | 34 |

## **ABBREVIATIONS**

|       |   |   |
|-------|---|---|
| CBO   | – | Community Based Organization                          |
| CCM   | - | Chama Cha Mashinani                                   |
| CRPD  | – | Convention on the Rights of Persons with Disabilities |
| FORD  | – | Forum for the Restoration of Democracy                |
| KANU  | - | Kenya African National Union                          |
| KDF   | - | Kenya Defense Forces                                  |
| KNCHR | - | Kenya National Commission on Human Rights             |
| MDG   | - | Movement for Democracy and Growth                     |
| NHIF  | - | National Health Insurance Fund                        |
| ODM   | - | Orange Democratic Movement                            |
| PPB   | - | Pharmacy and Poisons Board                            |
| PSK   | - | Pharmaceutical Society of Kenya (PSK)                 |
| SDG   | - | Sustainable Development Goal                          |
| UHC   | - | Universal Health Coverage                             |
| UN    | - | United Nations  |
| WPM   | - | Wiper Democratic Movement                             |

## **LIST OF ANNEXURES**

A. Adoption List

B. Advertisement dated 5th November, 2021 inviting submission of Memoranda

C. Minutes of the meetings of the Committee

## CHAIRPERSON'S FOREWORD

The Mental Health (Amendment) Bill, (*Senate Bill No. 28 of 2020*) was considered and passed by the Senate on 15<sup>th</sup> September 2021 and forwarded to the National Assembly for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The Bill was then committed to the Departmental Committee on Health on 13<sup>th</sup> October 2021.

The Bill seeks to amend the Mental Health Act, Cap. 248, Laws of Kenya to align it to the provisions of the Constitution and the Health Act, 2017. The Bill's overarching interest is to ensure that persons with mental illness receive the highest attainable standard of health by the provisions of Article 43(1)(a) of the Constitution by outlining the obligations of both the National and County Governments about the provision and access to mental health services.

In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Order 127(3), the Committee, through local daily newspapers of Friday 22<sup>nd</sup> October 2021 published advertisements inviting the public to submit memoranda on the Bill. Further, the Committee held a consultative meeting with the Ministry of Health, Kenya Parliamentary Caucus on Sustainable Development Goal (SDG) and Business and the Presidential Taskforce on Mental Health to make presentations on the Bill. The meeting was held on Monday 22<sup>nd</sup> November 2021 at the Mombasa Beach Hotel in Mombasa County.

The following institutions submitted memoranda:

- i. Counselors and Psychologists Society of Kenya (CPS-K);
- ii. Ministry of Health; and
- iii. The True North Society.

This report contains the analysis of the public submissions on the Bill, written submissions received from the public noting general comments in support or against the amendments, and the list of the individuals and institutions that submitted their memoranda and participated in the public hearing meeting.

The report further contains a signed list of Members who attended the sitting which considered and adopted the report, a copy of the newspaper advertisements of Friday 22<sup>nd</sup> October 2021 inviting the public to submit memoranda on the Bill, and a letter regarding public hearings with the Presidential Taskforce on Mental Health and the Ministry of Health that was held on 22<sup>nd</sup> November, 2021 and Minutes on proceedings of Committee sittings during the consideration of the Bill.

May I take this opportunity to thank and commend Committee Members for devotion and commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction, and finally the Committee secretariat for exemplary performance in the provision of technical and logistical support. Indeed, their efforts were critical in the consideration of the Bill and production of this report. The Committee also reiterates its gratitude to the stakeholders who made submissions about the Bill.

On behalf of the Departmental Committee on Health and under the provisions of Standing Order 127 (4), it is my pleasant privilege and duty to present the House a report of the Committee on its consideration of the **Mental Health (Amendment) Bill, (Senate Bill No. 28 of 2020)**

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

## PART I

### 1.0 PREFACE

#### 1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Health is established under the provisions of Standing Order No. 216(5) of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of Departmental Committees is as follows-
  - a) *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned Ministries and departments;*
  - b) *Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
  - c) *Study and review all legislation referred to it;*
  - d) *Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
  - e) *Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - f) *Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and*
  - g) *Make reports and recommendations to the House as often as possible, including the recommendations of proposed legislation.*

#### 1.2 Oversight

In executing this mandate, the Committee is mandated to oversight Ministry of Health alongside its Semi-autonomous Government Agencies (SAGAs) namely;

- i. Kenya National Hospital (KNH);
- ii. Moi Teaching and Referral Hospital (MTRH)
- iii. Kenyatta University Teaching, Research and Referral Hospital (KUTRRH)
- iv. Kenya Medical Training College (KMTC)
- v. Kenya Medical Supplies Agency (KEMSA)
- vi. Kenya Medical Research Institute (KEMRI)
- vii. National Aids Control Council (NACC)
- viii. National Hospital Insurance Fund (NHIF)
- ix. Kenya Nuclear Regulatory Authority (KENRA)

### 1.3 Committee Membership

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

Hon. Sabina Chege, MP - **Chairperson**

County MP for Muranga County

**Jubilee Party**

Hon. Joshua Kutuny, MP - **Vice-Chairperson**

Cherangan'y Constituency

**Jubilee Party**

Hon. (Dr.) Esteli Simiyu, MP  
Tongaren Constituency

**Ford Kenya Party**

Hon. Gideon Ochanda, MP  
Bondo Constituency

**ODM Party**

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

**ODM Party**

Hon. Alfred Agoi Masadia, MP  
Sabatia Constituency

**ANC Party**

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

**Jubilee Party**

Hon. Muriuki Njagagua, MP  
Mbeere North Constituency

**Jubilee Party**

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

**KANU Party**

Hon. Beatrice Adagala, MP  
Vihiga County

**ANC Party**

Hon. James G Wamacukuru  
Kabete Constituency

**Jubilee Party**

Hon. Prof. Mohamud Sheikh, MP  
Wajir South

**Jubilee Party**

Hon. Sarah Puleta Korere, MP  
Laikipia North Constituency

**Jubilee Party**

Hon. Capt. Ruweida Mohamed, MP  
Lamu County

**Jubilee Party**

Hon. Kipsengeret Koros, MP  
Sigowet-Soin Constituency

**Independent Party**

Hon. Martin Peters Owino, MP  
Ndhiwa Constituency

**ODM Party**

Hon. Joyce Ekai Emanikor, MP  
Turkana County

**Jubilee Party**

Hon. Said Hirabe, MP  
Galole Constituency

**Ford Kenya Party**

Hon. Tongoyo Gabriel Koshal, MP  
Narok West Constituency

**CCM Party**



#### **1.4 Committee Secretariat**

3. The Committee is facilitated by the following members of staff:

Mr Douglas Katho  
**Head of the Secretariat**  
**Clerk Assistant II**

Ms. Christine Odhiambo  
**Legal Counsel I**

Mr. Muyodi Meldaki Emmanuel  
**Clerk Assistant II**

Mr Eric Kanyi  
**Fiscal Analyst II**

Ms Fiona Musili  
**Research Officer II**

Mr Ahmed Yakub  
**Media Relations Officer**

Ms Catherine Wangui  
**Serjeant-At-Arms**

Mr Nimrod Ochieng  
**Audio Officer**

## PART II

### 2.0 OVERVIEW OF THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILL NO. 28 OF 2020)

4. The Bill proposes to impose obligations on each level of government to address the issue of accessibility to mental health services including care, treatment, and rehabilitation of persons with mental illness. It also proposes to incorporate within the membership of the Kenya Mental Health Board representation of the County government. It further seeks to review the membership of the Kenya Mental Health Board from the current fourteen executive members to nine to make the workings of the council more efficient and representative.

### 2.1 CLAUSE ANALYSIS OF THE MENTAL HEALTH (AMENDMENT) BILL

- Clause 1** Short title (Mental Health (Amendment) Act), 2018.
- Clause 2** The clause seeks to amend the long title by deleting the words “mental disorder or mental sub normality with a mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals”. The new long title shall read; “An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental illness; for the custody of their persons and the management and control of mental health facilities.”
- Clause 3** The principal Act is amended in Section 2 by deleting the terms director, mental hospital, person in charge, and person suffering from a mental disorder.
- Further, it seeks to insert the definitions of Cabinet Secretary, care treatment and rehabilitation, county executive committee member, director, guardian, health information system, health care provider, mental health facility, person in charge, person with mental illness, mental health practitioner, mental health unit, supporter and representative.
- Clause 4** The clause seeks to insert new sections after section 2 that provide for the purpose and guiding principle of the Act.
- The purpose of the act includes promoting the mental health and well-being of all persons and the implementation of the acts should be guided by the promotion and fulfillment of the right to the highest attainable standard of health as enshrined under Article 43 of the Constitution.
- Clause 5** The clause seeks to introduce a new part (1 A) that provides for functions of both the national and county governments. The national government shall provide the necessary resources for the provision of mental health care while the county governments shall provide mental health care, treatment, and rehabilitation services within the county health facilities.

The clause further seeks to establish the county mental health councils which shall assist the county executive committee on health in fulfilling its mandate in regards to mental health.

**Clause 6** The clause deletes part II and substitutes it with a new part that provides the rights of persons with mental illness. They include the right to mental health services, consent to treatment, right to participate in treatment planning, access to medical insurance, protection of persons with mental illness, rights to civil, political, and economic rights, right of access to information, right to confidentiality, right to representation, right to appoint a supporter and legal capacity.

**Clause 7** The clause amends section 4 by deleting subsection 2 and substituting it with new sections that provide for the composition of the Board. It further, provides for the qualifications of members of the Board. It also amends subsection 6 by deleting it and substituting it with a new subsection that provides for the power of the Board to regulate the conduct of its business and affairs.

**Clause 8** The clause seeks to insert a new section (4A) after section 4 to provide for the vacancy of the Board and the removal of a Board member. It also provides for the delegation powers of the Board.

**Clause 9** The clause seeks to amend the functions of the Board. The Board shall advise the national government and county governments on the levels of access to mental health care services in Kenya and the most appropriate strategies and programs for the care of persons with mental illness and the effective delivery of mental health care service at the national and county levels of government.

**Clause 10** The clause seeks to amend section 6 by deleting subsection 1 and substituting it with new subsections which provide for the establishment of the office of the Director of Mental Health. It also provides for the qualifications for appointment as director.

Further, it provides for the functions of the Director of Mental Health which shall include the implementation of the decisions of the Board and the directing and supervising of the acts of the staff of the Board.

**Clause 11** The clause seeks to delete section 7 of the Principal Act which provides for the District Mental Health Councils.

**Clause 12** The clause amends section 8 by deleting the words district mental health councils as they are no longer provided for in the Act.

Further, it deletes subsection 2 and inserts a new one to provide that the remuneration of the Board shall be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

- Clause 13** Amends the heading to Part IV to provide for management of mental facilities, admission, and treatment of persons with mental illness.
- Clause 14** The clause seeks to amend Section 9 of the act by deleting the word hospitals appearing in the marginal note and substituting it with the words health facilities.
- The clause seeks to provide for the designation, management, and running of mental health units and mental health facilities.
- Clause 15** The clause inserts new sections after section 9. It provides for the establishment of both public and private mental health facilities. It also provides for the penalty for the fraudulent procurement of registration of a mental health facility. It further provides for reports by the mental health facilities to be submitted to the Board and the county executive committee.
- It also provides for the process of seclusion and restraint of a person suffering from mental health illness.
- Clause 16** The Principal Act is amended by deleting the heading to Part V of the Act.
- Clause 17** The clause seeks to delete section 10 and substitute it with a new section to provide for the voluntary admission of a patient. A person who voluntarily admits themselves as a patient is entitled to receive appropriate care and treatment including being referred to an appropriate mental health facility.
- Clause 18** The Principal Act is amended by deleting section 11 which provided for a voluntary patient to be reviewed within seventy- two hours.
- Clause 19** The amendment seeks to delete section 12 of the Principal Act on notification of reception, death, or departure of the voluntary patient.
- Clause 20** The amendment seeks to delete section 13 which provides for a voluntary patient not to be retained for more than forty-two days after becoming incapable of expressing himself.
- Clause 21** The clause seeks to delete from the Act the heading on involuntary patients.
- Clause 22** The clause seeks to delete the marginal note and substitute it with ‘involuntary admission’.
- It would mean that a patient can only be admitted voluntarily.
- Clause 23** The clause seeks to delete section 15 of the Act on the Board’s power of discharge
- Clause 24** The clause deletes the heading to part VII
- Clause 25** The clause inserts a new section to provide for the conditions for emergency admission and treatment of persons with mental illness. The amendment also stipulates the timelines for emergency admission or treatment and requires the

mental health practitioner to obtain consent in case the person with the illness requires care beyond the period prescribed.

**Clause 26** The clause substitutes the word “disorder” with “illness” to conform to the provisions of the Bill. The amendment seeks to separate the provisions of section 16(2) of the Patent Act into two different subsections but retains what it provides.

The clause further provides for the functions of the person in charge of the mental health facility upon the delivery of the person with mental health. It deletes subsection (4).

**Clause 27** The clause substitutes the words ‘armed forces in the heading of part VIII with ‘Kenya Defence Forces’ to conform with the Constitution.

**Clause 28** The clause seeks to substitute the use of “armed forces” with “Kenya Defence Forces” and “mental hospital” with “mental health unit”.

The clause further reduces the admission period of members of KDF from 28 days to 14 days.

**Clause 29** The clause separates the provisions of subsection (1). It makes provision for the requirement of a warrant and any other documents duly authorizing a person suffering from mental illness, detention in, and removal from the foreign country.

**Clause 30** The clause seeks to bring forth provisions of the parent Act to align it with the Constitution on the Cabinet Secretary and devolved government.

**Clause 31** The amendment seeks to include a review of persons with mental illnesses in the heading of Part X to conform to the provisions of the Part.

**Clause 32** The amendment seeks to introduce a new section to provide for the review.

It provides for the mandate of the Cabinet Secretary in consultation with the Board and the Council of Governors.

**Clause 33** The clause removes the proviso requiring that an order for discharge shall not be made in case of a person detained under the criminal procedure code and that the section shall not prejudice the Board’s power.

**Clause 34** The clause deletes the provision for an order of delivery of patients into the care of a relative or friend and provides for the interim discharge of persons with mental illnesses into the custody and care of a supporter, representative, or guardian in case of a minor.

**Clause 35** The clause seeks to substitute the reference to government mental hospitals with national referral hospitals, mental health units, or county mental health facilities and allows the county executive committee member to facilitate the transfer.

- Clause 36** The clause seeks to provide for the treatment of a person with mental illnesses abroad on the application of persons specified to the Board.
- Clause 37** The clause seeks to substitute Part XII of the Act with a new part providing for the care and administration of the property of persons with mental illnesses.
- The clause introduces the priority for application for an order for the management and administration of the estate of a person with mental illnesses.
- The clause introduces a penalty for the contravention of provisions of the part.
- The clause removes the provisions on orders on recovery of persons previously suffering from mental disorders, examination of females, court procedure, and delegation of power to magistrates by the Chief Justice.
- Clause 38** The clause seeks to move away from reference to “every person having charge of any patient in the mental hospital” and provides for “mental health practitioner” as indicated in the interpretation section.
- It also substitutes a reference to “district mental health council” to “county executive committee member” to comply with the devolved government roles under the Constitution of Kenya, 2010.
- Clause 39** The clause deletes reference to “hospital” and provides for “mental health facilities” within the definition of the proposed Section 9 in the Bill.
- Clause 40** The clause removes the requirement of the Attorney General’s consent in the institution of criminal proceedings and provides for notice to the Director of Public Prosecution.
- Clause 41** The clause aligns the Section with the provisions and definitions of the proposed legislation.
- Clause 42** The clause substitutes references to “hospital” with “mental health facility” to fit the interpretation in the Bill.
- Clause 43** The clause divides the section into two subsections to promote logical sequence in the drafting.
- Clause 44** The clause introduces the mechanisms for persons with mental illnesses to lodge complaints against health professionals with the Kenya Health Professions Oversight Authority.

It provides for people who complain on behalf of a person with mental illness.

It lays down the timelines for determination of the complaint by the Authority and provides for Appeals to the High Court.

- Clause 45** The clause substitutes a reference to “disorder” with “illness” and “hospital” with “health facility”
- Clause 46** The clause substitutes a reference to “mental hospital” with “mental health facility” to conform to provisions of the Bill.
- Clause 47** The clause removes the provision that seeks to protect persons in charge of mental health facilities from liability when they take steps necessary to protect the patient’s interest and prevent the patients from causing injury to themselves and others.
- Clause 48** The clause substitutes a reference to “mental hospital” with “mental health facility” to conform to provisions of the Bill.
- Clause 49** The clause increases the penalty imposed in Section 53 of the Act from ten thousand to five hundred thousand shillings.
- Clause 50** The clause substitutes reference to the “Minister” with “Cabinet Secretary” to conform to the Constitution.
- The clause also mandates the Cabinet Secretary to consult the Council of Governors in the regulation-making.
- The clause includes the making of regulations to prescribe the form of the supportive decision-making agreement.
- Clause 51** The clause contains transition provisions
- Clause 52** The clause contains the consequential amendment to the Health Act No. 21 of 2017 by providing for mental health services as health services under that Act.

## PART III

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION ON THE MENTAL HEALTH (AMENDMENT) BILL, 2020

5. This section contains submissions by the stakeholders and submissions made during the public participation exercise conducted on Monday 22<sup>nd</sup> November 2022 at the Bahari Beach Hotel in Mombasa County.

#### 3.1 COUNSELLORS AND PSYCHOLOGISTS SOCIETY OF KENYA (CPS-K)

##### Title

6. Amend Title to read- “Mental Health and Happiness (Amendment) Bill, 2020”

##### Justification

To align the recommendations by the Mental Health and Wellness Taskforce

##### Observation

The Committee rejected the amendment. The amendment is not necessary as currently there does not exist a Mental Health and Happiness Act.

##### Long Title

7. Amend Long Title to read-

“An Act of Parliament to amend the Mental Health and Happiness Act, and for connected purposes”

##### Justification

To align the recommendations by the Mental Health and Wellness Taskforce

##### Observation

The Committee rejected the amendment. The amendment is not necessary as currently there does not exist a Mental Health and Happiness Act.

##### Clause 4

8. Insert new a paragraph in section 2A—

“The purpose of this Act is to provide a framework to—

- (a) invest in early intervention, adopt a holistic approach to the community health services; and strengthen integrated mental health and reproductive health, especially at primary health facilities.”

##### Justification

To align to the Taskforce recommendations on Mental Health and Wellness, 2019-2020.



The Ministry currently has structures in place that can be utilized for intervention and mental health services through the CHS personnel for a holistic approach.

To encourage and support postpartum family planning for perinatal services in primary healthcare facilities hence it is imperative to have this framework in the reproductive health counseling services for adolescent mothers among others.

### **Observation**

The Committee agreed to the amendment. However, while the adoption of a holistic approach to community-based care and promotion of mental health services may be included among the purposes of the Act, matters of reproductive health would not properly be placed as purposes of the Act.

#### **Clause 5 (2C)**

9. Introduce a new subparagraph in paragraph (b)-

“(iii) expanding and strengthening community and family-based care and support systems for youth, street, prison population”

### **Justification**

Utilize the community health services structure to offer home-based counseling services and psychoeducation to alleviate stigma and discrimination.

### **Observation**

The Committee agreed to the amendment as it seeks to mandate the collaboration of national and county governments in the promotion of home-based care in respect of mental health illness

#### **Clause 5 (2C)**

10. Introduce a new subparagraph in paragraph (e)-

“(iv) put in place mechanisms for outpatient comprehensive cover for mental health care, treatment and rehabilitation of substance use disorders to promote prevention as well as continued care for mental illnesses.”

### **Justification**

The provision of mental health cover under NHIF is discriminatory, while it is not explicit under the law on the insurance cover.

Current practices do not cover outpatient services.

### **Observation**

The Committee noted that the proposal conflicts with section 5(1)(c) of the National Hospital Insurance Fund Act, No. 9 of 1998 which provides that one of the functions of the National

Hospital Insurance Fund Board is to regulate the contributions payable to the Fund and the benefits and other payments to be made out of the Fund.

The Committee however included the development of mechanisms for outpatient cover for mental health as one of the programs to be developed by the national government.

**Clause 5 2C(f)**

11. Delete paragraph (f) and replace it with-

“(f) develop community-based mental health service programs for the continued counseling care and rehabilitation of persons with mental illness;”

**Justification**

To help in establishing human resource capacity in counseling from the community health strategy for quality services.

**Observation**

The Committee rejected the amendment as the provision is already contained in the Bill.

**Clause 5**

12. Insert new paragraph-

“(k) establish the directorate of mental health and substance use to coordinate the implementation of policies on mental health.”

**Justification**

To align to the recommendations of the Mental Health and Wellness Taskforce on governance and leadership in Mental Health and Wellness.

**Observation**

While the proposal seeks the establishment of a directorate responsible for mental health, it would be more effective to introduce the provision as a substantive section, setting out the functions of the directorate.

The Committee however rejected the amendment as the Board as reconstituted would be adequately placed to perform the functions bestowed on it.

**Clause 5 2D(1)**

13. Amend paragraph (b) to read-

“(b) provide community-based care and treatment in community health services level 1 for persons with mental illness including initiating and organizing community or family-based programs for the care of persons suffering from mental illness;”

**Justification**

To achieve the goal in psychoeducation and psychological first aid to the community

To align the Bill with the Title

**Observation**

The amendment is not necessary as the county governments are mandated to perform their functions within the limits set out in the Fourth Schedule.

It is therefore not necessary to provide the level of health facility in the provision.

**Clause 5 2D(2)**

14. Insert the following new paragraphs-

“(k) support and organize community-based dialogues and action days programs on mental health;

(l) ensure and support the mental health services counseling unit are well equipped as per laid procedures by global health authorities.”

**Justification**

To achieve the goal in psychoeducation and psychological first aid to the community

To align the Bill with the Title

**Observation**

The amendment is not necessary as it provides for matters already provided in the Bill.

**Clause 5 2D(3)**

15. Amend to read-

“(3) The county executive committee member may delegate some or all the functions under this section, to a committee or an officer within the county public service with a prerequisite qualification in mental health and wellness.”

**Justification**

To create the need for the deployment of counseling and psychologists in the community health services

**Observation**

The amendment is not necessary as it negates the role of the county mental health council as established in the Bill.

**Clause 6 3A(5)**

16. Delete “A person” and replace it with “Psychotherapist”

**Justification**

To give the onus and responsibility to the psychotherapist in charge.

**Observation**

The amendment is not necessary since the Bill in clause 2 defines the term “person in charge” to mean a person in charge of a health facility, and this person need not be a psychotherapist.

**Clause 7(a)**

17. Amend (2)(f) to read-

“(f) the Director of Mental Health and Happiness who shall be the secretary to the Board and an *ex officio* member of the Board.”

**Justification**

To align to the Taskforce recommendations on Mental Health and Wellness.

**Observation**

The inclusion of the word “Happiness” is not in conformity with the purpose of the Mental Health Act which is to provide for matters relating to mental health.

The Act does not provide for the regulation of happiness.

**Clause 7(a)-**

18. Insert new paragraph-

“(g) lecturer nominated by universities/ KMTC training counseling psychology;”

**Justification**

To bring the input of institutions of higher learning into the profession and council

**Observation**

The Committee rejected the amendment as there is no distinct role to be performed by a lecturer of the Kenya Medical Training College within the Board.

**Clause 10 (1B)**

19. Amend paragraphs (a) and (b)-

“(a) holds a degree in medicine or counseling psychology from a university recognized in Kenya;

(b) is registered—

- i) by the Medical Practitioners and Dentists Board as a mental health practitioner; or
- ii) by the Counsellors and Psychologists Board;”

### **Justification**

To align the professional practice in mental health and happiness dispensation.

### **Observation**

The Committee rejected the amendment since the Bill already contains the provisions proposed.

## **3.2 MINISTRY OF HEALTH**

### **Clause 2**

20. Delete the definition of “person with mental illness” and substitute with the following-  
“person with mental illness” means a person diagnosed to be suffering from mental illness by a qualified and registered health care provider, (b) this includes person diagnosed with alcohol or substance use disorder and a person with suicidal ideation or behavior.”

21. Insert the following new definitions-

“mental health unit” means a place or a section within a health facility designated to provide mental health services.

“mental health facility” means a facility registered and licensed by a relevant medical regulatory body to provide mental health services.

“mental health” means a state of well-being in which the individual realizes his or her abilities, can cope with the normal stresses of life, can work productively and fruitfully, and can contribute to his or her community.

“mental health services” means the promotion of mental wellbeing, prevention, the management or alleviation of disease, illness, injury, and other physical and social determinants affecting mental health in individuals, delivered through the mental health system, or emergency health services;

“mental health practitioner/mental healthcare professional” means a health care professional who has obtained mental health professional qualifications and licensed by the relevant health regulatory body;

“reintegration” means the process of assisting persons with psychosocial, intellectual, and cognitive disabilities, who have been abandoned at a hospital due to various reasons, reunite with their relatives by taking them home

“rehabilitation” means the multidisciplinary approach aimed at supporting persons with psychosocial, intellectual, and cognitive disabilities, access to services geared towards their treatment and recovery process.

### **Justification**

A Mental Health unit is only a section within a Health Facility while a mental health facility is a facility mainly providing Mental Health services.

Therefore, the two interpretations comprehensively capture all the facilities providing mental health services.

The definition of a Person with Mental illness is limited to maternal mental illness and substance abuse. It does not cover the entire spectrum of Mental illness.

The definition as proposed is restricting the practitioners to the 5 cadres while in Kenya, mental health services are provided from community and primary health care levels by general nurses, clinical officers, medical officers, and other health workers in the effort of decentralization and integration of mental health services.

Mental health is part of the training of most health care professionals and therefore they will be able to provide primary mental health care. This will enable increased access to mental health services, especially with the few specialized mental health professionals in the country.

The roles and functions in the Bill requiring specific expertise such as issuance of medical certificates, the person in charge, review of patients will be assigned to the relevant cadre or person delegated to by the medical officer in charge, Director or the Authority.

### **Observation**

The Committee agreed to the definition of the following terms-

“person with mental illness”

“mental health unit”

“mental health facility”

“mental health services”

“rehabilitation”

The definitions as proposed provided more clarity in regards to the terms as used in the Bill.

The Committee however rejected the definitions of the following terms-

“mental health”- the definition does not define with certainty a person’s capability or otherwise to cope with normal stresses of life. This may therefore be subject to ambiguous interpretation.

“mental health practitioner/mental healthcare professional” – the definition may also be subject to ambiguous interpretation. The definition as contained in the Bill offers more certainty.

“reintegration”- the term is not used in the Bill or the parent Act.

### **Clause 7**

22. (a)-Section 4 is amended by deleting the Kenya Board of Mental Health and substituting it with Mental Health Authority

(b) by deleting subsection (2) and substituting therefor the following new subsections—

(2) The commission shall consist of; -

(a) the chairperson, person with experience in mental health and effective leadership roles for more than 15 years appointed by the President;

(b) the Director-General for health;

(c) the Principal Secretary in the Ministry for the time being responsible for Health, or his or her representative, appointed in writing;

(d) the Principal Secretary in the Ministry for the time being responsible for finance, or his or her representative, appointed in writing;

(e) Four persons with knowledge and at least four years experience in mental health care-

i. psychiatrist, nominated by the Medical Practitioners and Dentists Board;

ii. a counselor or psychologist nominated by the Counsellors and Psychologists Board;

iii. a psychiatric nurse nominated by the Nursing Council of Kenya;

iv. a clinical officer nominated by the Clinical Officers Council;

(f) one person nominated by such organizations that advocate for the rights of persons with mental illness as the Cabinet Secretary may determine;

(g) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;

(h) the director of Social development or, where the director cannot serve, his nominee appointed by the Minister;

(i) the Director of Basic Education or, where the Director cannot serve, his nominee appointed by the Minister;

(j) the Director of Mental Health, who shall be the secretary to the council.

(2A) The Cabinet Secretary shall appoint the members of the Council nominated under subsection

(2) (e), (f), and (g) by notice in the Gazette.

## **Justification**

The Taskforce on Mental Health report found the burden associated with mental health conditions and related impact to be a public health emergency of an epidemic proportion requiring a whole Government and societal approach to address it holistically. This required concerted efforts and strategies similar to approaches applied to the HIV/AIDS pandemic.

The proposed Authority will provide leadership, governance, and oversight in cross-sectoral mental health-related matters.

## **Observation**

The Committee rejected the amendment as the Constitution of the Board as contained in the Bill consists of persons having the relevant knowledge and expertise in matters relating to mental health, which is necessary for the proper performance of the functions of the Board.

## **Clause 9**

23. Section 5 of the principal Act is amended-The function of the Authority shall be-
- (a) provide advisories on the effect of policies, guidelines, legislation, and any acts by state organs on mental health and happiness;
  - (b) advise the National government and County governments on the levels of access to mental health care services in Kenya and the most appropriate strategies and programs for the care of persons with mental illness and the effective delivery of mental health care services at the national and county levels of government;
  - (c) coordinate, monitor, and support supervision of cross-sectoral mental health activities and programs;
  - (d) to prepare the annual National report on mental health and happiness index;
  - (e) to initiate and support community-based preventive and promotive mental health programs
  - (f) to collaborate with public, faith-based, and private sectors such as education, labor, public services, security, youth, sport, and gender-based organizations in the promotion of mental health.
  - (g) to set standards for the establishment of mental health services;
  - (h) approve the establishment of mental health facilities;
  - (i) inspect mental health units and mental health facilities to ensure that they meet the prescribed standards for mental health services;
  - (j) to monitor the adherence to legal provision on mental health and the fulfillment of the rights of persons with psychosocial, intellectual, and cognitive disabilities;
  - (k) to receive and investigate any matter referred by a patient, guardian, a supporter, a health facility concerning delivery of mental health services and where necessary take or recommend remedial actions;
  - (l) to develop guidelines on admission procedures and emergency care of persons with mental illness;
  - (m) to collaborate with the Cabinet Secretary responsible for education in developing and integrating into the education syllabus instructions relating to mental health, including



- instructions on prevention, treatment, rehabilitation, and general information on mental health-related illness;
- (n) to collaborate with Ministries, State Departments, and agencies to mainstream mental health in the workplaces
  - (o) Conduct periodic survey on the status of mental health, analysis of related determinants, and continuous surveillance of happiness index;
  - (p) To provide oversight on the management of the mental health fund
  - (q) to liaise, where necessary, with other person or agencies to fulfill its mandate;

### **Justification**

To align to the recommendations of the Taskforce on Mental Health;

To monitor and coordinate cross-sectoral Mental Health activities;

To provide surveillance mechanisms and give reports on Mental Health status and happiness index;

To oversight on the implementation of the rights of persons with Mental Health conditions and psychosocial disabilities;

### **Observation**

The Committee rejected the amendments for the following reasons-

- The proposed additional functions are already contained in the Bill but with different wordings- the objectives behind the functions are the same;
- The new paragraph (l) conflicts with the regulation-making power granted to the Cabinet Secretary who shall do so in consultation with the Board;
- The new paragraph (l) goes against the mandate of the Kenya Institute of Curriculum Development which is responsible for developing, reviewing, and approving curricula,
- The new paragraph (p) usurps the role of the Auditor-General.

### **Clause 14**

24. Delete 2A-county executive committee member and county mental health council replace with

—

An application to the Board/commission to inspect and authorize such place within a health facility to provide mental health services or health facility (specialized mental health services) to be registered by the relevant medical regulatory body.

The Authority may, by notice in the Gazette, designate such places within a health facility as Authority may consider necessary as a mental health unit

### **Justification**

The health services regulatory role is a mandate of the National government.

Mental health services should be provided in a standardized manner across all public and private general health facilities as a tripartite to holistic health services.

(the provision to regulate/authorize establishment at the County level may affect the standard of mental health care across different County governments).

### **Observation**

The Committee rejected the amendment as it may go against the objects of devolution which grant the county governments the functions over county health services.

### **Clause 15**

25. Delete 9E and substitute with the following

Amend by deleting the words “seclusion and restraint” and replace with “**least restrictive alternative interventions and programs**”

9E (1) a person with mental illness shall not be physically restrained or secluded.

(2) Least restrictive alternatives interventions will be used where this is the only means available to prevent immediate or imminent harm to the person with mental illness or other people.

The Authority in consultation with the Cabinet Secretary shall provide guidelines on least restrictive alternative intervention to end seclusion and restraints.

The Authority shall oversee the implementation of providing guidelines to end seclusion and restraints

### **Justification**

Alignment to Convention on the Rights of Persons with Disabilities (CRPD) and Bill of Rights

### **Observation**

The Committee rejected the amendment as it is vague and does not provide what the least restrictive alternative interventions shall include.

The provision in the Bill adequately provides for the circumstances in which a person shall be physically restrained or secluded.

### **Clause 22**

26. Amend by deleting the words “involuntary admission” and replace with “admission through supported decision making ”

### **Justification**

Alignment to Convention on the Rights of Persons with Disabilities (CRPD) and Bill of Rights

The admission procedures/regulations through supported decision making retain the legal capacity, the will, and preference of a person with mental illness.

### **Observation**

The Committee rejected the amendment as the change of the marginal note does not affect the substance of the section.

### **Clause 35**

27. Delete the proposed amendment

Transfer of patients to be by the referral strategy guidelines within an approval from a medical officer in charge of a health facility.

### **Justification**

Mental Health services to be aligned with other National Health referral strategies.

### **Observation**

The Committee agreed to the amendment as it would be impractical to require the approval of the Director of Mental Health or the county executive committee member to approve every transfer of a patient with mental illness.

28. **New Clause**

## **INTRODUCTION OF FINANCIAL PROVISIONS**

### **Funds for the council**

(1) The funds of the Authority comprise of –

- (a) monies allocated by the National Assembly for the Authority;
- (b) such monies or assets as may accrue to the Authority in the course of the exercise of its powers, or in the performance of its functions under this Act; and
- (c) monies from other sources including loans, grants, or donations to the Authority.

(2) The Authority shall open a bank account for its funds and its balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for this Act by Article 206 (1) (a) and (b) of the Constitution.

### **Financial year**

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

### **Annual estimates**

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

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

- (a) the payment of salaries, allowances, and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities, and other charges in respect of the staff of the Board/Commission;
- (c) the maintenance, repair, and replacement of the equipment and other property of the Authority;
- (d) implementation of the mandate programs; and
- (e) any other expenditure as may be necessary for the carrying out of the objects and functions of the Authority under this Act.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the Authority except by the annual estimates approved under subsection (3).

### **Accounts and Audit**

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

(2) Within three months after the end of a financial year, the Authority shall submit to the Auditor-General the accounts of the Authority for that year together with —

- (a) a statement of income and expenditure during the year; and
- (b) a statement of the assets and liabilities of the Authority as on the last day of that year.

(3) The annual accounts of the Authority shall be prepared, audited, and reported upon by the Public Audit Act, (No. 34 of 2015).

### **Investment of funds**

The Authority may invest any of its funds in securities, trust funds, or banks which the National Treasury may from time to time, approve for that purpose.

### **Justification**

The financial provision to the Authority will help to effectively implement the mandated functions

### **Observation**

The Committee rejected the amendment since under the provisions of Standing Order 133(5), the amendments deal with a different subject and propose to unduly expand the subject of the Bill.

## 29. New Clause

### **INTRODUCTION OF MENTAL HEALTH FUND**

#### Establishment of Mental Health Fund

##### 1. Establishment of the Fund

There is established a fund to be known as the Mental Health Fund.

##### 2. Sources of funds for the Fund

The Fund shall consist of —

- (a) all money appropriated by the National Assembly, or paid into, or allocated to the Fund under the provisions of any other Act;
- (b) domestic and foreign grants;
- (c) Revenue raised from sin taxes and
- (d) any property or amount of money received or acquired from any other legal sources.

##### 3. Administration of the Fund

The Fund shall be administered by the Authority.

##### 4. Functions of the Fund

The functions of the Fund shall be to cater for —

- (a) the skills training of persons with mental illness, intellectual and cognitive disabilities;
- (b) any matter connected with the rescue, rehabilitation, and reintegration of persons with mental illness;
- (d) Training, capacity building, and research.

##### 5. Other matters to be prescribed

(1) The Cabinet Secretary, in consultation with the National Treasury, may make regulations on —

- (a) the administrative operations of the Fund; and
- (b) the financial requirements for rescue, rehabilitation, and reintegration of persons with mental illness.

(2) Regulations made under subsection (1) shall be laid before Parliament.

## **Justification**

The findings on the recommendations of the Taskforce Report found the burden of Mental illness as a public health emergency of an epidemic proportion requiring investment across the sectors.

The mental health fund will address mental health disparities and inequalities in the implementation of cross-sectoral and community programs.

The fund will provide for an affirmative act to facilitate the empowerment and inclusion of persons with mental health conditions, intellectual and cognitive disabilities.

## **Observation**

The Committee rejected the amendment since under the provisions of Standing Order 133(5), the amendments deal with a different subject and propose to unduly expand the subject of the Bill.

### **30. New Clause**

Consequential amendment to the Penal Code, Cap 63.

**Repeal of section 226-** Any person who attempts to kill himself is guilty of a misdemeanor.

## **Justification**

Decriminalization of Suicide

## **Observation**

The Committee rejected the amendment since under the provisions of Standing Order 133(5), the amendments deal with a different subject and propose to unduly expand the subject of the Bill.

### **3.3 SUBMISSIONS BY THE TRUE NORTH SOCIETY**

31. The Committee also received submissions from the True North Society which proposed the following general recommendations about mental health in Kenya—

- (a) Ensure funding for mental and behavioral management for both active service personnel and their families is a revolving annual requirement with its independent vote cemented by an authority to incur expenses. This vote should cover wounded and retired personnel, widows, orphans, and vulnerable children to support reintegration and transition.
- (b) Remove the requirement of height in the recruitment across all security services to open up the opportunity for all Kenyans to serve their country with their talents, education, experience, and gifts.
- (c) Include mental health screening as a requirement during recruitment. This screening ought to include screening for drug use such as and not limited to cocaine, khat, heroin, and marijuana.
- (d) Revise the basic training curriculum to be in line with international standards.

- (e) Establishment of mental wellness units in the various security services stations and garrisons countrywide.
- (f) Establishment of armed security informed facility and program in Mathari hospital which is fully equipped with personnel trained in the care of armed security personnel.
- (g) Establishment of a facility for the wounded and incapacitated armed security veterans to cater to their recovery, care, treatment, protection, reintegration, and transition.
- (h) The coming into law of the Military veterans' law which is currently with the Senate and sponsored by Senator Pareno awaits the First Reading.
- (i) Enforce the global standards of welfare support services for active and retired armed security services personnel.
- (j) Curate a career progression formula that is sensitive to our local situation and put monitors to ensure compliance.
- (k) Repeal the section in the Defense Forces Standing Orders that criminalizes more solid suicide and denies the family financial compensation.

### **Committee Observation**

The Committee notes that True North Society, in its submissions, did not propose any specific amendments to the Mental Health (Amendment) Bill, 2020.

## PART IV

### 4.0 COMMITTEE RECOMMENDATION

32. The Committee, having considered the Mental Health (Amendment) Bill, (Senate Bill No. 28 of 2020) and the submissions from the stakeholders, recommends that the House approve the Bill with amendments as proposed in the schedule.



## PART V

### 5.0 SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:

#### CLAUSE 3

**THAT**, Clause 3 of the Bill be amended in paragraph (b)—

(a) in the proposed definition of “mental health practitioner” by inserting the following new paragraph immediately after paragraph (a)—

“(aa) medical practitioner under the Medical Practitioners and Dentists Act;”

(b) by deleting the proposed definition of “mental health unit” and substituting therefor the following new definition—

“mental health unit” means a place or a section within a health facility designated to provide mental health services;”

(c) by deleting the proposed definition of “person with mental illness” and substituting therefor the following new definition—

“person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—

- (a) a person diagnosed with alcohol or substance use disorder; and
- (b) a person with suicidal ideation or behavior;”

(d) by inserting the following new definitions in their proper alphabetic sequence—

“mental health facility” means a facility registered and licensed by the relevant medical regulatory body to provide mental health services;

“mental health services” means the promotion of mental wellbeing, prevention, the management, or alleviation of disease, illness, injury, and other physical and social determinants affecting mental health in individuals;

“rehabilitation” means the multidisciplinary approach aimed at supporting persons with psychosocial, intellectual and cognitive disabilities, access to services geared towards their treatment and recovery process;”

#### **Justification**

The amendment seeks to provide for the definition of terms that are used in the Bill and the Act.

#### **CLAUSE 4**

**THAT**, Clause 4 of the Bill be amended in the proposed new section 2A by inserting the following new paragraph immediately after paragraph (e)—

- “(f) adopt a holistic approach to community-based mental health services; and
- (g) promote the provision of mental health services in primary health facilities.”

#### **Justification**

The amendment seeks to provide additional purposes of the Act, which include the promotion of community-based mental health services and to promote the provision of mental health services in primary health facilities.

#### **CLAUSE 5**

**THAT**, Clause 5 of the Bill be amended in the proposed new section 2C—

- (a) by inserting the following new sub-paragraph immediately after subparagraph (b)(ii)—
  - “(iii) expanding and strengthening community and family-based care and support systems for vulnerable persons;”
- (b) by inserting the words “including mechanisms for outpatient comprehensive cover for mental health care and continued care for mental illness” immediately after the words “realized” appearing in paragraph (c);
- (c) by deleting paragraph (f) and substituting therefor the following new paragraph—
  - “(f) develop community-based programs for the continued care and rehabilitation of persons with mental illness;”

#### **Justification**

The amendments seek to make emphasize the need to promote community-based programs in the provision of mental health services.

## CLAUSE 7

THAT, Clause 7 of the Bill be amended by deleting the proposed new subsection (2) and inserting the following new subsection—

“(2) The Board shall consist of—

- (a) a chairperson appointed by the President who shall—
  - (i) holds a master’ degree in psychiatry or its equivalent from a university recognized in Kenya; and
  - (ii) have at least ten years experience, five of which shall be in a managerial position;
- (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health or a representative appointed in writing;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a representative appointed in writing;
- (d) four persons, not being public officers, appointed by the Cabinet Secretary by gender, disability, and regional balance, with knowledge and experience in mental health care of whom—
  - (i) one shall be a psychiatrist nominated by the Medical Practitioners and Dentists Board;
  - (ii) one shall be a counselor or psychologist nominated by the Counsellors and Psychologists Board;
  - (iii) one shall be a nurse nominated by the Nursing Council of Kenya; and
  - (iv) one shall be a clinical officer nominated by the Clinical Officers Council;
- (e) one person nominated by the Kenya National Commission on Human Rights with knowledge and experience in matters related to mental health;
- (f) two persons, not being Governors, and having knowledge and experience in matters related to mental health, nominated by the Council of County Governors;
- (g) one county director of health nominated from amongst the forty-seven county directors of health by the Council of County Governors;

the Director of Mental Health, who shall be the secretary to the Board and an *ex officio* member of the Board.”

### Justification

The amendment seeks to provide qualifications for the chairperson of the Board, as well as to provide that the four persons nominated by the Cabinet Secretary shall not be public officers.

The amendment also seeks to include the Principal Secretaries responsible for health and finance into the membership of the Board.

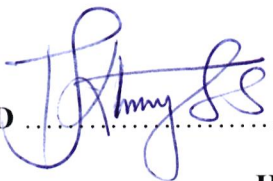
**CLAUSE 35**

**THAT**, Clause 35 of the Bill be amended in paragraph (a) by—

- (a) deleting the words “by order of the Director or the respective county executive committee member” appearing in the proposed new subsection (1) and substituting, therefore, the words “with the approval of the person in charge”;
- (b) deleting the words “The Director or the county executive committee member, as the case may be, shall” appearing in the proposed new subsection (1A) and substituting, therefore, the words “The person in charge shall”.

**Justification**

The amendment seeks to ensure that transfer of patients is done by the referral strategy guidelines with the approval of the person in charge.

SIGNED  .....

DATE 22/2/22 .....

**HON. SABINA CHEGE**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**



## THE NATIONAL ASSEMBLY

12TH PARLIAMENT - SIXTH SESSION (2021)

### HEALTH COMMITTEE

### ATTENDANCE REGISTER

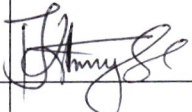

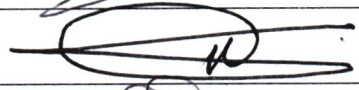
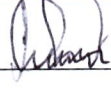
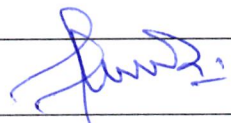
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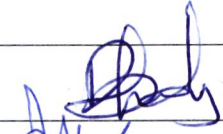
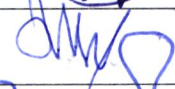
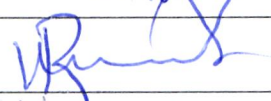
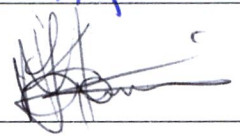
Venue: CPA Room

Time Started 10:29

Time Ended: 11:47am

Adoption schedule of the Report on the Mental Health (Amendment) Bill 2020

| No. | HON MEMBER                                | SIGNATURE   |
|-----|---|---|
| 1.  | HON. SABINA CHEGE, MP – CHAIRPERSON       | Virtual   |
| 2.  | HON. JOSHUA KUTUNY, MP – VICE/CHAIRPERSON |   |
| 3.  | HON. DR. ESELI SIMIYU, MP                 |   |
| 4.  | HON. DR. JAMES NYIKAL, MP                 |  |
| 5.  | HON. DR. JAMES KIPKOSGEI MURGOR, MP       |  |
| 6.  | HON. DR. MOHAMED DAHIR DUALE, MP          |  |
| 7.  | HON. ALFRED AGOI MASAIDA, MP              |   |
| 8.  | HON. MURIUKI NJAGAGUA, MP                 | Virtual   |
| 9.  | HON. JOYCE AKAI EMANIKOR, MP              |   |
| 10. | HON. DR. GEDION OCHANDA, MP               |  |
| 11. | HON. SARAH PAULATA KORERE, MP             |   |

| No. | HON MEMBER                             | SIGNATURE  |
|-----|--|--|
| 12. | HON. PROF. MOHAMUD SHEIKH MOHAMED, MP  |  |
| 13. | HON. MARTIN PETERS OWINO, MP           |   |
| 14. | HON. KIPSENGERET KOROS, MP             | Virtual  |
| 15. | HON. TONGOYO GABRIEL KOSHAL, MP        |  |
| 16. | HON. BEATRICE ADAGALA, MP              |   |
| 17. | HON. SAID HIRIBAE, MP                  |   |
| 18. | HON. (CAPT.) RUWEIDA MOHAMMED, MP      |   |
| 19. | HON. JAMES GITHUA KAMAU WAMACUKURU, MP |  |

## REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT – FIFTH SESSION**

**DEPARTMENTAL COMMITTEE ON HEALTH**

**In the Matter of Article 118(1) (b) of the Constitution and National  
Assembly Standing Order 127(3)**

**And**

**In the Matter of Consideration by the National Assembly of:-**

- 1. The Community Health Services (Senate Bill No. 34 of 2020)**
- 2. The Mental Health (Amendment) Bill, 2020 (Senate Bill No. 28)**
- 3. The Health Laws (Amendment) Bill, (National Assembly Bill No. 2 of 2021)**

**PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)**

Article 118(1) (1) (b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees". National Assembly's Standing Order 127(3) provides that "the Departmental Committee to which a Bill has been committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the following Bills:

**The Community Health Services (Senate Bill No. 34 of 2020)** sponsored by **Sen. (Dr.) Agnes Zani, M.P.**, seeks to provide for a framework for the delivery of community health services; to promote access to primary health care services at the community level and reduce health disparities between counties; to provide for the training and capacity building of the community health workforce; and for connected purposes.

**The Mental Health (Amendment) Bill, 2020 (Senate Bill No. 28)** sponsored by **Sen. Sylvia Kasanga, M.P.**, seeks to amend the Mental Health Act; The Bill seeks to provide for the prevention of mental illness, to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness.

**The Health Laws (Amendment) Bill, (National Assembly No. 2 of 2021)**, sponsored by the Leader of Majority Party, **Hon. (Dr.) Amos Kimunya, EGH, M.P.**, seeks to make various wide ranging amendments to various health-related statutes on matters relating to health policy to improve efficiency, service delivery, realization of the Universal Health Coverage and the Big 4 Agenda, in line with the Constitution, the Health Act, 2017, the Mwongozo Code of Governance for State Corporation and other applicable laws.

Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bills were committed to Departmental Committee on Health for consideration and Report to the House, having undergone the First Reading as set out in the schedule hereunder:

**SCHEDULE**

| No. | Bill  | First Reading   |
|-----|---|---|
| 1.  | <b>The Community Health Services (Senate Bill No. 34 of 2020) sponsored by Sen. (Dr.) Agnes Zani, M.P.</b>  | 30 <sup>th</sup> September, 2021  |
| 2.  | <b>The Mental Health (Amendment) Bill, 2020 (Senate Bill No. 28) sponsored by Sen. Sylvia Kasanga, M.P.</b>   | 13 <sup>th</sup> October, 2021  |
| 3.  | <b>The Health Laws (Amendment) Bill, (National Assembly No. 2 of 2021), sponsored by the Leader of Majority Party, Hon. (Dr.) Amos Kimunya, EGH, M.P.</b> | 30 <sup>th</sup> March, 2021<br>21 <sup>st</sup> October, 2021 ( <i>referred back to Committee for regularization</i> ) |

Copies of the Bills are available at the National Assembly Table Office, or on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before **Friday, 19<sup>th</sup> November, 2021 at 5.00 p.m.**

MICHAEL R. SIALAI, CBS  
CLERK OF THE NATIONAL ASSEMBLY  
5<sup>th</sup> November, 2021.

**MINUTES OF THE 10<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 22<sup>ND</sup> FEBRUARY, 2022 IN THE COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) ROOM, MAIN PARLIAMENT BUILDING AT 10.00AM**

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**PRESENT**

- |   |                         |
|---|-------------------------|
| 1. The Hon. Sabina Chege, MP              | - Chairperson – Virtual |
| 2. The Hon. Joshua Kutuny, MP             | - Vice-Chairperson      |
| 3. The Hon. Dr Eseli Simiyu, MP           |                         |
| 4. The Hon. Dr James Nyikal, MP           | - Virtual               |
| 5. The Hon. Dr James Kipkosgei Murgor, MP |                         |
| 6. The Hon. Muriuki Njagagua, MP          |                         |
| 7. The Hon. Martin Peters Owino, MP       |                         |
| 8. The Hon. Kipsengeret Koros, MP         | - Virtual               |
| 9. The Hon. Beatrice Adagala, MP          |                         |
| 10. The Hon. (Capt) Ruweida Mohammed, MP  |                         |

**ABSENT WITH APOLOGY**

1. The Hon. Alfred Agoi Masadia, MP
2. The Hon. Dr Mohamed Dahir Duale, MP
3. The Hon. Joyce Akai Emanikor, MP
4. The Hon. Dr Gideon Ochanda, MP
5. The Hon. Prof Mohamud Sheikh Mohamed, MP
6. The Hon. Tongoyo Gabriel Koshal, MP
7. The Hon. Sarah Paulata Korere, MP
8. The Hon James Githua Kamau Wamacukuru, MP
9. The Hon. Said Hiribae, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

- |                       |   |                    |
|-----------------------|---|--------------------|
| 1. Douglas Katho      | - | Clerk Assistant II |
| 2. Muyodi Emmanuel    | - | Clerk Assistant II |
| 3. Christine Odhiambo | - | Legal Counsel I    |
| 4. Nimrod Ochieng     | - | Audio Officer      |

**MIN. NO.NA/DC.H/2022/28: PRELIMINARIES**

The meeting was called to order at 10.29 am with a word of prayer from the Vice-Chairperson.

**MIN.NO.NA/DC.H/2022/29: CONSIDERATION OF THE REPORT ON THE MENTAL HEALTH (AMENDMENT) BILL 2020**

The Committee considered the report and proposed the following amendments to be considered by the House in the Committee stage:



### **CLAUSE 3**

**THAT**, clause 3 of the Bill be amended in paragraph (b)—

(a) in the proposed definition of “mental health practitioner” by inserting the following new paragraph immediately after paragraph (a)—

“(aa) medical practitioner under the Medical Practitioners and Dentists Act;”

(b) by deleting the proposed definition of “mental health unit” and substituting therefor the following new definition—

“mental health unit” means a place or a section within a health facility designated to provide mental health services;”

(c) by deleting the proposed definition of “person with mental illness” and substituting therefor the following new definition—

“person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—

- (a) a person diagnosed with alcohol or substance use disorder; and
- (b) a person with suicidal ideation or behavior;”

(d) by inserting the following new definitions in their proper alphabetic sequence—

“mental health facility” means a facility registered and licensed by the relevant medical regulatory body to provide mental health services;

“mental health services” means the promotion of mental wellbeing, prevention, management or alleviation of disease, illness, injury and other physical and social determinants affecting mental health in individuals;

“rehabilitation” means the multidisciplinary approach aimed at supporting persons with psychosocial, intellectual and cognitive disabilities, access to services geared towards their treatment and recovery process;”

### **Justification**

The amendment seeks to provide for the definition of terms that are used in the Bill and in the Act.

### **CLAUSE 4**

**THAT**, clause 4 of the Bill be amended in the proposed new section 2A by inserting the following new paragraph immediately after paragraph (e)—

“(f) adopt a holistic approach to community-based mental health services; and

(g) promote the provision of mental health services in primary health facilities.”

### **Justification**

The amendment seeks to provide additional purposes of the Act, which include the promotion of community-based mental health services and to promote the provision of mental health services in primary health facilities.

### **CLAUSE 5**

**THAT**, clause 5 of the Bill be amended in the proposed new section 2C—

- (a) by inserting the following new sub-paragraph immediately after sub-paragraph (b)(ii)—
  - “(iii) expanding and strengthening community and family-based care and support systems for vulnerable persons;”
- (b) by inserting the words “including mechanisms for outpatient comprehensive cover for mental health care and continued care for mental illness” immediately after the words “realised” appearing in paragraph (c);
- (c) by deleting paragraph (f) and substituting therefor the following new paragraph—
  - “(f) develop community-based programmes for the continued care and rehabilitation of persons with mental illness;”

### **Justification**

The amendments seek to make emphasis on the need to promote community-based programmes in the provision of mental health services.

### **CLAUSE 7**

**THAT**, clause 7 of the Bill be amended by deleting the proposed new subsection (2) and inserting the following new subsection—

“(2) The Board shall consist of—

- (a) a chairperson appointed by the President who shall—
  - (i) hold a Masters’ degree in psychiatry or its equivalent from a university recognised in Kenya; and
  - (ii) have at least ten years’ experience, five of which shall be in a managerial position;
- (b) the Principal Secretary in the ministry for the time being responsible for matters relating to health or a representative appointed in writing;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or a representative appointed in writing;

- (d) four persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in mental health care of whom—
  - (i) one shall be a psychiatrist nominated by the Medical Practitioners and Dentists Board;
  - (ii) one shall be a counsellor or psychologist nominated by the Counsellors and Psychologists Board;
  - (iii) one shall be a nurse nominated by the Nursing Council of Kenya; and
  - (iv) one shall be a clinical officer nominated by the Clinical Officers Council;
- (e) one person nominated by the Kenya National Commission on Human Rights with knowledge and experience in matters related to mental health;
- (f) two persons, not being Governors, and having knowledge and experience in matters related to mental health, nominated by the Council of County Governors;
- (g) one county director of health nominated from amongst the forty-seven county directors of health by the Council of County Governors;

the Director of Mental Health, who shall be the secretary to the Board and an *ex officio* member of the Board.”

**Justification**

The amendment seeks to provide qualifications for the chairperson of the Board, as well as to provide that the four persons nominated by the Cabinet Secretary shall not be public officers.

The amendment also seeks to include the Principal Secretaries responsible for health and finance into the membership of the Board.

**CLAUSE 35**

**THAT**, clause 35 of the Bill be amended in paragraph (a) by—

- (a) deleting the words “by order of the Director or the respective county executive committee member” appearing in the proposed new subsection (1) and substituting therefor the words “with the approval of the person in charge”;
- (b) deleting the words “The Director or the county executive committee member, as the case may be, shall” appearing in the proposed new subsection (1A) and substituting therefor the words “The person in charge shall”.

**Justification**

The amendment seeks to ensure that transfer of patients is done in accordance with the referral strategy guidelines with an approval of the person in charge.

MIN.NO.NA/DC.H/2022/30:

ADOPTION OF THE REPORT ON THE MENTAL  
HEALTH (AMENDMENT) BILL 2020

The Committee adopted the report on the Mental Health (Amendment) Bill, 2020, after being proposed by the Hon. Martin Peters Owino, MP and seconded by the Hon. Dr James Kipkosgei Murgor, MP.

MIN. NO.NA/DC.H/2022/31:

ADJOURNMENT

There being no other business, the meeting adjourned at 11.47 pm.

Sign.......... Date.....22/2/22.....

(Chairperson)

**MINUTES OF THE 8<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 15<sup>TH</sup> FEBRUARY, 2022 IN THE COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) ROOM, MAIN PARLIAMENT BUILDING AT 10.00 AM**

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**PRESENT**

1. The Hon. Sabina Chege, MP - Chairperson – Virtual
2. The Hon. Joshua Kutuny, MP – Vice-Chairperson
3. The Hon. Dr James Nyikal, MP
4. The Hon. Muriuki Njagagua, MP
5. The Hon. Dr Gideon Ochanda, MP
6. The Hon. Sarah Paulata Korere, MP
7. The Hon. Martin Peters Owino, MP
8. The Hon. Beatrice Adagala, MP
9. The Hon. (Capt) Ruweida Mohammed, MP
10. The Hon James Githua Kamau Wamacukuru, MP

**ABSENT WITH APOLOGY**

1. The Hon. Dr Eseli Simiyu, MP
2. The Hon. Alfred Agoi Masadia, MP
3. The Hon. Dr James Kipkosgei Murgor, MP
4. The Hon. Dr Mohamed Dahir Duale, MP
5. The Hon. Joyce Akai Emanikor, MP
6. The Hon. Prof Mohamud Sheikh Mohamed, MP
7. The Hon. Kipsengeret Koros, MP
8. The Hon. Tongoyo Gabriel Koshal, MP
9. The Hon. Said Hiribae, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Douglas Katho – Clerk Assistant II
2. Muyodi Emmanuel – Clerk Assistant II
3. Christine Odhiambo – Legal Counsel I
4. Nimrod Ochieng – Audio Officer

**MIN. NO.NA/DC.H/2022/22: PRELIMINARIES**

The meeting was called to order at 10.21 am with a word of prayer from the Vice-Chairperson.

**MIN.NO.NA/DC.H/2022/23: CONSIDERATION OF THE PROPOSED AMENDMENTS OF THE MENTAL HEALTH (AMENDMENT) BILL 2020**

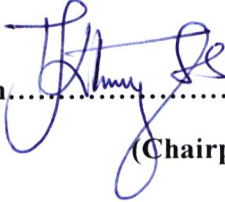
The Committee considered the proposed amendments by the stakeholders and further proposed additional amendments to be considered by the House in the Committee stage.

*(Details of the Committee's proposed amendments are contained in the Mental Health (Amendment) Bill report, 2020).*

MIN. NO.NA/DC.H/2022/24:

ADJOURNMENT

There being no other business, the meeting adjourned at 11.37 pm.

Sign.......... Date..... 22/2/22 .....

(Chairperson)

**MINUTES OF THE 77<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD AT BAHARI BEACH HOTEL ON MONDAY 22<sup>ND</sup> NOVEMBER, 2021 AT 10.00 AM**

**PRESENT**

- |   |                              |
|---|------------------------------|
| 1. The Hon. (Cpt.) Ruweida Mohammed, MP     | - Chairing                   |
| 2. The Hon. Sabina Chege, MP                | - Chairperson - Virtual      |
| 3. The Hon. Joshua Kutuny, MP               | - Vice-Chairperson - Virtual |
| 4. The Hon. Dr James Kipkosgei Murgor, MP   |                              |
| 5. The Hon. Muriuki Njagagua, MP            | - Virtual                    |
| 6. The Hon. Joyce Akai Emanikor, MP         | - Virtual                    |
| 7. The Hon. Dr Gideon Ochanda, MP           |                              |
| 8. The Hon. Sarah Paulata Korere, MP        |                              |
| 9. The Hon. Prof Mohamud Sheikh Mohamed, MP | - Virtual                    |
| 10. The Hon. Martin Peters Owino, MP        | - Virtual                    |
| 11. The Hon. Kipsengeret Koros, MP          | - Virtual                    |
| 12. The Hon. Said Hiribae, MP               |                              |

**ABSENT WITH APOLOGY**

1. The Hon. Dr Eseli Simiyu, MP
2. The Hon. Dr James Nyikal, MP
3. The Hon. Dr Mohamed Dahir Duale, MP
4. The Hon. Alfred Agoi Masadia, MP
5. The Hon. Tongoyo Gabriel Koshal, MP
6. The Hon. Beatrice Adagala, MP
7. The Hon James Githua Kamau Wamacukuru, MP

**IN ATTENDANCE**

**National Assembly Secretariat**

- |                    |   |                    |
|--------------------|---|--------------------|
| 1. Muyodi Emmanuel | - | Clerk Assistant II |
| 2. Emma Essendi    | - | Legal Counsel I    |
| 3. Nimrod Ochieng  | - | Audio Officer      |

**Kenya Parliamentary Caucus on SDGs and Business**

1. The Hon. Omulele Christopher, MP
2. The Hon. Beatrice N. Nyagah, MP
3. The Hon. Janet Ongera, MP
4. The Hon. Joshua Kimilu, MP
5. Senator Slyvia Kasanga - Virtual

**STAKEHOLDERS**

- 1. Dr Frank Njenga - Psychiatrist and Mental Health Consultant
- 2. Professor Lukoye Atwoli - Professor of Psychiatry and Dean, Medical College East Africa The Aga Khan University
- 3. Dr. Simon Njuguna - Senior Deputy Director Medical Services – Ministry of Health

**MIN. NO.NA/DC.H/2021/261: PRELIMINARIES**

The meeting was called to order at 10.25 am with a word of prayer from the Hon. (Cpt.) Ruweida Mohammed, MP. She informed the meeting that the Ministry of Health had invited the Committee to a consultative workshop to deliberate on critical inputs to improve on the Mental Health Amendment Bill, 2020

**MIN.NO.NA/DC.H/2021/265: CONSIDERATION OF THE MENTAL HEALTH AMENDMENT BILL, 2020**

The meeting deliberated on the following: the report by the task force on mental health in Kenya, amendments to decriminalize suicide attempts and suicide and the proposed amendments to the Mental health (Amendment) Bill, 2020.

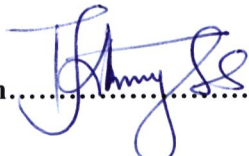
The Committee agreed to the proposed amendments with additional amendments to be included in its report on the Bill.

**MIN. NO.NA/DC.H/2021/266: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 12:51 pm.

**HON. SABINA CHEGE, MP**

**(CHAIRPERSON)**

Sign.......... Date..... 22/2/22 .....