



Kenya Medical Association

NATIONAL EXECUTIVE

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REF: KMA / NEC / HEALTH LAWS (AMENDMENT) BILL 2021

4th MARCH 2021

RE: Kenya Medical Association Memorandum on The Health Laws (Amendment) Bill 2021

The Kenya Medical Association (KMA) was established in 1968 with the twin mandate of championing for the welfare of doctors and advocating for quality health care for all people in Kenya. Pursuant to these mandates the Association engages with legislators and policy makers at all levels of government in order to secure improvements to the welfare of our members and the healthcare system in this country.

KMA is in receipt of the Health Laws (Amendment) Bill (National Assembly Bill 2021 received in the national assembly on 23rd February 2021. KMA has perused the proposed amendments and makes the following observations and proposals”

EXECUTIVE SUMMARY

KMA is deeply concerned that the Health Laws Amendment Bill 2021 has removed The Kenya Medical Association from all health regulatory bodies and thus removing the voice of the providers.

There precedence on regulation of professionals is very clear. It has been clear in health prior to these proposed radical changes. It is clear with other professionals such as Lawyers (LSK), Architects, Engineers, Accountants and others. These professionals have regulatory bodies here in Kenya anchored in the law by the various acts. The membership of regulatory bodies should be composed of industry leaders who are able to provide oversight of their professions. The role of established professional associations of the particular professions is underpinned by their participation in boards that govern these professions. Health should not be an exception.

KMA takes note that the health regulatory bodies affected in proposed memorandum are unique in that they provide professional regulation unlike other SAGAs. The mechanisms of professional regulation include the development of standards for professionals, the promulgation of codes of professional conduct and ethics, the adoption of credentialing mechanisms and the implementation of disciplinary procedures.

The health amendment bill 2021 is proposing changes to the composition of regulatory councils as currently composed. The amendments have sighted the Mwongozo code of governance. The rationale given by the proposers of the bill in amendment of composition of the bill is flawed as the regulatory councils are not state corporations or parastatals. Mwongozo is a guide for boards but it does not prescribe the exact individuals to sit in boards. Professional regulatory boards and councils are not the same as boards of management of parastatals and other government agencies. They have roles that go beyond the management of an institution, and into setting professional and ethical standards of practice, and ensuring that recognized professionals adhere to these standards or lose their license to practice.

The proposers of the bill have put the PS, Health, PS Finance and Attorney General in all the health regulatory boards. Additionally, the bill gives vague guidelines of organizations and qualifications of people the CS of health will populate these boards with. The Attorney General position in all regulatory councils presents a conflict of interest in cases where government facility is being brought to task on regulatory matters. As such, regulatory bodies should be independent. The Director General of Health is the most suitable technical person who should be in these boards. Senior government officials do not have a role sitting on a PROFESSIONAL regulatory body that should be the one advising them on professional and ethical standards.

The removal of specific professional organizations is dangerous. It leaves the selection process fraught with ambiguity, a situation that is the complete opposite of the proposed spirit to the changes. In health, the danger of not being explicit opens up the window of important regulatory functions to all and sundry, a situation that will place the health of a nation in jeopardy.

The suggestion that the nominees of the Cabinet Secretary should not be public officers is not good practice for regulatory bodies that are for public good.

The Kenya Medical Association thus proposes that the Health Laws Amendment Bill 2021 be shelved all together and that the regulatory bodies remain as they are. Should parliament choose to continue with the bill then KMA proposes the following amendments. KMA is available to explain its proposals when called upon to.

	ACT	SECTION	PROPOSED CHANGES/COMMENTS	RATIONALE
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1	CAP 244 Pharmacy and Poisons board act	s.3	Insert sec 3(1)g) one medical practitioner nominated by Kenya Medical Association to represent prescribers of medicines and handlers of poison"	It is important and valuable to include medical practitioners in membership of the board to provide technical expertise since it will be responsible for the regulation of their prescribing functions as well as their role in research, including clinical trials.
			Delete 3(1) c, d and e	
2	The Medical Practitioners & Dentists Act (Cap 253)	s. 3A	to change 3A (1) (a) to read chairman appointed by President who shall be a medical or dental practitioner	The leadership role of the council needs to have a respected medical practitioner to provide proper technical expertise and long experience.
			To change s.3A(1)(e)(i) to read as follows: "s.3A(1)(e)(i) two persons of opposite gender who shall be representatives of the Kenya Medical Association;"	The Kenya Medical association is the professional representative of doctors providing peer and self-regulation and thus is best placed to contribute to oversight of its members. The nominee acts in the professional guidance of an association.
			Retain section 3 a (1) c and d as is in the current 2018 act.	The role of KMA and KDA in the council is to provide professional oversight and we propose that this be retained.
			Delete sec 3A (b, c, d, e) introducing the PS-health, PS-Finance, Attorney General and Cabinet Secretary appointments	The role of AG in the council is unclear. In the KMPDC act, there is a provision for a person versed in finance and thus not necessary for PS finance to sit in the board, Moreover, we think that a medical practitioner should replace the person with finance knowledge as person with finance knowledge can be outsourced
		4d	To delete the proposed section 4d 1 on appointment of corporation secretary	
3	Cap 257 Nurses Act	s.4	retain National Nurses association of Kenya	NNAK is the professional representative of nurses providing peer and self-regulation and thus is best placed to contribute to oversight of its members
			retain Kenya Progressive Nurses association	NNAK is the professional representative of nurses providing peer and self-regulation and thus is

				best placed to contribute to oversight of its members
4	NHIF ACT No 9 of 1998	s4	retain section 4 (1)k as in previous act one person nominated by Kenya Medical Association	Part of role of NHIF is to set the criteria for the declaration of hospitals and to declare such hospitals in accordance thereto for the purposes of this Act. KMA represents health providers and thus best placed to participate in the board.
			delete section 4 (1) g "on person nominated by council of governors"	No rationale on role of COG in the board
5	The Medical laboratories technician and Technologists Act 10 of 1999	s 2	Retain representation of the relevant professional associations	providing peer and self- regulation and thus is best placed to contribute to oversight of its members
		s6		
6	Tobacco control Act 2007	s5	sec 5 (1) - person nominated by KMA; person nominated by LSK	Providers who see the effects of Tobacco should be represented
7	The Nutritionist and Dieticians Act	s2	insert Kenya Medical Association	Providers who see the effects of nutrition on health should be represented
		s5	sec 5(2) insert "one person nominated by Kenya Medical Association"	
			insert one person nominated by Nutrition association of Kenya	
8	Cancer prevention Act	s.6	s.6 (2)(g) insert one person nominated by Kenya Medical Association.	
9	The public Health Officers Act 2013	s. 3	s.3 (3) (f) insert one person nominated by Public Health Society of Kenya	
10	The Kenya	s.5	s.5 (i) insert one person nominated	The end users of supplies of KEMSA are the

	Medical Supplies Agency		by Kenya Medical Association	providers whose duty is to provide feedback and quality control
11	The Counsellors and Psychologists Act, 2014 (No. 14 of 2014)	s. 4		provide peer and self- regulation and thus is best placed to contribute to oversight of its members
12	The Physiotherapists Act	s. 6		provide peer and self- regulation and thus is best placed to contribute to oversight of its members
13	The health Records and Information Managers Act No.15 of 2016	s.7		provide peer and self- regulation and thus is best placed to contribute to oversight of its members
14	The clinical officers Act no 20 Of 2017	s.4	Insert one person nominated by Kenya Clinical officers Association	provide peer and self- regulation and thus is best placed to contribute to oversight of its members
		s.4	sec 4 (1) c Delete Attorney General	
		s.4	Insert in sec 4 (1)c one person nominated by Kenya Medical Association	Clinical Officers work in a multidisciplinary setting. Addition of a KMA member would provide additional expertise in oversight.
15	The Health Act 2017 (no 21 of 2017)		sec 30(1) e	
		sec.33	sec 33(2) insert 2(a) to read as follows A person shall be qualifies to be appointed as chief executive officer to the authority if the person 1) possesses a degree in health from a recognized university	A manager with a health background
		sec. 46		
		Sec 49	Level 3 – registered health practitioner	Define registered health practitioner.

16	FIRST SCHEDULE		Level 4 delete “law, business, physical science, social science or any other relevant field “and replace as follows "is a Health practitioner and holds a master’s degree in Health management, public health or its equivalent	Quality Health is a prerequisite for UHC. Studies have shown that facilities managed by clinically trained managers provide better quality of service compared to those run by business executive with no health background.
			level 5 delete “law, business, physical science, social science or any other relevant field” and replace as follows "is a Health practitioner and holds a master’s degree in Health management, public health or its equivalent management, public health or its equivalent	Quality Health is a prerequisite for UHC. Studies have shown that facilities managed by clinically trained managers provide better quality of service compared to those run by business executive with no health background.
			level 6 delete “law, business, physical science, social science or any other relevant field “and replace as follows "is a Health practitioner and holds a master’s degree in Health management, public health or its equivalent	Quality Health is a prerequisite for UHC. Studies have shown that facilities managed by clinically trained managers provide better quality of service compared to those run by business executive with no health background.
	Universal Health Coverage Scheme		Facilitation of access to quality promotive preventive, curative, rehabilitative and palliative health services based on need social and financial risk protection will be achieved with efficient running of NHIF with oversight from KMA and strengthening of HRAC	

Signed



Dr Were Onyino