

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE CONSIDERATION OF THE PETITION BY KENYA NATIONAL
UNION OF NURSES ON THE HEALTH BILL, 2015

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY, 2016

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1.0 PREFACE

I wish to table the Report of the Departmental Committee on Health on its consideration of the Petition on the Health Bill, 2015 pursuant to Standing Order 227(2).

1.1 Committee Mandate

The Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia:-

- i. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii. study the programme and policy objectives of Ministries and Departments and the effectiveness of the implementation;
- iii. study and review all legislation referred to it;
- iv. study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
- v. **investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to it by the House;**
- vi. vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments) ; and
- vii. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee is also mandated under Standing Order 227 to consider petitions referred to it.

1.2 Committee Membership

The Committee Comprises of the following members:

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. David Karithi, M.P.
4. The Hon. Dr. James Murgor, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Dr. James O. Gesami, M.P.
7. The Hon. Dr. Naomi Shaban, M.P.
8. The Hon. Dr. Stephen Wachira, M.P.
9. The Hon. Dr. Susan Musyoka, M.P.
10. The Hon. Hassan Aden Osman, M.P.
11. The Hon. James Gakuya, M.P.
12. The Hon. John Nyaga Muchiri, M.P.

13. The Hon. Michael Onyura, M.P.
14. The Hon. Paul Koinange, M.P.
15. The Hon. Stephen M. Mule, M.P.
16. The Hon. Zipporah Jesang, M.P.
17. The Hon. Alfred Agoi, M.P.
18. The Hon. Christopher Nakuleu, M.P.
19. The Hon. Dr. Dahir D. Mohamed, M.P.
20. The Hon. Dr. Eseli Simiyu, M.P.
21. The Hon. Dr. Enoch Kibunguchy, M.P.
22. The Hon. Dr. Patrick Musimba, M.P.
23. The Hon. Alfred Outa, M.P.
24. The Hon. Joseph O. Magwanga, M.P.
25. The Hon. Kamande Mwangi, M.P.
26. The Hon. Leonard Sang, M.P.
27. The Hon. Mwahima Masoud, M.P.
28. The Hon. Mwinga Gunga, M.P.
29. The Hon. Raphael Milkau Otaalo, M.P.

1.3 Consideration of the Petition Amendment to the Health Bill, 2015

The Petition by the Kenya National Union of Nurses on the Enactment of Legislation to operationalize Section 23 of Part 1 and Section 2 of Part?? of the Fourth Schedule to the Constitution, to streamline the distribution of Health functions between the National Government and County Governments through the Health Bill, 2015 was committed to the Departmental Committee on Health for consideration and reporting to the House pursuant Standing Order 227 on 21st July, 2015.

The petitioner was requesting the National Assembly to:-

- (i) Enact relevant legislation to:
 - (a) Correctly interpret Section 23 Part 1 and Section 2 of Part 2 of the Fourth Schedule to the Constitution and revert the national referral health facilities to the national government;
 - (b) Establish the Health Service Commission (HSC) to manage the human resource in the public health sector; and
- (ii) Fast track the process of approving the National Referral Health Facilities Bill, 2015.

The Committee during the consideration of the petition held a meeting with the petitioners on Thursday, 12th November, 2015.

The petitioners in their submission indicated that the Health Bill, 2015 had failed to take care of areas such as the management of health facilities, management of health workers within the National Referral Health System and the classification of Health facilities. They were therefore proposing amendment of Clauses 15, 16, 17 and 18 of the Health Bill, 2015 to address the issue of management of health facilities.

On the issue of management of workers within the National Referral Health System, the petitioners propose that the Health Bill, 2015 establishes the National Health Service Commission (HSC) to deal with management of workers in the National Referral Health System. In addition, they recommended that the Health Bill, 2015 classifies level 5 and 6 as National Referral Hospitals since they argued it is inconsistent with the Constitution in paragraph 23 of the Fourth Schedule which provides for National Referral facilities. They further noted that replacing the word facilities with hospitals fails to take care of clinics, dispensaries and health centres. They therefore recommended that the First Schedule of the Health Bill, 2015 be amended in Note 2 to read 'Level 2,3,4,5 and 6 shall be National Referral Health Facilities.

1.4 Committee Observations and Recommendations

Having analyzed the Petition and the submissions from stakeholders as covered in the body of this report, the Committee observed that the Petitioner's prayers on the formation of Health Service Commission was unconstitutional and that the contents of the prayer had been adequately addressed in the consideration of the Health Bill, 2015 through the establishment of an inter-governmental mechanism to address the issue of the health workers.

Further, the Committee observed that the technical classification of health facilities in the First Schedule of the Health Bill, 2015 had addressed the issue of National Referral facilities and therefore, the proposed legislation that sought to make levels 2, 3, 4, 5 and 6 National Referral facilities was unconstitutional and contradicted the provisions of Section 23 of Part I and Section 2 of Part II of the Fourth Schedule. Further, Clause 15(1)(t) provides that the National Government shall develop and manage the national health referral facilities.

1.5 Acknowledgement

On behalf of the Committee and on my own behalf we are grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

I also wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this Report.

It is therefore my pleasure and privilege, on behalf of the Departmental Committee on Health, to table its Report in the House on the consideration of the Petition by the Kenya National Union of Nurses on the Enactment of Legislation to Operationalize Section 23 of Part 1 and Section 2 of Part 2 ??? of the Fourth Schedule to the

Constitution, to Streamline the Distribution of Health Functions Between the National Government and County Governments pursuant to Standing Order 227 (2).

Signed..........Date..... 23/02/2016

(HON. DR. RACHEAL NYAMAI, M.P.)
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON HEALTH

2.0 BACKGROUND

The Petition by the Kenya National Union of Nurses on the Enactment of Legislation to Operationalize Section 23 of Part 1 and Section 2 of Part 2 of the Fourth Schedule to the Constitution, to Streamline the Distribution of Health Functions Between the National Government and County Governments was committed to the Committee on Health on 21st July, 2015 to consider and report back to the House pursuant to Standing Order 227.

The petitioners indicated that the Transitional Authority had acted contrary to the Statutory Instruments Act, 2013 which provides for a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments with requirements of consultation with stakeholders and the public before making statutory instruments, laying of the instrument before Parliament. The Petitioners drew the attention of the National Assembly to the following issues:-

- i. With the irregular devolution of the national referral health facilities, the health sector has been facing various challenges including; irregular payment of salaries and allowances, brain drain, demoralized work force, strikes and disorganization resulting in sustained deterioration in the provision of curative health services.
- ii. The Transitional Authority vide sections 2(a) and 2(b) of the legal notices 137-182 issued on 9th August, 2013 irregularly devolved national referral health facilities from the National Government to the County Governments.
- iii. The Transitional Authority misinterpreted the distribution of health functions of the National Government and the County Governments as contained in Fourth Schedule of the Constitution and irregularly expanded the scope of the county governments to include the responsibility for the part of the national referral health facilities especially levels 2 to 5.
- iv. The health sector is grossly underfunded and contrary to Article 187(2)(a) of the Constitution, resources and powers necessary for the performance of the health function were not fully transferred from the National Government to County Governments when the function was devolved.
- v. The irregular devolution had affected the management, coordination and health policy implementation of the national referral facilities by the national government. This has led to many persistent problems in the health sector as well as resource strain on the referral facilities.
- vi. The mismanagement of the devolved health functions by the county governments is epitomized by migration of doctors and nurses out of the public sector due to poor working conditions, tribalism/nepotism in the employment of health professionals, missed or delayed salaries, frozen

- promotions, re-designation, redeployment, and lack of career progression such as training for specialists.
- vii. As a result of devolution, it has been impossible to fairly distribute the limited health professionals in public service among the counties and, further, it has been impossible to standardize their terms and conditions of service across the counties.
 - viii. The state's ability to monitor health emergencies and to have an updated Health Information Systems data for reporting on the Kenya's international health obligations are diminished and/or collapsed.
 - ix. The provision of the Health Services Commission in the draft Constitution were deleted citing that the Commission could adequately be catered for in the relevant Acts of Parliament. Kenya's health professionals and the general public endorsed the Constitution with an understanding that the National Assembly would deliver on the undertaking to establish the HSC by legislation. However, the National Assembly has not delivered on the establishment of the HSC by legislation.
 - x. The National Assembly and the Government of Kenya should intervene and uphold and defend the Constitution to save Kenya's health sector from imminent calamity or collapse.

The petitioners prayed that the National Assembly;

- (i) Enact relevant legislation to:
 - (c) Correctly interpret Section 23 Part 1 and Section 2 of Part 2 of the Fourth Schedule to the Constitution and revert the national referral health facilities to the national government;
 - (d) Establish the Health Service Commission (HSC) to manage the human resource in the public health sector; and
- (iii) Fast track the process of approving the National Referral Health Facilities Bill, 2015.

3.0 SUBMISSIONS BY KENYA NATIONAL UNION OF NURSES

The Committee held a meeting with the Petitioner on Thursday, 12th November, 2015. In their submission, the Petitioners informed the Committee that:-

- i. KNUN had identified three key areas that the National Referral Facilities Bill, 2015 proposed by the Nurses Organizations intended to address. They include; management of health facilities; management of health workers within the National Referral Health System; and Classification of Health facilities.
- ii. The fragmentation of health services in Kenya is an indicator that strong management is absolutely essential. The proposed Health Bill is inadequate in terms of health facilities management. The responsibilities of the Cabinet Secretary for Health are not far reaching and a lot need to be added. The Bill also seems to create discrimination of some health professional cadres in

favour of one cadre in managerial positions that is in the position of the Director General for Health which only attracts the cadre of medical practitioners only.

- iii. The Petitioners proposed amendments of Part II of the Health Bill to provide for among others:-
- Equal distribution of the national health referral facilities that are grounded in a fundamental respect for human rights and community participation throughout the country;
 - Development and maintenance of firm managerial structure based on technical directorates headed by a Director General of Health;
 - Accessibility of services for the marginalized groups, ensuring existing resources are shared equitably across the republic;
 - Developing a human rights approach to service delivery ensuring ownership and a clear distinction between rights and obligations of the clients and those of the service providers;
 - Expand network of national referral health facilities through construction and rehabilitation, with a corresponding increase in the number of health workers employed in these facilities;
 - Develop and promote measures to promote equitable access to health services to the entire population, with special emphasis on eliminating disparities in realization of the objects of the Act for marginalized areas and disadvantaged populations;
 - Develop and promote application of norms and standards for the development of human resources for health including affirmative action measures for health workers in marginalized areas;
 - To enhance effective service delivery by providing policy guidelines for synchronizing national referral health functions of the national government and primary health functions of the county governments.
- iv. The Petitioners proposed establishment of the National Health Service Commission in Part XVI in line with the recommendation of the Parliamentary Select Committee on Review of the Constitution on the Reviewed Harmonized Draft Constitution of 29th January, 2010.
- v. On the issue of classification of the health facilities, the petitioners indicated that the Health Bill, 2015 classifies level 5 and 6 as National Referral Hospitals which they cited to be inconsistent with the Constitution in paragraph 23 of the Fourth Schedule which provide for National Referral facilities. They noted that replacing the word facilities with hospitals fails to take care of clinics, dispensaries and health centres. They therefore recommended that the First Schedule of the Health Bill, 2015 be amended in Note 2 to read 'Level 2,3,4,5 and 6 shall be National Referral Health Facilities.

4.0 COMMITTEE OBSERVATIONS

The Committee having considered the petitioners' prayers and their submissions, observed the following, that:-

Prayer No. 1: To correctly interpret Section 23 Part 1 of Part 2 of the Fourth Schedule to the Constitution and revert the national referral health facilities back to the national Government:

The National Assembly may not be able to interpret Section 23 Part 1 and Section 2 of Part 2 of the Fourth Schedule to the Constitution and revert the national referral health facilities to the County Government as prayed by the KNUN as the power to interpret the Constitution is not one of the powers contemplated under Article 119 of the Constitution. This is a function of the High Court reserved under Article 165.

Prayer No. 2: To establish the Health Service Commission (HSC) to manage the human resource in the public health sector:

On the establishment of the Health Service Commission (HSC) to manage the human resource in the public health sector, the Departmental Committee on Health has in consultation with Council of Governors proposed an amendment to the Health Bill creating the Kenya Health Advisory Authority. The proposed body shall be an Intergovernmental body that shall have the mandate to establish:

- (a) uniform norms and standards,
- (b) review policy for:-
 - Posting of interns to National Government and County Government facilities;
 - Inter County transfer of healthcare professionals;
 - Transfer healthcare professionals from one level of Government to another;
 - Health professionals scheme of service; and
 - Management and rotation of specialists.

Prayer No. 3: To fast track the process of approving the National Referral Health Facilities Bill, 2015:

on fast tracking the process of approving the National Referral Health Facilities Bill, 2015, the Committee may not be able to resolve this issue in favour of KNUN, in the form prayed for as the proposed Bill attempts to do the following:

- (i) define the national health referral system and classify all health facilities as national referral facilities under parts I and II of the legislative proposal;
- (ii) define the concept of emergency medical treatment; and
- (iii) create a Health Services Commission

Parts I and II of the proposed Bill are unconstitutional as they contradict the provisions of section 23 of Part I and section 2 of Part II of the Fourth Schedule. The Health Bill, 2015 reflects the latter position under clause 15 (t) which provides that the National Government develops and manages the national health referral facilities and Clause 26 provides for classification of national referral facilities under level 5 and level 6. The Committee shall propose amendment to the Bill to limit the national referral facilities to level 6.

Emergency treatment: the Health Bill, 2015 defines emergency treatment as the necessary immediate health care that must be administered to prevent death or worsening of a medical situation and contains provisions relating to-

- (i) rights of an individual to access and duty of a health professional to administer emergency treatment under Clauses 7 and 59;
- (ii) rights to receive and mechanisms through which a health professional may receive financial compensation under Clause 54 (1)(e).

Further, the Health Bill, 2015 has provided that the Cabinet Secretary shall enact regulations on emergency medical services and emergency medical treatment under Clause 79. This is because the implementation of the concept shall require wide consultation. Further, the Statutory Instruments Act contains adequate mechanisms that ensure sufficient consultation before an instrument is operationalized by Parliament.

Health Services Commission: The Committee after wide consultations with stakeholders during the consideration of the Health Bill, 2015 has provided for an inter-governmental mechanism to handle the health workers welfare in its proposed amendments to the Bill which adequately covers the prayer on the establishment of the Health Service Commission (HSC) to manage the human resource in the public health sector.

5.0 COMMITTEE RECOMMENDATION

Arising from the submissions by the petitioner and the committee observations, the committee respond to the prayers of the petition as follows:-

Prayer No. 1: To correctly interpret Section 23 Part 1 of Part 2 of the Fourth Schedule to the Constitution and revert the national referral health facilities back to the National Government:

The Committee noted that the power to interpret the Constitution is vested on the High Court and therefore, Parliament may not handle the prayer as requested as it is beyond its mandate.

Prayer No. 2: To establish the Health Service Commission (HSC) to manage the human resource in the public health sector:

The Committee noted that establishing the Health Service Commission as prayed for is against the Constitution, however, the matters raised by the petitioners had been addressed by the Committee during its consideration of the Health Bill, 2015, whereby a proposed amendment to create an intergovernmental mechanism to address issues of the health workers welfare was adopted after engaging with the stakeholders. This is in view of the fact that the proposed amendments to the Bill are well thought out and result from submissions from members of the public and conform to the provision of the Constitution.

Prayer No. 3: To fast track the process of approving the National Referral Health Facilities Bill, 2015:

The Committee noted that the proposed National Referral Health Facilities Bill, 2015 was unconstitutional as it attempted to: define the national health referral system and classify all health facilities as national referral facilities under parts I and II of the legislative proposal; define the concept of emergency medical treatment; and to create a Health Services Commission. Parts I and II of the proposed Bill are unconstitutional as they contradict the provisions of section 23 of Part I and section 2 of Part II of the Fourth Schedule. It however noted that Health Bill, 2015 in clause 15(t) provides that the National Government develops and manages the national health referral facilities and Clause 26 provides for classification of national referral facilities under level 5 and level 6.

On Emergency treatment: the Health Bill, 2015 defines emergency treatment as the necessary immediate health care that must be administered to prevent death or worsening of a medical situation.

In conclusion therefore, the Committee recommends that issues raised by the petitioner were adequately addressed during the Committee's consideration of the Health Bill, 2015 during which extensive stakeholders engagement took place.

MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 11TH FEBRUARY, 2016 IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 AM.

PRESENT

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
3. The Hon. Christopher Nakuleu, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Dr. Eseli Simiyu, M.P.
7. The Hon. Dr. Enoch Kibunguchy, M.P.
8. The Hon. Dr. James Murgor, M.P.
9. The Hon. Dr. James O. Gesami, M.P.
10. The Hon. Dr. Naomi Shaban, M.P.
11. The Hon. Hassan Aden Osman, M.P.
12. The Hon. James Gakuya, M.P.
13. The Hon. Joseph O. Magwanga, M.P.
14. The Hon. Kamande Mwangi, M.P.
15. The Hon. Michael Onyura, M.P.
16. The Hon. Mwinga Gunga, M.P.
17. The Hon. Raphael Milkau Otaalo, M.P.
18. The Hon. Stephen M. Mule, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. James Nyikal, M.P.
2. The Hon. Paul Koinange, M.P.
3. The Hon. Dr. Stephen Wachira, M.P.
4. The Hon. Alfred Agoi, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Alfred Outa, M.P.
7. The Hon. Mwahima Masoud, M.P.
8. The Hon. Zipporah Jesang, M.P.
9. The Hon. John Nyaga Muchiri, M.P.
10. The Hon. Leonard Sang, M.P.
11. The Hon. Dr. Patrick Musimba, M.P.

IN ATTENDANCE

1. Mr. Elijah King'ori Githima - Petitioner

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Dennis Mogare - Third Clerk Assistant.
2. Ms. Ruth Mwhaki - Third Clerk Assistant.

3. Mr. Kariuki Moses - Serjeant At Arms

MIN.NO. DCH 15/2016: PRELIMINARIES.

The Chairperson called the meeting to order at 10.30 am and a word of prayer was said by Hon. Christopher Nakuleu, M.P. The Chairperson thereafter invited the Members present, and the petitioner to introduce them.

MIN.NO.DCH 16/2016: AGENDA ADOPTION.

The agenda of the meeting was adopted after being proposed by the Hon. Mwinga Ngunga, M.P. and seconded by the Hon. James Gakuya, M.P.

MIN.NO.DCH 17/2016: SUBMISSIONS FROM THE PETITIONER IN THE PETITION ON THE DEPLORABLE STATE OF MENTAL HEALTH FACILITIES IN KENYA

Mr. Elijah Kingori Githima informed the Committee that:-

1. He was 28years old and was a former student of Moi University. He had dropped out of Moi University during his second year after he went through some difficulties and fell ill. He was later diagnosed as bipolar at the Nyeri Provincial General Hospital after a failed suicide attempt but could not afford the medication;
2. There was only one major mental health Hospital In Kenya, the Mathare Mental Hospital and that wards designed for mental health patients in the general hospitals across the country are understaffed, underfunded and in a bad physical condition;
3. Individuals who have mental health problems are suicidal but are often charged for attempted suicide rather than being offered the medical assistance they need. Charging a mentally ill and suicidal individual person for attempted suicide is therefore akin to making mental illness a criminal offence and only increases the stigma and hopelessness felt by the individual;
4. There was need to decriminalize suicide especially when it emanates from mental illness as was the case in the UK, India among other countries that had decriminalized the same.
5. There were increased cases of suicide in the country and there was need to look at suicide as an illness in order to be able to help the victims.
6. The Mental Health Bill that was passed by the National Assembly in 2014 was a progressive document but it was yet to be operationalized.

He thereafter prayed that the Committee recommends,

- a) The establishment of mental healthcare facilities in the country to have at least one per County;
- b) Adequate budgetary allocations for the running of the existing facilities;
- c) That the government through the Ministry of Health recognizes the World Mental Healthcare day celebrated on 10th October every year and on this day sensitizes people on mental health illnesses. This would create awareness and help reduce the stigma suffered by the patients.

Committee Observations:

The Committee observed that:

1. Mental Health facilities in the country were not properly funded;
2. There is a lot stigmatization of mental Health Patients in the country based on a lack of understanding of the illness by the general public;
3. The Petitioner had dropped out of College due to mental illness and with proper support he can lead a normal productive life.
4. The judiciary always attempted to establish the mental health status of accused persons before putting them on trial. This was an adequate safeguard against punishing persons for actions committed when mentally ill.
5. There was need to fund and encourage training of more consultant psychiatrists.
6. The public health system in Kenya had failed to adequately care for mental health patients.
7. There was need to engage the Ministry of Health to come up with a strategy/policy to tackle the matter of mental healthcare i.e. funding, facilities, and training of specialists.

Committee Resolutions:

The Committee resolved:

1. That the issue of Funding for mental Hospitals and in particular the Mathare National Teaching and Referral Hospital and Gilgil Hospital be raised for discussion during the retreat with the Ministry scheduled for Wednesday 17th to Saturday 20th February 2016.
2. That the Ministry of Health to appear before the Committee after the Committees scheduled visit to the Mathare National Teaching and referral hospital on 23rd February 2016 to give information on the quality of care and the status of Mental Health facilities in the country.
3. The Ministry of Health should second an officer responsible for mental health matters to accompany the committee during its planned visit to Mathari Mental Hospital on 23rd February, 2016.

MIN.NO.DCH 18/2016: CONSIDERATION AND ADOPTION OF REPORTS

The Committee considered the following reports:

A. REPORT ON THE BIOMEDICAL ENGINEERS BILL 2015

The report was adopted after being proposed by the Hon. Raphael Otaalo, M.P and Seconded by the Hon.Dahir Mohammed with the amendment that:

1. The word Board be replaced with "Council"
2. The Membership of the Council to include a representative from the Engineers' Board of Kenya.
3. The representation of the biomedical engineering professionals be reduced from three to two.

B. REPORT ON PRE-PUBLICATION SCRUTINY COMMENTS ON THE CLINICAL OFFICERS (TRAINING, REGISTRATION AND LICENSING) BILL, 2015.

The Committee Considered and adopted the report after being proposed by the Hon. Stephen M. Mule, M.P. and seconded by Hon. Hassan Aden Osman, M.P.

C. REPORT PRE-PUBLICATION SCRUTINY COMMENTS ON THE OCCUPATIONAL THERAPIST (TRAINING, REGISTRATION AND LICENSING) BILL, 2015.

The Committee Considered and adopted the report after being proposed by the Hon. Kamande Mwangi, M.P. and seconded by Hon. Stephen M. Mule, M.P. as follows:

D. REPORT ON THE CONSIDERATION OF THE PETITION BY KENYA NATIONAL UNION OF NURSES ON THE HEALTH BILL, 2015

The Committee Considered and adopted the report after being proposed by the Hon. Dr. Naomi Shaban, M.P. and seconded by Hon. Raphael M. Otaalo, M.P.

MIN. NO. DCH 19/2016

ANY OTHER BUSINESS

1. Universal Healthcare Sub- Committee

The Hon. Stephen M. Mule informed the Committee that the subcommittee on Universal Health care was ready to present its report to the committee.

The Committee Resolved that the matters be slotted as a Committee agenda and a meeting be scheduled and that the Ministry, the USAID and the Consultant, Mr. Muchiri be invited to appear before the Committee during the said meeting.

2. Access to Kenyatta National Hospital (KNH) Private Wing

The Hon. Dr. Naomi Shaban informed the Committee that the new Civil Servants medical Scheme provides for access to the KNH private wing for all Civil Servants.

However, due to a memorandum entered into between the Chief Executive Officers of KNH and the National Hospital Insurance fund, Civil Servants below Job Group M are being denied access to the KNH private wing.

Members also raised concerns over the high cost of treatment at the KNH private wing, which is higher than private hospitals.

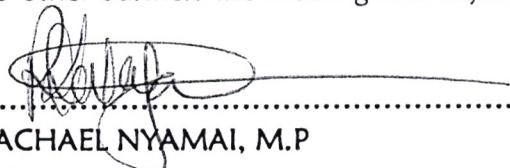
The Committee resolved that the Cabinet Secretary Public Service Commission, Cabinet Secretary Health, and the Chief Executive Officers, KHN and NHIF be invited to appear before the Committee to discuss the provision of services to civil servants at KHN, the memorandum between KNH and NHIF, and the cost of treatment at the KHN Private Wing.

MIN. NO. DCH 20/2016

ADJOURNMENT

There being no other business the meeting was adjourned at 12.54 pm.

SIGNED.....


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

DATE:.....

16/02/2016

MINUTES OF THE 89TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH
HELD IN 2ND FLOOR CONTINENTAL HOUSE, ON THURSDAY
NOVEMBER, 2015, AT 10.00 AM.

12TH

PRESENT

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson).
3. The Hon. Mwinga Gunga, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Raphael Milkau Otaalo, M.P
6. The Hon. Dr. Eseli Simiyu, M.P.
7. The Hon. Dr. James Nyikal, M.P.
8. The Hon. James Gakuya, M.P.
9. The Hon. Fred Outa, M.P.
10. The Hon. Kamande Mwangi, M.P.
11. The Hon. Christopher Nakuleu, M.P.
12. The Hon. Zipporah Jessing, M.P.
13. The Hon. Dr. Susan Musyoka, M.P.
14. The Hon. Dr. Enoch Kibunguchy, M.P
15. The Hon. Hassan Aden Osman, M.P.
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17. The Hon. Leonard Sang, M.P.
18. The Hon. Dr. James Murgor, M.P.
19. The Hon. Joseph O. Magwanga, M.P.
20. The Hon. Stephen M. Mule, M.P.
21. The Hon. Dr. Dahir D. Mohamed, M.P.
22. The Hon. Dr. James O. Gesami, M.P.
23. The Hon. John Nyaga Muchiri, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. Patrick Musimba, M.P.
2. The Hon. Mwahima Masoud, M.P.
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Paul Koinange, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Dr. Stephen Wachira, M.P.

IN ATTENDANCE

National Assembly Secretariat

1. Esther Nginyo - Third Clerk Assistant.
2. Hassan A. Arale - Third Clerk Assistant.
3. Dennis Mogare - Third Clerk Assistant.
4. Sidney Lugaga - Legal Counsel.
5. Sande Marale - Researcher.
6. Faith Makena - Serjeant at Arms.

THE NURSING COUNCIL OF KENYA OFFICIALS.

1. Seth Panyako - Kenya National Union of Nurses-General Secretary
2. Magdalene Ngari - Nairobi Branch, Deputy Chairperson.
3. Lucy mwangi - Cooperate Relation Officer
4. Alfred O.Obengo - National Secretary
5. Sopthie Ngugi - Standard Officer
6. Agned Munderu - National Treasurer
7. Lucy kamau - Chair Nairobi branch
8. Rachael Onyiri - Treasurer NRB
9. Ediah A. Mururi - Deputy Secretary Nairobi branch.

MIN.NO. DCH 384/2015: PRELIMINARIES.

The Chairperson called the meeting to order at 10.30 am after which a word of prayer was said by Hon. Dr. Stephen Wachira, MP. She then welcomed all present to the meeting and invited them to do self-introduction.

MIN.NO. DCH 385/2015: PRESENTATION BY THE KENYA NATIONAL UNION OF NURSES.

The representatives of the Kenya National Union of Nurses appeared before the Committee to brief it on the contents their petition on the Health Bill, 2015. In their submission, the Petitioners informed the Committee, that;

- i. KNUN had identified three key areas that the National Referral Facilities Bill, 2015 proposed by the Nurses Organizations intended to address. They include; management of health facilities; management of health workers within the National Referral Health System; and Classification of Health facilities.
- ii. The fragmentation of health services in Kenya is an indicator that strong management is absolutely essential. The proposed Health Bill is inadequate in terms of health facilities management. The responsibilities of the Cabinet Secretary

for Health are not far reaching and a lot need to be added. The Bill also seems to create discrimination of some health professional cadres in favour of one cadre in managerial positions that is in the position of the Director General for Health which only attracts the cadre of medical practitioners only.

iii. The Petitioners proposed amendments of Part II of the Health Bill to provide for among others;

- Equal distribution of the national health referral facilities that are grounded in a fundamental respect for human rights and community participation throughout the country;
- Development and maintenance of firm managerial structure based on technical directorates headed by a Director General of Health
- Accessibility of services for the marginalized groups, ensuring existing resources are shared equitably across the republic;
- Developing a human rights approach to service delivery ensuring ownership and a clear distinction between rights and obligations of the clients and those of the service providers;
- Expand network of national referral health facilities through construction and rehabilitation, with a corresponding increase in the number of health workers employed in these facilities;
- Develop and promote measures to promote equitable access to health services to the entire population, with special emphasis on eliminating disparities in realization of the objects of the Act for marginalized areas and disadvantaged populations;
- Develop and promote application of norms and standards for the development of human resources for health including affirmative action measures for health workers in marginalized areas;
- To enhance effective service delivery by providing policy guidelines for synchronizing national referral health functions of the national government and primary health functions of the county governments.

iv. The Petitioners proposed establishment of the National Health Service Commission in Part XVI in line with the recommendation of the Parliamentary Select Committee on Review of the Constitution on the Reviewed Harmonized Draft Constitution of 29th January, 2010.

v. On the issue of classification of the health facilities, the petitioners indicated that the Health Bill, 2015 classifies level 5 and 6 as National Referral Hospitals which they cited to be inconsistent with the Constitution in paragraph 23 of the Fourth Schedule which provide for National Referral facilities. They noted that replacing the word facilities with hospitals fails to take care of clinics, dispensaries and health centres. They therefore recommended that the First Schedule of the Health

Bill, 2015 be amended in Note to 2 to read 'Level 2,3,4,5 and 6 shall be National Referral Health Facilities.

WAY FORWARD.

As a way forward the committee informed the petitioners that:

- i. Their proposal on the formation of the Health Service Commission had been addressed in the proposed amendments to the Bill which are well thought out as they resulted from submissions from members of the public and conform to the provision of the Constitution.
- ii. The Committee further informed the petitioners that in their proposed bill on National Referral Facilities, Parts I and II are unconstitutional as they contradict the provisions of section 23 of Part I and section 2 of Part II of the Fourth Schedule. However, The Health Bill in clause 15 (t) provides that the National Government shall develop and manage the national health referral facilities and clause 26 provides for classification of national referral facilities under level 5 and level 6. The Committee will be proposing an amendment to the Bill to limit the national referral facilities to level 6.

MIN.NO.DCH. 386/ 2015: BRIEF BY HON. LEONARD SANG ON OCCUPATIONAL THERAPISTS LEGISLATIVE PROPOSAL.

The Honorable Member informed the Committee that, the key objective of the Occupational therapy (Training, Registration and Licensing Bill 2015) is to provide a legislative framework for the training, registration and licensing of occupational therapist in order to regulate their practice. He further informed the Committee that the Occupational therapists help people achieve independence, meaning and satisfaction in all aspects of their lives whose goal is to provide the client with skills for independent living-those necessary to function in the community or in the client chosen environment. On the other hand, the physiotherapists focus on the large motor / muscle groups that contribute to walking, reaching, standing and physical activities.

COMMITTEE CONCERNS.

The Committee noted that there was very minimal difference between the occupational therapists and the physiotherapists and therefore proposed that the proposed legislation on the occupational therapists be halted and instead, propose amendments to the physiotherapists Act to recognize them. This is in an effort to reduce disintegration of the related cadres in the health sectors through legislation.

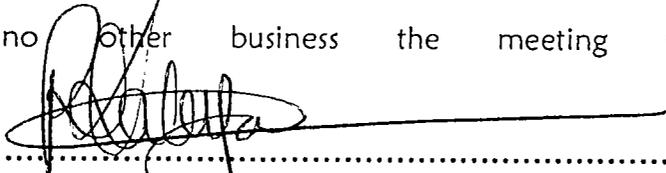
MIN.NO DCH 387/2015: ANY OTHER BUSINESS.

The following were discussed as this agenda item:

- i. There is need to invite the NHIF and the Faith Based Organizations that do not accept the NHIF cards from the patients to reach an amicable solution on the issue. Further, there is need to look at the Presidential Memorandum that returned the National Insurance Health Scheme Bill proposed by Hon. Charity Ngilu for the Committee to understand the issues therein as it makes its proposals on the rolling out of the universal health coverage.
- ii. The Committee nominated the following Members for foreign visits:
 - i. Canada (27th November – 5th December, 2015)
 - 1. Hon. Dr. Rachael Nyamai, MP
 - 2. Hon. Dr. James Murgor, MP
 - 3. Hon. Paul Koinange, MP
 - 4. Hon. Michael Onyura, MP
 - 5. Hon. Alfred Agoi, MP
 - ii. India (November, 2015)
 - 1. Hon. Fred Outa, MP
 - 2. Hon. Leonard Sang, MP
 - 3. Hon. Hassan Osman, MP
 - 4. Hon. Raphael Otaalo, MP
 - 5. Hon. Christopher Nakuleu, MP
 - iii. Japan (Sponsored by JICA) (January 2016)
 - 1. Hon. Dr. Rachael Nyamai, MP
 - 2. Hon. Dr. James Nyikal, MP

MIN.NO. DCH 388/2015: ADJOURNMENT

There being no other business the meeting was adjourned at 12.10 PM.

SIGNED.....

HON (DR.) RACHAEL NYAMAI, M.P

CHAIRPERSON

DATE:..... 10/12/2015

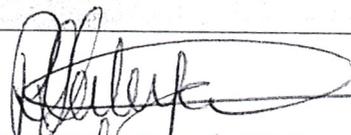
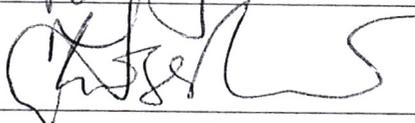
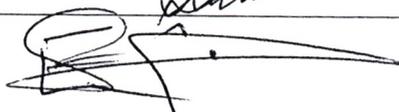
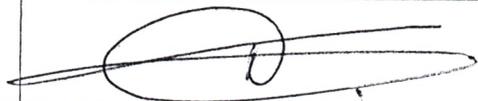
DC-H: DEPARTMENTAL COMMITTEE ON HEALTH

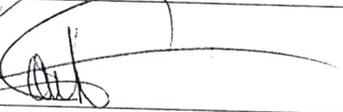
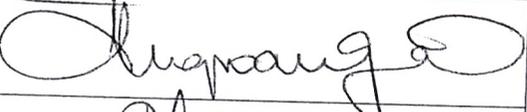
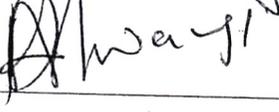
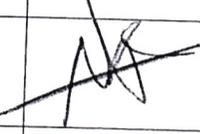
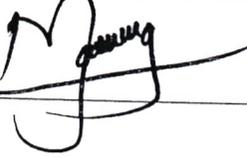
ATTENDANCE REGISTER

DATE: 11th Feb, 2016 Venue: 2nd Floor, Continental Hse.

AGENDA:

1. CONSIDERATION AND ADOPTION OF THE FOLLOWING COMMITTEE REPORTS: REPORT ON THE CONSIDERATION OF THE BIOMEDICAL ENGINEERS BILL, 2015; PRE-PUBLICATION SCRUTINY COMMENTS ON THE CLINICAL OFFICERS (TRAINING, REGISTRATION AND LICENSING) BILL, 2015; PRE-PUBLICATION SCRUTINY COMMENTS ON THE OCCUPATIONAL THERAPIST (TRAINING, REGISTRATION AND LICENSING) BILL, 2015; REPORT ON THE CONSIDERATION OF THE PETITION BY KENYA NATIONAL UNION OF NURSES ON THE HEALTH BILL, 2015
2. MEETING WITH MRELIJAH KINGORI GATHIMA ON THE PETITION ON THE DEPLORABLE STATE OF MENTAL HEALTH FACILITIES.

	HON. MEMBER	SIGNATURE
1.	The Hon. Dr. Rachel Nyamai, M.P. Chairperson	
2.	The Hon. Dr. Robert Pukose, M.P. Vice Chairperson	
3.	The Hon. Alfred Agoi, M.P.	
4.	The Hon. Christopher Nakuleu M.P.	
5.	The Hon. David Karithi, M.P.	
6.	The Hon. Dr. Dahir D. Mohamed, M.P.	
7.	The Hon. Dr. David Eseli, M.P.	
8.	The Hon. Dr. Enoch Kibunguchy, M.P.	
9.	The Hon. Dr. James Murgor, M.P.	
10.	The Hon. Dr. James Nyikal, M.P.	
11.	The Hon. Dr. James O. Gesami, M.P.	
12.	The Hon. Dr. Naomi Shaban, M.P.	

	HON. MEMBER	SIGNATURE
13.	The Hon. Dr. Patrick Musimba, MP	
14.	The Hon. Dr. Stephen Wachira, M.P.	
15.	The Hon. Dr. Susan Musyoka, M.P.	
16.	The Hon. Fred Outa, M.P.	
17.	The Hon. Hassan Aden Osman, M.P.	
18.	The Hon. James Gakuya, M.P.	
19.	The Hon. John Nyaga Muchiri, M.P.	
20.	The Hon. Joseph O. Magwanga, M.P.	
21.	The Hon. Kamande Mwangi, M.P.	
22.	The Hon. Leonard Sang, M.P.	
23.	The Hon. Michael Onyura, M.P.	
24.	The Hon. Mwahima Masoud, M.P.	
25.	The Hon. Mwinga Gunga, M.P.	
26.	The Hon. Paul Koinange, M.P.	
27.	The Hon. Raphael Milkau Otaalo, M.P.	
28.	The Hon. Stephen M. Mule, MP	
29.	The Hon. Zipporah Jesang, M.P.	

