



CLIFFORD ODHIAMBO  
& COMPANY ADVOCATES

# UNIVERSAL HEALTH COVERAGE (UHC) ACTS

✉ [info@cliffordadvocates.com](mailto:info@cliffordadvocates.com)



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# UNIVERSAL HEALTH COVERAGE (UHC) ACTS

The four acts President William Ruto signed into law include the Primary Health Care Act, Facility Improvement Financing Act, Digital Health Act and the Social Health Insurance Act.

These Acts all contribute to the mandate of Article 43 of the Constitution of Kenya the right to the highest attainable standard of health as a fundamental right. It stipulates that every person has the right to access healthcare services, including reproductive health care.

Please see our summary of each act below:

## 1. Primary Health Care Act, 2023

### Objectives

According to section 3 of the act, the objective of this Act is to;

- Promote and fulfill the rights of all persons in Kenya towards the progressive realization of their right to the highest attainable standards of health care;
- Promote the implementation of primary health care through a systematic approach and clear delienation of roles of all stakeholders towards realization of universal health coverage;
- Provide for the establishment of primary health care networks, community health units and other stakeholder centered engagement forums for sustainable provision of primary health care services;
- Provide for the role of the multi disciplinary team in the provision of primary health care services; and
- Provide for the role of community health officers, community health assistants and community health promoters in the provision of community based primary health care services.



## The Primary Health Care Workforce and Community

The Act sets up a Primary Health Care Workforce that shall include community health promoters and health care providers. The Act has put great emphasis on the community by creating a system of accountability that ensures that health education, disease prevention, family health services, environmental health and hygiene, first aid of minor illnesses and injuries, psychological support, rehabilitation and palliative care all **commence at the household level** through the oversight of the community health care promoters.

## Role of the National Government

The Act further provides for the Role of the National Government in Primary health Care Policy and states that the Cabinet Secretary shall provide policy direction for the effective provision of primary health care services by the county governments through:

- Formulating, developing and disseminating policies, guidelines and frameworks;
- Consulting the county government to equitable service delivery;
- Consolidate and analyze national primary health care data for transmission to the stakeholders;
- Facilitating knowledge sharing and dissemination of best practices; and
- Provide capacity development for the effective management of primary health care across Kenya.

In addition to the above, the National Government may also provide additional allocation of resources to the county government for the effective performance of its functions. However, these resources shall not be a substitute of the resources already allocated to each county government but act as a supplement.

## Role of County Government

The Act outlines the role of the county government in management of health care services as below;

- Overseeing and Implementing National policies, guidelines and standards;
- Mobilize and allocate adequate resources;
- Allocating adequate funds and resources for the community health promoters;
- Developing necessary technological infrastructure;
- Putting in place mechanisms to facilitate access to timely health care;
- Facilitating access to information;

- Co-ordinating the implementation of training programmes;
- Providing community health promoters with the required tools of work; and
- Undertake monitoring and evaluation.

The County Government shall also set up a County Primary Health Care Advisory Committee to assist in the functions above in order to manage health care services provided. Each committee member shall establish a primary health care network that shall equally have its own committee.

Lastly, the county government shall establish and operationalize community health units with its committee which shall serve a catchment population of up to five thousand persons and one thousand households. These units shall be linked to a health care facility to facilitate the delivery and access to primary health care services for the community.

### **Offences and Penalties**

The Act only provides for offences and penalties of community health care promoters and it provides that community health promoters shall not; conduct any procedure that is beyond their training and approved scope of work; administer to a person medication that is not authorized by clinical standards and guidelines under this Act or any other applicable law; conduct deliveries for pregnant women; negligently handle property entrusted to them; use tools, gadgets or properties under their custody for purposes other than the delivery of community health services authorized under this Act and any other applicable law; solicit financial or other rewards for personal gain whether or not in recognition of effort in delivering services to the community; withdraw services as community health promoters without giving notice of intention to do so, except in a case of emergency; falsify any records or data collected by them in course of duty; engage in other activities that may conflict with their duty; and disclose the client's health information to an unauthorized person.

Any community health promoter who contravenes the provisions of this section shall be subject to disciplinary actions as prescribed by law.



## 2. Facilities Improvement Financing Act, 2023

### Objectives

The objectives of this act is to provide for an efficient, secure and accountable mechanism for the collection, retention and management of revenue derived from health services rendered at public health facilities in Kenya; establishing of a governance framework that will facilitate effective planning, coordination, mobilization and access of pyublic health facilities' improvement financing in Kenya; providing for the appropriation, management and use of budgeted health services revenue to supplement operations and facilitate quality service delivery in public health facilities ; promotion of equitable health facilitated improvement financing including benefit sharing in accordance with the relevant laws of Kenya; and provide for a unified system to guide financial management in public health facilities, improving efficiency and effectiveneddd and ultimately quantity health service delivery.

The act applies to level 1 to level 5 public health facilities.

### Public Health Facilities Improvement Financing

The act provides for an account opening for each public health facility and all monies received or raidd shall be channelled to such accounts. The donations and receivables may eithr be retained by the facility or re-donated to another facility. The Act states that such money shall be supplementary to the budgets and resources already appropriated to the facilities.

The moneis and donations referred to above shall be from the facilities own revenues, grants, donations, gifts and money from the county government from the equitable share.

Once the money is retained, the finances shall be used to support the facilities' optimal operations, purchase and acquisition of urgent goods and services, enhance accsibility and predicatability for procurement of essential products, commodities and technology, ensure that the health services are



available, accessible, acceptable, affordable, and of good quality and standard, guarantee that health facilities are optimally resource to offer quality care to all patients, facilitate primary health care and preventive services at the community level, sustain daily operations and promote improved access to health services in the country and fund ambulance services.

### **Role Of National Government**

The role of the national government is limited to the Cabinet Secretary for matters relating to health providing a policy framework for the administration of facility improvement financing. They will do so by developing policy guideline, collecting, receiving, collating and analyzing data, establishing a repository, providing feedback based on data received, and prescribing and assisting in the setting up of a standardized facility improvement financing health data systems.

### **Role Of The County Government**

The county executive committee through the County Health Management Team, Sub-county health Management Team, Hospital Management Team, Health Facility Management Team and committee shall support the implementation of the facility improvement financing by;

- Facilitating effective collection and retention of revenue;
- Collating and reporting on all facility improvement financing revenue;
- Implementing policies that will ensure direct complementary funding;
- Establishing a repository for financial information systems
- Reviewing and approving expenditure plans and issuance of timely authority to incur expenditure to health facilities;
- Oversee health facilities to ensure optimal management of revenue;
- Planning and budgeting support to the health facilities;
- Evaluating the quality of health services and its linkage to health resource allocation;
- Ensuring community members are represented; and
- Performing any other role that the county or national act may provide.

### **Financial Provisions**

As previously stated, each public health institution shall have a bank account into which all monies received shall be paid into.

The signatories of such accounts shall be the medical superintendent and the hospital administrator and the facility-in-Charge and county accountant for each hospital and health center/dispensary respectively.

The Chief Officer shall be the accounting officer and shall give the medical superintendent and facility-in-charge the authority to incur expenditure. Upon issuance of such authority the user department shall raise vouchers for payment for services or procurement of commodities. The vouchers shall be verified and presented to the county department for health for the accountant to confirm the items requested are in the vote book and thereafter approved. The voucher shall then revert to the medical superintendent and facility-in-charge for initiation of payment.

An integrated financial management system shall be used as the primary accounting platform for the county entities and the health facilities shall be expected to file returns and financial accounts for the preceding quarter before a new authority to incur expenditure is issued.

Financial statements shall be submitted to the Auditor general, the controller of budget and the commission on revenue allocation within three months after the end of each financial year.

All the financial improvement financing shall be subjected to audits in accordance with the Public Audit Act and the accounting officer shall ensure that the accounts are not overdrawn.

### **Penalties**

The act finally states that the penalties stipulated in the Public Finance Management Act, the Public Procurement and Asset Disposal Act and other written laws on misuse, misappropriation and other deviations shall apply.





### 3. The Digital Health Act

#### Objectives

The Act aims to establish the Digital Health Agency and foster a comprehensive integrated health information system. It emphasizes promoting innovation for safe and efficient healthcare technology use, including emergency preparedness, disease surveillance, and continuity of care. Additionally, it sets up a regulatory framework for the e-Health ecosystem data life cycle, ensuring privacy, confidentiality, and security of health data. The Act also strives to develop standards for m-Health, telemedicine, and e-learning and establish regulations for e-waste management. Furthermore, it addresses the secure transfer of health data and medical records between health facilities within and outside Kenya.

#### Principles

The Act outlines principles to guide its implementation. It acknowledges health data as a strategic national asset and emphasizes safeguarding privacy, confidentiality, and security of health data while facilitating information sharing and use. The Act underscores the role of digital health in enabling data sharing for informed decision-making across all levels of healthcare. Moreover, it stresses that the digital health ecosystem should serve the health sector progressively and equitably, striving to achieve the highest standard of health for all.

#### The Digital Health Agency

The Digital Health Act establishes the Digital Health Agency (DHA) as a corporate body with perpetual succession, enabling it to sue, hold property, invest, and perform necessary functions. The agency's role encompasses various functions, including developing and managing the Comprehensive Integrated Health Information System, establishing registries, promoting data analysis for policy formulation, and supporting digitization across the health sector.

The Board, responsible for managing the DHA, possesses powers to administer its assets, associate with relevant bodies, and invest funds. It consists of appointees from various sectors, ensuring diverse representation. Board members serve terms subject to performance and can be removed based on

defined criteria, guaranteeing accountability and competence in their roles.

Additionally, the Act defines the Chief Executive Officer's role, emphasizing qualifications such as advanced degrees, relevant experience, and a clean legal record. The CEO oversees day-to-day management and serves as the Agency's accounting officer. The Corporation Secretary, responsible for board-related administrative functions, requires specific qualifications and acts as the Board's secretary, ensuring proper meeting procedures and record-keeping.

The Act allows the Board to recruit staff necessary for the Agency's functions, outlining that the terms and conditions of their employment are determined by the Board in consultation with the Salaries and Remuneration Commission. These provisions establish a clear framework for the Agency's structure, governance, and operational procedures.

### **The Comprehensive Integrated Health Information System**

The Comprehensive Integrated Health Information System (CIHIS) is established and managed by the Digital Health Agency (DHA). This system serves as a platform for collecting, analyzing, storing, and sharing health-related data. It includes information about individuals' physical or mental health, records of health services, and data associated with specific health services.

The CIHIS comprises various components such as an Information and Communication Technology environment, data collection and analysis tools, quality assurance measures, and shared resources like registries and health management services. Its primary goals are centered on enhancing people-centered health service delivery, enabling secure data sharing, supporting informed decision-making, and ensuring privacy and confidentiality of health data.

To effectively implement the system, the Agency is mandated to adopt internationally recognized standards and best practices. The processes and technical aspects of the CIHIS operate based on fundamental principles like confidentiality, scalability, accuracy, transparency, and consistency. These principles guide the system's design, ensuring it is secure, reliable, efficient, and accessible while maintaining the integrity and privacy of health information.

### **Health Data Governance**

The Act defines categories for health data, such as sensitive personal health data, de-identified data, administrative data, aggregated health data, medical equipment data, and research-related health data. This classification is essential for managing and utilizing health information appropriately.

The governance of health data adheres to specific principles: prioritizing client health improvement, ensuring data security throughout its lifecycle, maintaining equity and accountability, safeguarding privacy and confidentiality, and emphasizing accuracy and reliability in handling health information.

The Cabinet Secretary, in collaboration with the Director-General, establishes a health data governance framework. This includes developing guidelines for legacy data utilization, setting integration and interoperability standards, ensuring data dictionary availability and updates, conducting routine data

quality checks, ensuring data security, and overseeing the integration of health information systems. Health data controllers and processors are required to report designated data points in specified formats to the Ministry of Health.

The Digital Health Agency serves as the custodian for all health data in Kenya, while the Cabinet Secretary ensures that health data is used for public benefit. The Agency provides health data to the Cabinet Secretary for relevant actions, ensuring its responsible and beneficial utilization.

### **Confidentiality, Privacy and Security of Data**

The Cabinet Secretary bears the responsibility for ensuring the protection of this data, allowing its disclosure to third parties only in specific situations, such as emergencies, public health risks, or with proper legal authorization. This act establishes a robust health data governance framework that delineates the roles and responsibilities of various entities in managing, storing, and securing health data. It sets a minimum retention period of twenty years for data within the system, allowing extensions under lawful conditions.

Additionally, the Act mandates the creation of national and county health data banks, ensuring seamless integration with relevant databases across different healthcare levels, thereby promoting comprehensive data accessibility. Data controllers are tasked with the responsibility of safeguarding and governing the use of sensitive personal data, ensuring compliance with legal requirements. Individuals have rights granted by this Act, including access to their health information and the ability to rectify or erase inaccurate or irrelevant data held by health data banks or providers.

Furthermore, the act outlines various offenses related to health data misuse and specifies corresponding penalties, such as fines or imprisonment, thereby ensuring the ethical handling and protection of health information while upholding individual privacy rights.

### **E-Health Service Delivery**

The Act outlines the incorporation of E-Health as a recognized model of healthcare delivery, emphasizing its complementary nature to existing modalities. E-Health services encompass various facets like telemedicine, electronic health records, m-health, e-learning, telehealth, and other recognized services, delivered by licensed healthcare providers or facilities. The legislation mandates the development of standards and guidelines for the E-Health platform, aiming for ethical, safe, secure, reliable, equitable, and sustainable service delivery. The objectives of E-Health revolve around patient-centered care, equitable access to quality healthcare through technology, integration into healthcare systems, and the promotion of E-Health solutions. In the provision of E-Health services, healthcare providers are obligated to furnish clients with comprehensive health information, ensure data management complies with the law, maintain high-quality care, and obtain appropriate consent for minors or mentally ill individuals. The Act also necessitates adherence to prescribed standards when sharing patient information for consultation and training purposes within E-Health platforms and emphasizes the responsibility of E-Health service providers to meet reporting obligations as per the Act's provisions.



## **E-Waste Management and Health Tourism**

Act mandates the Cabinet Secretary to collaborate with county governments and relevant agencies to create guidelines for the safe handling and disposal of e-waste in the health sector. Additionally, there's a directive to establish an e-waste management system focusing on segregation, collection, transportation, processing, reuse, recycling, and embracing sustainable models through public-private partnerships.

In terms of health tourism, the Act requires the Cabinet Secretary to safeguard the transfer of a patient's medical records to and from facilities outside Kenya. It emphasizes the confidentiality of personal health information, especially when transferring biological specimens, health images, human tissues, or organs of a Kenyan citizen outside the country. The Act stipulates conditions for sharing health information, requiring reports to the Director-General for Health, notification to the Cabinet Secretary, and seeking guidance on storing, processing, and destroying health information. Additionally, guidelines on health tourism are to be developed in consultation with county governments and relevant agencies. Personal health information sharing outside Kenya is allowed solely for health tourism purposes.

## **Financial Provisions and Miscellaneous Provisions**

The Financial Provisions within the Digital Health Act outline the funding mechanisms for the Agency, including appropriations from the National Assembly, fees for services rendered, and various other sources designated for the Agency's operation. The Act mandates the preparation of annual estimates, outlining expenditure, salaries, maintenance, and funding for training and research activities, to be approved by the Board and submitted to the National Assembly before the financial year commences. Expenditure cannot occur without alignment to these approved estimates.

The Act emphasizes proper accounting practices, requiring the maintenance of audit books, and it stipulates that the Agency's accounts should undergo auditing in accordance with specific financial management and audit laws. Furthermore, the Chief Executive Officer is responsible for preparing an annual report detailing the Agency's financial statements, activities, and other relevant information, to be submitted to the National Assembly.

Regarding investment of funds, the Act mandates that surplus monies be invested in reputable banks or government securities, with investments held in the name of the Agency.

Additionally, it addresses conflict of interest situations, confidentiality, and cooperation with the Board, laying down rules for disclosure of interests and limitations on sharing confidential information. It also sets penalties for various offenses, such as obstructing Board members or submitting false information, and requires compliance with the Data Protection Act, 2019 by those processing personal data. Lastly, a grace period of six months is given for compliance with the Act's requirements for those handling health information before its commencement.



## 4. Social Health Insurance Act

### Objectives

The act shall provide a framework for improved health outcomes and financial protection in line with the right to health and universal health coverage, realign health care systems, processes and programs for responsiveness, reliability, and sustainability of health care in Kenya, enhance the pooling of resources and risk based on the principles of solidarity, equity and efficiency so as to guarantee access to health care services to all and promote strategic purchasing of health care services.

### Social Health Authority

The Social Health Authority is established with perpetual succession, a common seal, and the authority to charge and dispose of movable and immovable property.

The Authority is tasked with various functions, including registering beneficiaries, managing funds, receiving contributions, empaneling healthcare providers, making payments to healthcare providers, developing guidelines, establishing sectoral linkages, monitoring programs, addressing complaints, advising the Cabinet Secretary, implementing government policies, and performing other functions as mandated by the Act.

The Authority has the necessary powers to carry out its functions, including managing and administering its assets, receiving gifts and grants, opening banking accounts, and entering into associations with other bodies.

The Authority is managed by a Board consisting of various members, including a non-executive Chairperson appointed by the President, representatives from relevant ministries, healthcare professionals, and other nominated members. Board members must be citizens of Kenya, hold at least a bachelor's degree, have relevant experience, and meet the requirements of Chapter Six of the Constitution.

Board members serve a term of three years and can be eligible for reappointment for one further term. Their office becomes vacant under certain conditions like resignation, bankruptcy, conviction, or death. Board members, including the Chairperson, receive remuneration, fees, and allowances as approved by the Cabinet Secretary.

The Authority has a Chief Executive Officer appointed by the Board, responsible for the day-to-day management of the Authority and the administration of the established funds. The Authority also has a Corporation Secretary responsible for board-related functions, including issuing notices, keeping records, and providing guidance on governance matters.

The Board may appoint staff as necessary for the proper discharge of the Authority's functions. Board members and officers are protected from personal liability for actions done in good faith while executing the Authority's functions.

The Authority has a common seal kept in the custody of the Corporation Secretary, used under the direction of the Board, and authenticated by specific signatures.

### **Primary Healthcare Fund**

The Fund is established with the objective of purchasing primary health care services from health facilities. Funding for the Primary Healthcare Fund is derived from various sources, including monies appropriated by the National Assembly, grants, gifts, donations, bequests, fees or levies, and monies from any other source. Payments from the Fund cover expenses incurred in pursuit of its established objectives. Expenditure is limited to annual budget estimates prepared by the Authority at the beginning of the financial year, with any revisions requiring approval from the National Assembly through supplementary budget estimates.

The capital of the Fund is determined by appropriations from the National Assembly or any other source as provided for under the Act. The Cabinet Secretary, in consultation with the Board, is responsible for making regulations that guide the implementation of the Primary Healthcare Fund. These regulations ensure proper utilization and management of the Fund in accordance with its objectives, providing a framework for its effective operation.

### **The Social Health Insurance Fund**

The Fund is established, funded by contributions under the Act, appropriations by the National Assembly for indigent and vulnerable persons, and gifts, grants, innovative financing mechanisms, or donations.

Every Kenyan, as well as non-Kenyans ordinarily residing in Kenya, including children born after the Act's commencement, shall register as members of the Social Health Insurance Fund. Registration will be continuous at various points as prescribed by the Cabinet Secretary. Proof of compliance is required for accessing public services.

Non-Kenyans intending to stay in Kenya for less than twelve months must have travel health insurance.



The Cabinet Secretary will establish measures for compliance.

Liability to contribute to the Fund extends to every Kenyan household, non-Kenyan residents, the national government, county government, and other employers. Contributions are made through statutory deductions, annual contributions based on household income, government assistance for qualifying households, government payment for persons under lawful custody, and self-payment for permanent residents and others.

Contributions are to be paid at the time of registration, with non-Kenyan residents making annual payments. Access to healthcare services under the Act is contingent on up-to-date and active contributions. Premium financing products are provided for non-salaried individuals.

Failure to pay contributions on time incurs a penalty equal to two percent of the unpaid amount, and a person must settle all outstanding contributions and penalties before resuming access to healthcare services under the Act.

### **The Emergency, Chronic, And Critical Illness Fund And Benefits, Tarries, Empanelment, Contracting And Claims**

The Emergency, Chronic, and Critical Illness Fund is established to defray the costs of managing chronic illnesses after depletion of social health insurance cover and cover the costs of emergency treatment. Funding sources include appropriations by the National Assembly, gifts, grants, donations, or endowments, and other lawful sources. The Cabinet Secretary, in consultation with the Board, will regulate its implementation.

Beneficiaries are entitled to an essential healthcare benefits package, and nothing prevents them from obtaining private health insurance. Benefits payable are tariff-based, prescribed by the Cabinet Secretary in consultation with the Board, subject to periodic review.

The Authority will make payments to empaneled and contracted healthcare providers and facilities, with accreditation managed by a designated body. Contracts will be negotiated, and a list of contracted providers published. Identification criteria and termination conditions are set, and violations may result in penalties.

The Claims Management Office within the Authority will review, process, and validate medical claims, appraise claims based on the benefit package, issue pre-authorizations, and manage an e-claims system. It will undertake quality assurance, establish fraud detection systems, collect and analyze data, and prepare reports. Delegation of functions may occur to licensed entities, subject to regulations.

Payments to contracted healthcare providers or facilities will be made upon the submission of claims to the Claims Management Office, with regulations prescribed by the Cabinet Secretary for the efficient settlement of claims.

## **Financial Provisions**

The financial year spans twelve months, ending on June 30th annually. At the close of each financial year, all funds, receipts, earnings, and accruals remain retained by the Authority to serve the Fund's purposes.

Within three months after the end of the financial year, the Authority is mandated to prepare estimates of its revenue and expenditure. These estimates encompass various expenses such as medical claims, staff salaries, retirement benefits, building maintenance, and equipment. Approval of these estimates by the Board is required before the commencement of the financial year. Any expenditure beyond these approved estimates necessitates prior consent from the Board.

For administrative purposes related to exercising its powers, the Board may incur expenses, capped at five percent of the annual Fund expenditure.

Stringent financial record-keeping is mandated by the Act. The Board is required to maintain meticulous records of the Authority's income, expenditure, assets, and liabilities. Additionally, within three months after the financial year concludes, the Board submits the Authority's accounts, income and expenditure statements, and asset and liability statements to the Auditor-General for auditing. The auditing process adheres to the provisions outlined in the Public Finance Management Act, 2012, and the Public Audit Act, 2015.

Post-audit, the Board prepares an annual report detailing the Authority's operations within three months after the financial year's closure. This report is then submitted to the Cabinet Secretary. Subsequently, within three months of its submission, the Cabinet Secretary transmits the report to Parliament. These annual reports serve as comprehensive summaries of the Authority's activities for the preceding year.

## **Dispute Resolution And Miscellaneous Provisions**

The Dispute Resolution Tribunal provides an avenue for appealing decisions made under the Act. Individuals dissatisfied with decisions can appeal to this Tribunal within one month, followed by further appeals to the High Court. The Tribunal, comprising a Chairperson appointed by the President and members appointed by the Judicial Service Commission, holds authority to review, reverse, revoke, or vary Board decisions. It has specific criteria for member appointment, tenure, quorum, and removal from office.

Regarding Stakeholder Engagement and Digitization, the Act mandates the Authority to facilitate public participation and stakeholder engagement in its functions. Additionally, it mandates the digitalization of all Act-related processes and services, emphasizing secure, verifiable technology, conforming to data protection laws.

The Act outlines various Offences, Penalties, and Legal Proceedings. It stipulates offences like failure to pay contributions, misappropriation, making false statements, or misusing funds. Convictions may lead to fines, imprisonment, or both. Regulations for effective implementation are entrusted to the

Cabinet Secretary, developed in consultation with the Board.

Further, the Act asserts its Supremacy, Applicability, and Winding Up . It prevails over inconsistent laws related to social health insurance. The Insurance Act pertains only to the Authority concerning claims administration. The Act repeals the National Health Insurance Fund Act of 1998. In the event of winding up, cash balances are directed to the Exchequer, while other assets are transferred to the National Treasury.



**CLIFFORD ODHIAMBO & COMPANY ADVOCATES**  
Jumuia Place, Lenana Road  
P.O Box 70209-00400 Nairobi

 @cliffordadvocates

[cliffordadvocates.com](http://cliffordadvocates.com)

