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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT  
THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON HEALTH  
REPORT ON THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL,  
(NATIONAL ASSEMBLY BILL NO. 5 OF 2019)

DIRECTORATE OF COMMITTEE SERVICES  
THE NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI


	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 26 JUN 2019	DAY: Wed.
TABLED BY:	Hon. Gabriel Tongayo Member, Health Committee
CLERK AT THE TABLE:	Mr. Moko.
JUNE, 2019	

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## **CHAIRMAN'S FOREWORD**

The National Hospital Insurance Fund (Amendment) Bill No. 5 of 2019 was read a First Time on Wednesday, March 20<sup>th</sup>, 2019. Pursuant to the provisions of Standing Order 127(1) the Bill was committed to the Departmental Committee on Health for consideration.

The Bill proposes to amend the National Hospital Insurance Fund (NHIF) Act Cap. 255 to provide for persons who have retired from employment to continue paying standard contribution to the Board, equivalent to the contribution the person was paying immediately before the retirement. The Bill also seeks to ensure that where a retiree opts to continue paying a standard contribution equivalent to the contribution the person was paying immediately before retirement, the persons shall be entitled to the medical cover and benefits ordinarily accruing to persons making such contributions.

As it is presently, a person retiring from employment is automatically subjected to make special contributions hence enjoys less benefits in terms of cover limits. This is despite the fact that based on the number of years a person has worked, the person may still be in a position to continue paying standard contributions akin to the ones the person was paying prior to retirement.

The Committee placed newspaper advertisements in the local dailies calling for memoranda from the public on 9<sup>th</sup> May, 2019. The Ministry reiterated the position it stated during the legislative proposal stage, while only one organization responded to the advertisement and their views are contained in this report.

The Committee sincerely thanks the Offices of the Speaker and the Clerk of the National Assembly for the immense and timely technical and logistical support accorded to it in the execution of its mandate. I also thank all the Members of the Committee and the secretariat for their commitment and hard work which enabled us to complete the tasks related to the scrutiny of the proposed amendments and compilation of this report.

The Committee is also grateful to stakeholders who made submissions in relation to the Consideration of the Bill.

On behalf of the Departmental Committee on Health and pursuant to provisions of Standing Order 127 (4), it is my pleasant privilege and honor to present the Report of the Committee on its consideration of the National Hospital Insurance Fund (Amendment) Bill No. 5 of 2019.

**HON. SABINA CHEGE, MP**

**(CHAIRPERSON)**

## COMMITTEE MANDATE

### Mr. Speaker Sir,

The Departmental Committee on Health is established pursuant to 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 the Committee is to;

- 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 programme 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 recommendation of proposed legislation.*

The Departmental Committee is mandated to cover the functions of the Ministry of Health alongside its Semi-autonomous Government Agencies.

### Committee Membership

The Committee comprises the following Honourable Members;

	NAME	POLITICAL PARTY	CONSTITUENCY/ COUNTY
1	Hon. Sabina Chege, MP – <b>Chairperson</b>	Jubilee	Murang'a
2	Hon. Swarup Ranjan Mishra, MP –	Jubilee	Kesses

	Vice Chairperson		
3	Hon. (Dr.) Eseli Simiyu, MP	Ford Kenya	Tongaren
4	Hon. (Dr.) James Nyikal, MP	ODM	Seme
5	Hon. Alfred Agoi Masadia, MP	ANC	Sabatia
6	Hon. (Dr.) James Kipkosgei Murgor, MP	Jubilee	Keiyo North
7	Hon. Muriuki Njagagua, MP	Jubilee	Mbeere North
8	Hon. (Dr.) Mohamed Dahir Duale, MP	KANU	Daadab
9	Hon. Stephen Mule, MP	Wiper	Matungulu
10	Hon. Esther M. Passaris, MP	ODM	Nairobi
11	Hon. Gladwell Jesire Cheruiyot	KANU	Baringo
12	Hon. Kipsengeret Koros, MP	Independent	Sigowet-soin
13	Hon. Martin Peters Owino, MP	ODM	Ndhiwa
14	Hon. Mercy Wanjiku Gakuya, MP	Jubilee	Kasarani
15	Hon. Prof. Mohamud Sheikh Mohamed, MP	Jubilee	Wajir South
16	Hon. Patrick Munene Ntwiga, MP	Jubilee	Chuka Igamba Ng'ombe
17	Hon. Tongoyo Gabriel Koshal, MP	CCM	Narok West
18	Hon. Zachary Kwenya Thuku, MP	Jubilee	Kinangop
19	Hon. David Ochieng', MP	MDG	Ugenya

The Committee is supported by the following members of the Secretariat;

- |                                |   |                            |
|--------------------------------|---|----------------------------|
| 1. Mr. Victor Weke             | - | Clerk Assistant I          |
| 2. Mr. Muyodi Meldaki Emmanuel | - | Clerk Assistant III        |
| 3. Mr. Ahmed Hassan Odhowa     | - | Principal Research Officer |
| 4. Ms. Lynette Otieno          | - | Legal Counsel I            |
| 5. Mr. Eric Kanyi              | - | Fiscal Analyst             |
| 6. Ms. Winnie Kiziah           | - | Media Officer              |

## EXECUTIVE SUMMARY

**Mr. Speaker Sir,**

This report details the Consideration of The National Hospital Insurance Fund (Amendment) Bill No. 5 of 2019. The Bill was read a First Time on 20<sup>th</sup> March, 2019. Pursuant to the provisions of Standing Order 127(1) the Bill was committed to the Departmental Committee on Health for consideration.

The Committee considered the amendment proposals in the Bill beginning with a brief of the import of the proposed amendments by the Committee's legal counsel. To note is that the Committee had already met with the sponsor of the Bill, Hon. Emmanuel Wangwe, MP, when the Bill was at the Legislative Proposal stage.

In considering the bill, the National Assembly called for submission of memoranda from the public in the major dailies on 9<sup>th</sup> May, 2019, and subsequently received written submissions from the public. The Committee then retreated consider this memoranda and write this report.

The Committee's decisions on the amendments were based on Constitutional requirements and views from the relevant stakeholders and other members of the public.

The Committee notes the importance of the proposed amendments in securing the health future of its senior citizens. This was towards provision of Universal Health Coverage (UHC) for all, by 2022. The Committee also observes and notes current efforts by the Ministry to streamline and reform operations at NHIF towards support of UHC.

The Committee recommends that the Bill proceeds to Second Reading without amendments.

## **1.0 INTRODUCTION**

The National Hospital Insurance Fund (Amendment) Bill No. 5 of 2019 was read a First Time on 20<sup>th</sup> March, 2019. Pursuant to the provisions of Standing Order 127(1) the Bill was committed to the Departmental Committee on Health for consideration pursuant to Standing Order No. 127(1) that provides that; *'a Bill having been read a First time shall stand committed to the relevant Departmental Committee without question being put.'*

The Bill seeks to amend sections of NHIF Act. It proposes amendments to the NHIF Act Cap. 255 that will provide for continued medical cover of retired employees. It proposes that retirees would continue to regularly pay standard contributions to the Board equivalent to the amount the person was paying immediately before their retirement. The said contributions would entitle the retiree to a medical cover and benefits equivalent to which is provided to persons paying similar contributions.



## 2.0 SITUATIONAL REVIEW

The table below analyzes provisions of the Sections of each clause, vis a vis the proposed amendments;

Clause	Amendment	Principal Act	Analysis of Amendment
1	This clause provides the short title of the Bill as well as the commencement.		-
2	Amends section 15 of the Act by inserting the following new subsections immediately after subsection (2)– “(2A) Despite the provisions of subsection (2), a person who has retired from employment may opt to continue paying a standard contribution to the Board, equivalent to the contribution the person was paying immediately before the retirement.	<b>Contributions to the Fund</b> 15.(1) Subject to this Act, any person— (a) who is ordinarily resident in Kenya; and (b) who has attained the age of 18 years; and (c) whose total income, whether derived from salaried or self-employment, in the immediately preceding month, was not less than such amount as the Board, in consultation with the Minister, may prescribe shall be liable as a contributor to the Fund. (2) A person liable as a contributor under this section shall pay to the Board— (a) in the case of a person whose income is derived from salaried employment, a standard contribution; or (b) in the case of a person whose income is derived from self-employment a special contribution, in accordance with this section.	The amendment introduces a voluntary standard NHIF contribution to be made by persons who have retired from employment. The amendment further provides that persons who opt to continue remitting standard contributions shall be entitled to the benefits accruing to the standard contributors.

	<p>(2B) For avoidance of doubt, a person who opts to continue paying a standard contribution equivalent to the contribution the person was paying immediately before retirement, shall be entitled to the medical cover and benefits ordinarily applicable for persons making such contributions."</p>	<p>(3) A contribution under subsection (2) shall be at such rate, depending on the person's total income, as the Board, in consultation with the Minister, may determine.</p> <p>(4) A person to whom this section applies shall pay the contribution to the Board on the first day of each month or on such later date as the Board, in consultation with the Minister, may prescribe.</p> <p>(5) In this section, "income" means such income as the Board, in consultation with the Minister and the Minister for Finance may prescribe for the purposes of this Act.</p>	
3	<p>Amends section 16 of the Act by inserting the following new subsection immediately after subsection (1)–</p> <p>"(1A) A person liable to pay the standard contribution under section 15(2A) shall pay the contribution to the</p>	<p><b>16. Standard contributions</b></p> <p>(1) A person liable to pay a standard contribution under section 15 shall pay such contribution through monthly deductions from his salary or other remuneration and the employer of such person shall be liable to deduct and to pay the contribution to the Board on behalf of and to the exclusion of that person.</p> <p>(2) An employer shall not be liable under this</p>	<p>The amendment sets the timelines and manner with which the standard contributions shall be remitted to the Board by the retired contributors.</p>

	<p>Board on the first day of each month or on such later date as the Board may specify, in such manner and at such rate as may be prescribed.”</p>	<p>section to pay the standard contribution in respect of any person employed by him for any month—</p> <p>(a) in which he was not at any time the employer of that person except where the employment is terminated in the month immediately preceding that month;</p> <p>(b) in which he was not the employer on the first day of that month, unless that contribution has not been paid before the day in that month when he becomes the employer, in which case he shall only become liable seven days after that day; or</p> <p>(c) in respect of which the salary or other remuneration payable by him after all other statutory deductions have been made therefrom, are not sufficient to pay that contribution.</p> <p>(3) An employer shall be entitled subject to and in accordance with any regulations—</p> <p>(a) to deduct from the salary or other remuneration of any person employed by him, notwithstanding anything to the contrary in any other law, the amount of any standard contribution paid by him or to be paid by him within one month of such deduction, on behalf of that person;</p>	
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		<p>(b) to obtain a card for any person employed by him where that person does not provide him with a card issued to that person, or where that person's card has been lost or destroyed;</p> <p>(c) to retain possession of the card issued to a person employed by him, except when that person requires the card for the purpose of obtaining any benefit or making a claim under this Act until that card is required for surrender upon the issue of a new card for the next financial year.</p> <p>(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that person after a stamp to the value of that sum has been affixed to a card issued to that person and duly cancelled:</p> <p>Provided that nothing in this subsection shall affect the responsibility of the employer for the safe custody of that employee's card.</p> <p>(5) If for any reason an employer is unable to ascertain whether any person employed by him is liable to pay the standard contribution for any month, he may apply to the Board for a decision, and, subject to the provisions of section 31, any decision given by the Board thereon shall be final and binding on that</p>	
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		<p>employer.</p> <p>(6) Any person who—</p> <p>(a) fails without lawful excuse to pay, within the time and in the manner prescribed by this Act in relation to him, any standard contribution which he is liable as an employer to pay under this Act; or</p> <p>(b) knowingly makes any deductions from the salary or other remuneration of any person employed by him, purporting to be a deduction in respect of any standard contribution, other than a deduction which he is authorised to make by this Act, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.</p>	
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### 3.0 PUBLIC PARTICIPATION

#### Ministry of Health

The Ministry of Health maintained its position on the Bill as it had submitted during the legislative proposal stage. They submitted that the Bill provides for the continued cover of retirees equivalent to those who pay similar amounts, has made the continued contributions to the Board optional to retirees and contributes to the achievement of Universal Health Coverage (UHC).

However, weaknesses in the Bill include the fact that the proposals presuppose that retirees will be in a position to pay equivalent amounts paid while in employment. Further, the proposal for the standard contributions to be equivalent to preretirement contributions makes the law too prescriptive. This deviates from other contributions for which the Board decides on in consultation with the Cabinet Secretary from the time to time.

Contributions to the Fund may require revision from time to time depending on several factors such as the economy, cost of medical care, inflation and required packages.

Finally, the proposal will 'lock' retirees into one package, thus denying them the flexibility. Retirees may want to make contributions higher than their pre-retirement contributions for purposes of benefiting from a better medical cover package.

The table below shows their detailed submission, clause by clause:

Clause	Content	Recommendation	Justification
Amendment of section 15 (2) Contributions to the Fund	Additional clause in 15 (2)- (2A) ... a person who has retired from employment may opt to continue paying a standard contribution to the Board equivalent to the contribution the person was paying immediately before retirement	Section 15 is amended by inserting the following subsection immediately after subsection (3)-  “(4) The sources of Funds shall be: ..... f) Funds from the Post Retirement Funds for provision of medical	To provide clarity, expand the mandate and contribution avenues in line with achievement and sustenance of UHC and medical support of retirees.  To allow the Board in consultation with the CS Health to set medical packages and their

Clause	Content	Recommendation	Justification
		cover to retired employees.”	corresponding premiums for retirees from time to time.
	Additional clause 2B...a person who opts to continue paying a standard contribution .....shall be entitled to the medical cover and benefits ordinarily applicable for persons making such contributions.	This is in order	Promotes equity
Amendment of section 16	Insert new subsection after 16(1) 1(A) A person liable to pay the standard contribution under section 15(2A) shall pay the contribution to the Board on the first day of each month or on such later date as the Board may specify, in such manner and at such rate as may be prescribed	Substitute with.. 1(A) A person liable to pay the standard contribution under section 15(2A) shall pay the contribution to the Board periodically at such rate as they may deem feasible as long as the subscription is up to date.	NHIF has modernized its infrastructure, thus making it possible for contributors to pay periodically at will as long as their subscriptions are up to date. Thus contributions could be monthly, annually or as desired.

### Kenya Network of Cancer Organizations United against Cancer

In response to the call for public memoranda in the dailies, the Committee received a memorandum from the Kenya Network of Cancer Organizations United against Cancer (KENCO).

KENCO is the national umbrella body of cancer civil society organizations and cancer patients. The organization stated that up-scaling of insurance scheme to all Kenyans is considered as an imperative step in realizing universal health care coverage, there is however need to check on the retired person’s contribution for equity purposes.

Retired persons have no monthly pay, thus continuing to make standard contribution to the Board equivalent to the contribution the person was paying immediately before retirement will not be fair unless of course they will still enjoy the same NHIF benefits same as what they enjoyed prior to retirement. If this is not the case, then they should pay same as the amount paid by those persons who are self-employed or unemployed and simply gain the bare minimum benefits.

#### **4.0 COMMITTEE'S OBSERVATIONS**

The Committee made the following observations;

- i) The proposed amendments seek to cushion senior citizens who because of their advancing age, are more vulnerable to deteriorating health;
- ii) The country is currently seeking to attain Universal Health Coverage. These include efforts to cover indigents, students, mothers and their infants, and most relevant here, the elderly. This Bill therefore supports these efforts;
- iii) The concerns of the Ministry that retirees will be 'locked-in' are clearly baseless as the Bill proposes that the retiree 'may opt to continue paying standard contributions...'. This will therefore be a matter of choice.



## 5.0 COMMITTEE'S RECOMMENDATIONS

The Committee having considered the Bill and the submissions from the stakeholders makes the following recommendations on each proposed clause;

1. Amendment of Section 15 through insertion of new subsections (2A) and (2B) is agreed upon as published;
2. Amendment of Section 16 through insertion of new subsections (1A) is agreed upon as published;

SIGNED  .....

HON. SABINA CHEGE, MP

(CHAIRPERSON)

DATE 26/06/19. .....