



MATRIX ON RECOMMENDATION BY NEPHAK & KELIN ON THE HEALTH BILL 2015

HEALTH BILL 2015		
Clause	Marginal Note	Recommendation
PART 1: PRELIMINARY PROVISIONS		
	Preamble	We recommend that the preamble in the CIC draft is adopted. It is a better draft.
1	Short Title	No comment.
2	Interpretation section	<p>We recommend that the World Health Organisation definition on abortion is adopted. The definition reads as “Abortion is the premature expulsion of the products of conception from the uterus before the foetus is viable. Abortion can be spontaneous or induced”.</p> <p>Informed Consent: ‘means consent obtained freely, without threats or improper inducement, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient’</p>
3	Objects of the act	<p>We suggest you adopt and include the following objects:</p> <ul style="list-style-type: none"> (a) ensure the provision of health care to the vulnerable and marginalised person including children, persons with disability, the elderly and persons with mental illness among others (b) provide for the role of the national and county governments and their entities in respect of health functions as provided for in the constitution

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		<p>In the development and implementation of policies, laws and administrative frameworks the national and county governments shall apply the following principles –</p> <ul style="list-style-type: none"> (a) equitable access to health services and interventions in all parts of the country (b) ensure public participation and stakeholder consultation (c) facilitate access to information while ensuring the protection of the right to privacy and confidentiality; (d) facilitate mutual consultation and cooperation between the national and county governments and among county governments <p>This wording captures the National Values and principles in line with Articles 10(2) b, c and 201 and 232 of the Constitution of Kenya 2010.</p>
4	Responsibility for health	<p>We recommend that this section should be deleted and replaced with the following wording:</p> <p>The national government ministry responsible for health shall -</p> <ul style="list-style-type: none"> (a) develop health policies, laws and administrative procedures and programmes in consultation with county governments and health sector stakeholders and the public for the progressive realisation of the highest attainable standards of health (b) develop standards for health service delivery ; (c) set standards and guidelines for the health care service delivery in accordance with the Fourth Schedule of the constitution (d) in consultation with the health authority, develop, adapt and customize regional and international health standards to regulate the health sector

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		<ul style="list-style-type: none"> (e) set standards and formulate policies to guide the practice of traditional and alternative medicine (f) develop and regulate research for health standards (g) put in place intervention measures to reduce the burden of communicable and non-communicable diseases, emerging and re-emerging diseases, neglected diseases, especially among marginalised and vulnerable population (h) develop standards for the protection of the health and safety of consumers in all other sectors and promote, encourage collaboration and consultation with these sectors for the effective implementation of the standards; (i) put in place mechanisms for enforcement of the health standards including, where necessary prosecution of offenders; (j) provide capacity building and technical assistance to county governments as may be required; (k) coordinate the development of criteria for determining the equitable sharing of funds allocated to the health sector under articles 202(2), 204 and any other funding derived from external loans and grants; (l) determine the key national health indicators in consultation with the County governments; (m) coordinate national disasters and emergencies; (n) develop a national health information management system which information system includes the indicators that take into account the needs of vulnerable and marginalized groups and information from the counties (o) facilitate all forms of research that can guide the development of appropriate health policies; (p) develop and manage the national health referral facilities and ensure progressive access to healthcare in these facilities by all;

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		(q) determine the human resources skills and capacity required for health service delivery for the national government.
PART II: HEALTH RIGHTS AND DUTIES		
5	Reproductive health	<p>We recommend that Clause 6 (b) ought to be re-worded to emphasize that the right of access to appropriate health care services is to enable 'women' to go safely through pregnancy and childbirth as opposed to parents</p> <p>We recommend that the word 'abnormal pregnancy' be deleted in Clause 6(1)(c)</p> <p>We recommend that the word 'Uncomplicated abortion' be deleted in Clause 6(2) as the World Health Organization classifies that abortion as either induced or spontaneous.</p>
6	Emergency treatment	<p>We recommend that the bill adopts the following wording: Every person has a right to emergency medical treatment.</p> <p>(2) Every healthcare provider shall provide emergency medical care to any person requiring such treatment.</p> <p>(3) For the purposes of this section, emergency medical care shall include-</p> <p>(a)pre-hospital care; (b)stabilizing the health status of the individual; (c)emergency medical evacuations, or</p>

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		<p>(d) arranging for referral in cases where the healthcare provider of first call does not have facilities or capability to stabilize the health status of the individual.</p> <p>(4) A medical facility shall not prohibit a health professional working in their facility from providing emergency medical care.</p> <p>(5) Any healthcare professional who fails to provide emergency medical care while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a period not exceeding twelve months or both.</p> <p>(6) Any healthcare facility that fails to provide or prohibits a health professional working in their facility from providing emergency medical care commits an offence and is liable upon conviction to a fine not exceeding five million shillings.</p> <p>(7) The Cabinet Secretary, in consultation with county governments and relevant stakeholders, shall make regulations on emergency medical treatment.</p>
	<p>Clause 9 on Consent of Mature Minors</p>	<p>We recommend that the Clause on consent take into consideration the rights of a mature minor to give consent based on their evolving capacity and ability to comprehend the health issues at hand. The Bill is recommended to seek the wording of the HIV Prevention and Control Act, section 14 which grants the right of consent to mature minors.</p>

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7	New Clause Mandatory and free health care services	<p>(8)(1) The national and county governments shall ensure free -</p> <ul style="list-style-type: none"> (a) and compulsory access to vaccination; (b) maternity care for all pregnant women; and (c) treatment to all children under five years. <p>(2) No child maybe denied access to vaccination on the basis of culture, religion or any other excuse.</p>
8	New Clause Duties of a Citizen	<p>(1) Every citizen has responsibility to ensure the pursuit of health, and shall take all measures necessary to respect, protect and promote the health of others.</p> <p>(2) The measures referred to under subsection (1) shall include-</p> <ul style="list-style-type: none"> (a) Be a member of a health insurance plan approved by national government (b) Protect the rights of other individuals (c) Parents must ensure proper and adequate immunization for children and protect them from exposure to harmful substances (d) Provide truthful information to health workers when seeking medical attention (e) Report any suspected health threat (f) Comply with any reasonable regulatory or other restrictions placed upon the individual by a state or county organ pursuant to a stated health objective under this or any other written law
9	New Clause Partnerships with Non-State Actors	<p>(1) The National and County governments may partner with the private sector and Non state actors in the delivery of health services.</p> <p>(2) Partnerships entered into under subsection (1) may be for the purposes of, among others -</p>

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		(a) mobilization of resources; (b) joint capacity building programs; (c) procurement of medical supplies and technologies; (d) development and management of health infrastructure; (e) coordination of response during emergencies and disasters; and (f) exchange of expertise and personnel (g) Strengthening of health systems
10	New Clause Intergovernmental collaboration for health services delivery	National and county governments may, through the health sector inter-governmental consultative fora and in line with the Constitution the Inter-governmental Relations Act and any other law, collaborate, cooperate and coordinate in the delivery of health services
PART IX: HUMAN ORGANS, HUMAN BLOOD, BLOOD PRODUCTS, OTHER TISSUES AND GAMETES.		
	Making of Wills	We recommend that the Making wills is not suitable for the health bill and should be left to other laws like the Succession Act even on matters of tissue and body donation which is often captured in one's will.
PART X HEALTH FINANCING		
We recommend that the provisions in this Part emphasize that both National and County Governments are supposed to fundraise for resources for health locally, regionally and internationally.		
ENABLING LEGISLATION AND REGULATIONS – TIME FRAMES		
We recommend that for all clauses within the Bill that are geared towards establishment of enabling legislation and regulations, must give timelines within which the enabling legislation and or regulations are to be made. These include among others Clause 41 on Mental Health and clause 42 on traditional medicine.		
ESTABLISHMENT OF A HEALTH TRIBUNAL		
We recommend that the Health Bill establish a health tribunal for any person to file a complaint about the manner in which he or she was treated at a healthcare facility and have the complaint investigated appropriately. The Tribunal		

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		shall have jurisdiction to hear and determine complaints arising out of the conduct of any health care providers; to hear and determine any matter or appeal arising from the administrative processes made within the Bill.