FIRST REPORT OF THE JOINT PORTFORLIO COMMITTEE ON HEALTH AND CHILD CARE AND THEMATIC COMMITTEE ON HIV AND AIDS

ON THE EVIDENCE GATHERED DURING THE PUBLIC HEARINGS ON THE MEDICAL SERVICES AMENDMENT BILL [H.B 1, 2022]

FIFTTH SESSION—NINTH PARLIAMENT

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NOTE BY VERITAS
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1.0 INTRODUCTION

1.1 Following the promulgation of the new Constitution in 2013, the Government committed to aligning the various legislative pieces to the provisions of the Constitution. This also included the amendment of the Medical Services Act (Cap 15:13). Thus, the Medical Services Amendment Bill seeks to align the provisions of the principal Act to the Constitution of Zimbabwe. Secondly, the Bill seeks to provide a legal framework toward attainment of the universal health coverage by ensuring that every person in Zimbabwe has access to quality, affordable, available and accessible health services.

1.2 Following the gazetting of the Bill on 20th May, 2022 and in consistent with Section 141 of the Constitution, the Joint Portfolio Committee on Health and Child Care and Thematic Committee on HIV/AIDS conducted public consultations to gather the views of the people. The public hearings were conducted from 18th to 22nd of July 2022 with Team A covering Karoi, Kwekwe, Bubi, Beitbridge and Bulawayo while Team B covered Beatrice, Masvingo, Mutare, Mt. Darwin and Harare.

2.0 METHODOLOGY

The Committee considered submissions received from the public consultations and written submissions from the public and stakeholders.

3.0 COMMITTEE FINDINGS

3.1 *Clause 1* – Short Title

This clause provides the short title of the Bill which will be known as the Medical Services Amendment Bill, 2022. There were no submissions for or against this clause.

3.2 *Clause 2* - Key Definitions.

3.2.1 The Clause provides for interpretation of terms in the Bill such as basic healthcare, chronic illness, emergency medical treatment, healthcare provider, health service, health institution and reproductive health care. The findings from the public hearings revealed that there was consensus that this Clause was progressive as it defined key terms in the health and medical sector.

3.2.2 Some stakeholders welcomed the attempt to define "reproductive health care" but added that there is need to broaden the definition to read as:
"provision of information, services, commodities and an environment that ensures a state of complete physical, mental and social well-being of an individual in all matters relating to the reproductive system and its processes and functions but not merely the absence of disease or infirmity".

3.3 *Clause 3* - Treatment and care for persons under arrest, detention or imprisonment.

3.3.1 The Clause provides for the provision of treatment and care services for persons under arrest, detention and imprisonment at the expense of the State. Findings from the public hearings revealed that this was a positive step towards universal health coverage in Zimbabwe. It was further added that it was imperative for the Government to prioritise the recapitalisation of district, provincial and central hospitals to ensure that they have the requisite infrastructure to effectively and efficiently provide health services. Some of the services highlighted included psychosocial support as well as the strengthening of the health facilities at the prisons and correctional facilities. However, it was also submitted that the Clause could be amended to the effect that it specifies that these services will be offered by

public health institutions and exclude private health institutions as they reserve the right to serve patients as they deem fit.

3.4 *Clause 4* - Amendment of Section 8

3.4.1 Clause 4 amends Section 8 of the principal Act on ("Fees and charges at and admission to Government and State-aided health institutions") by the deletion of "fix" and the substitution of, "after consultation with health care providers, fix the maximum". This is a move away from the situation where Government would fix the maximum fees and charges without the involvement of the service providers. The majority of the submissions received noted that this was a welcome clause it sought to involve the service providers in setting the maximum fees payable. Further, it was observed that this clause was reflective of the letter and spirit of the devolution agenda currently being implemented by Government. The submissions also proposed that consultations should be extended to the public as they are the major stakeholders of the Government and State-aided health institutions. Furthermore, it was proposed that the fixed maximum fees payable must be charged in the local currency. Other submissions proposed that the clause emphasises that "The right to health and survival of the patient shall be prioritised at all times while appropriate arrangements are made for payment of the services."

3.4.2 Contrary opinion noted that the pegging of fees by the Minister was tantamount to micro-management as it was argued that operational issues should be left to the technocrats. It was proposed that the Bill should create an Advisory Panel to work on the general principles rather than drawing the Minister to set fees. Involving the Minister in such operational issues was deemed to affect the turnaround time given the hyper-inflationary environment.

3.5 *Clause 5* - New Part Inserted

3.5.1 Clause 5 inserts part 8, which spells out the general standards and practises applicable in health care delivery. These include:

8A - Information that Health Institutions must give to Patients.

This Clause provides that health care providers must provide information pertaining to the patient's health status, the range of diagnostic procedures and treatment options, the attendant benefits, risks and consequences and the patient's right to refuse the health services. The majority of the submissions noted that the proposed Clause was a step in the right direction as it ensured that patients would be provided with the requisite information pertaining to their health and related procedures.

However, there was a suggestion to amend 8A (1) (b) to read as: **"the range of diagnostic procedures, treatment and *future prevention and mitigation* options**.

It was emphasised that for health care providers to be able to afford information provision on time and comply with this clause, there is need for government to ensure that centres operate at full staff compliment.

It was also suggested to insert the phrase "without any discrimination" after the word "literacy" on Sub-clause 2 (1) to safeguard the rights to information and services to the vulnerable persons.

8B – Consent of Patient

This Clause spells out the circumstances under which health services may not be provided to a patient without their informed consent. The majority of the submissions

welcomed this clause as a step in the right direction towards universal health coverage. However, it was proposed that section 8B part 3 read as follows,

"*For the purpose of this section, "informed consent" means consent for a provision of a specified health service given by a person with capacity to understand the relevant facts about the health services sought, readiness, related risks and available alternatives.*" This is to ensure that children and young adults could gain access to sexual and reproductive health services without parental/guardian consent.

It was further proposed that there is need to insert a part which states that:

"***In terms of conditions like sex ambiguity at birth, consent to any surgery or corrective sex assignment procedure must be withheld until the child comes of age to exhibit the dominant traits and or choose their sexual orientation."***

8C – Participation in Decisions
This Clause provides for the patient's participation in decisions affecting their health. This was welcomed as a positive development.

8D-Health Services to Children
This clause provides for criminal sanctions against a parent or guardian for preventing or withholding consent for a child to receive health services which may be in the best interest of the child. The submissions received pointed out that while this clause sought to enhance access to health care services, criminal sanctions against the parent or guardian were not the best option as this will result in social conflicts or conflicts between parents/guardians and minors. It was also observed that some vulnerable children, orphans, child-headed families and children whose parents are in the diaspora would find it difficult to access health care services in the absence of a parent or guardian. Therefore, it was recommended that the clause should explicitly spell out that children can also access health care services unaccompanied. Other submissions recommended that the Ministry of Health and Child Care together with the Civil Society Organisations must implement awareness campaign programmes for the parents and guardians on the right to health and the importance of ensuring that children gain access to health services, in some instances without the consent of the parent or guardian. Further submissions proposed that the Clause should also allow other duty bearers the ability to take children to health care facilities to access treatment for example, Doctors, Social Workers, Psychologists, Police Officers, Church leaders, Neighbours, and Teachers. It was also submitted that criminal sanctions should be extended to religious and traditional leaders that discourage or prevent their congregants and people within their jurisdiction from accessing health services.

8E-Obligation to Provide Discharge Report
This clause places an obligation on health institutions to provide a patient with a discharge report at the time of discharge from the health institution. This insertion received both positive and negative reviews from the public. Submissions in support of this Clause argued that reports are important as they contain information that can be used for future reference. Submissions to the contrary argued that this Clause would compromise the privacy of the patient in the event that they lose this report or the report is accessed by people who may use the information for malicious purposes.

It was recommended, that there was an urgent need to develop a database accessible by healthcare service providers that will contain information on the medical history of the patient.

8F-Health Service for Experimental or Research Purposes

This clause provides for informed consent of the patients for participation in medical research and experiments. The majority of the submissions received pointed out that this Clause was progressive as it gave the patient the power to decide whether or not to participate in research and experiments. However, it was proposed that there be an insertion of a new sub-clause that obliges a health practitioner to disclose the experimental treatment that enable the patient to make an informed decision. The proposed new sub-clause would read as follows. "A ***health practitioner shall disclose to the patient the nature of the experimental treatment and anticipated side effects including any relevant medical information that will enable the patient to make an informed decision whether to take the treatment or not."***

8G & H- Confidentiality and Establishment of Control Measures

The Clauses enjoin healthcare service providers to ensure confidentiality of patient's health records and establish control measures which include a storage facility and a system to prevent unauthorised access to patient's records. Clause 8G outlines the types of offences in relation to the protection of health records and the fine thereof. The majority of the submissions viewed the Clauses as progressive as they ensured the protection of patient's records and information. It was further recommended that Government had to establish a digital platform accessible with patient's medical records and accessible by the healthcare service providers. On the contrary, it was submitted that the clause was contradictory to clause 8(e) which mandates the service providers to provide the patients with a discharge report. This contradiction would leave a grey area in the event that the patient's medical records are made public or the records are lost.

8I-Complaints Procedure

This clause mandates every health institution to establish a complaints procedure. Majority of the submissions agreed to the proposed clause and further recommended that the procedure should go beyond the health facility up to the district, provincial and national levels as the cases may require in order to ensure transparency in handling complaints. The submissions also implored that the established complaints procedure should ensure that patients' grievances are addressed and there is an efficient feedback mechanism. The submissions further suggested that the Clause indicate the timeframe within which the complaints are expected to be fully addressed and proposed 30 days to be a reasonable period to allow for thorough investigations.

8J-Duties of Patients

This clause spells out the duties of patients and the majority of the submissions stated that it was progressive.

8K-Rights of Health Care Personnel

The majority of the submissions observed that this clause was progressive as it protects the rights of the health care personnel. However, others felt that more can be done to improve the provision of the Clause by adding a sub-clause that speaks to the protection of health care workers from civil and legal liability in the provision of

services to children as long as the provision of such a service uses technical medical practice and due process and procedures.

3.6 *Clause 6* - Provision of Incentives.

The Clause provides for provision of incentives to persons who intend to build health institution in marginalised areas. The submissions received showed that this was a positive development in the drive towards universal health coverage in Zimbabwe. However, it was submitted that there is need to define the term **"marginalised areas"** and to clearly spell out the incentives that may accrue to those who intend to establish health facilities in the remote areas to minimise chances of arbitrage and corruption. It was also submitted that Government should remove barriers that delay the processes of securing permits to establish health facilities.

3.7 *Clause 7*-Prohibition against Discrimination

The Clause amends section 12 of the principal Act by extending the grounds of non-discrimination and it was positively received by the participants. However, some stakeholders stated that Section 56 (3) of the Constitution of Zimbabwe lists a wide range of categories of persons and personalities and characteristics and makes use of "every person." They observed that while some may argue that every person means that everybody's right to get fair access to health care has been protected, including categories that are not specified in the non-exhaustive Sec 56(3) list, there remains groups that have a strong stake in especially STIs prevalence, transmission and control who, already suffer untold discrimination and stigma in society including in the health care sector. They asserted that the key national HIV and AIDS management documents acknowledge the impact includes Key Populations, among them Sex Workers and the LGBTI community, have in HIV and AIDS management and rightfully includes them. Thus, to ensure that there is clear expression of intent and clearing of any doubts in the health services, in this bill, they recommended recitation of Section 56 (3) broader list by the insertion of sexual orientation and gender identity on the list.

3.8 *Clause 8*-Prohibition against Refusal of Emergency Treatment

3.8.1 The Clause prohibits private healthcare institutions from refusing to offer health services to a patient requiring emergency medical treatment that may threaten that person's life. Apart from stipulating that private health institutions should stabilise a patient for not less than 48hrs before transferring him/her to public health institutions, the clause further states that "The Minister and the concerned private health institution **may** conclude or facilitate the conclusion of an agreement, for the recovery of all or portion of costs of the treatment…" Although the majority of the submissions were in support of the clause, observing that it was a positive step towards ensuring health for all, those who represented the private health institutions strongly objected. They argued that prescribing minimum hours for patient stabilisation is problematic as this does not take long in most cases and 48hrs may become expensive for the patient if he/she is asked to pay their own bill or even the State. They also argued that the reimbursement model where government reimburses for services rendered is not working effectively, for example, local authorities are owed huge sums of money by government. Private institutions are businesses, and cannot afford to have funds locked up for inordinate periods. It was further submitted that it was imperative that the criteria on who qualifies to be assisted by Government and who may not, be clearly spelt out to ensure efficiency in the delivery of the emergency treatment.

3.8.2 Another area of concern to the private health players was on sub-clause 3 which they alleged that essentially the amendment ropes in the private sector to fulfil the State's

constitutional obligation to offer healthcare to citizens. They called for a limitation clause to be placed with respect to the duty of private institutions to provide services as contained in the Bill, stating that the duty should be subject to availability of resources as contained in its memorandum with respect to government's obligation to provide healthcare services. The submissions also stated that Government seems to be delegating its responsibility to the private health sector but is making registration restrictive for the private health sector to thrive. Private health sector should complement government not the other way round. Thus, it was recommended that the Government should strengthen and capacitate the public health service facilities to be able to provide emergency treatment services. Other submissions recommended for the deletion of the whole of this Clause as it seems to be geared towards destroying the private health system.

3.9 *Clause 9* - Fees and charges Payable at Private Health Institutions

This clause amends section 13 of the Principal Act by repealing the whole section which provided for the fees payable at health institutions. The Minister should concern himself with the revision of charges in public institutions and in the institutions that government gives grants to. i.e. mission hospitals and local government health facilities.

3.10 *Clause 10* - Amendment of Section 16

Clause 10 amends Section 16 of the principal Act by empowering the Minister to make regulations in respect of:

(a) the health care to be afforded to children, persons with chronic illnesses, persons over the age of seventy years and veterans of the War of Liberation and persons with disabilities. The concerns raised by the general public where as follows:

- **Access to health care services for children**—should remove age restrictions and provide the service free of charge for children under the age of 18 years.
- **Access to healthcare services for the elderly**—the age limit should be reduced from 70 years to between 55years and 65 years considering the low life expectancy in Zimbabwe which is currently hovering around 62 years.
- **Access to healthcare services for the war veterans**—this should include widows, widowers and children of the war veterans and should be free of charge.
- **Access to healthcare services for persons with disabilities**—should be free of charge.
- Healthcare should also be afforded to people with neurological illness, street kids and orphans.
- Above all, the Government must finance the public health sector to ensure that these institutions are adequately resourced in terms of human resources, equipment, infrastructure, medicines and other critical consumables in order to protect, uphold and defend the right to health for the above-mentioned groups of people.

(b) the health care packages which shall be available at Government primary health care centres, district health institutions, general health institutions, provincial health institutions, and central health institutions for specialist services. Majority of the participants agreed with the proposed clause, observing that the State should ensure that healthcare service providers must be proficient in sign language to ensure that no one is left behind.

(c) For the purposes of any consultation with the public, the establishment and composition of a national consultative health forum. This clause was viewed as a positive development as it was reflective of the Government's agenda of devolving decision making to the people through consultative platforms and forums.

5.0 OTHER SUBMISSIONS

It was submitted that the Bill should also provide for access to free testing/screening and treatment of terminal illnesses including cancer. It was further submitted that the Bill should provide for free medical services by affected vulnerable persons especially in situations of disasters and pandemics including children under the age of 18 years.

6.0 COMMITTEE OBSERVATIONS

The Committee observed that:

6.1 The penalties given to parents or guardians who deny or prevent a child from receiving any health service which is in the best interest of the child concerned in the Children's Amendment Bill are different from those given for the same offence in the Medical Services Amendment Bill. For ease of reference, the two Bills provides as follows:

Children's Amendment Bill

Section 9 ("Medical examination and treatment of children and young persons") of the principal Act is amended by the insertion after subsection (12) of the following subsection— "(13) Any parent or guardian who, without reasonable cause, denies medical treatment or access to medical treatment to a child in their care who is in need of such treatment, shall be guilty of an offence and liable to a fine not exceeding level 5 or imprisonment for period not exceeding six months or to both such fine or such imprisonment.".

Medical Services Amendment Bill

Clause 5: 8D Health services to children

(1) It shall be unlawful for any parent or guardian of a child to prevent a child from receiving any health service which is in the best interests of the child concerned, or to withhold consent for any health service in contravention of section 60(3) of the Constitution. (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

6.2 The phrase "leaving no one behind" on clause 7 was not explicitly clear.

6.3 There seem to be no financial strategy to support what the Bill provides for and this may negatively affect the smooth implementation of what the Bill envisages to achieve.

6.4 Persons who are suffering from chronic illnesses such as epilepsy, cancer, heart disease diabetes, hypertension among others have been finding it difficult to access health care services especially those accessing facilities in the rural and some urban areas that may not have the necessary testing equipment and the requisite drugs for patients.

7.0 COMMITTEE RECOMMENDATIONS

The Committee recommended as follows:

7.1 There is therefore, need to harmonise the penalties that are stipulated in the Children's Amendment Bill and Medical Services Amendment Bill.

7.2 On Clause 7 of the Bill, there is need for more clarity on the phrase "leaving no one behind" to avoid any doubt.

7.3 There is need for a financial strategy to support what the Bill seeks to achieve

7.4 The following phrase should be provided for on Clause 9 of the Bill; "Access to free healthcare services for all those who suffer from chronic illnesses."

7.5 On Clause 8 of the Bill, the Ministry of Health and Child Care and medical practitioners should craft a policy that clearly stipulates the magnitude and execution of critical emergency services.

8.0 CONCLUSION

8.1 In the view of the Committee, the provisions of the Medical Services Amendment Bill [H.B 1, 2022] were generally accepted by the public and the law perceived as progressive in improving access to health care services in the country in order to attain the universal health coverage. However, gaps were noted, some of them have already been mentioned in the report, while others will be addressed by the proposed amendments listed below.

9.0 PROPOSED AMMENDMENTS TO THE MEDICAL SERVICES AMENDMENT BILL [H.B 1, 2022]

9.1 **CLAUSE 5 New Part Inserted in Cap. 15:13**

The principal Act is amended by the insertion after Part II of the following Part—

"PART IIA

GENERAL STANDARDS AND PRACTICES APPLICABLE IN HEALTH CARE DELIVERY

8B (3)

For the purposes of this section, **"informed consent"** means consent for the provision of a specified health service given by a person who has been informed in terms of section 8B, and in the opinion of the health care service provider primarily responsible for the care of the patient, having the requisite capacity to do so.

8B (4) (new provisions proposed)

(a) For the purposes of this Act, the following principles apply

(i) A person must be assumed to have capacity unless it is established that they lack capacity.

(ii) A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.

(iii) A person is not to be treated as unable to make a decision merely because they make an unwise decision.

(iv) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done or made in their best interests.

(v) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

8B (5) (new provisions proposed)

(a) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time they are unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(b) It does not matter whether the impairment or disturbance is permanent or temporary.

(c) A lack of capacity cannot be established merely by reference to—

(i) a person's age or appearance, or

(ii) a condition of their, or an aspect of their behaviour, which might lead others to make unjustified assumptions about their capacity.

(a) In any proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on a balance of probabilities.

8B (5) (new provisions proposed)

(a) For the purposes of this Act, a person is unable to make a decision for themselves if they are unable—

(i) to understand the information relevant to the decision,

(ii) to retain that information,

(iii) to use or weigh that information as part of the process of making the decision, or

(iv) to communicate their decision (whether by talking, using sign language or any other means).

(b) A person is not to be regarded as unable to understand the information relevant to a decision if they are able to understand an explanation of it given to them in a way that is appropriate to their circumstances (using simple language, visual aids or any other means).

(c) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent them from being regarded as able to make the decision.

(d) The information relevant to a decision includes information about the reasonably foreseeable consequences of—

(i) deciding one way or another, or

(ii) failing to make the decision.

8B (6) new provision proposed

(a) For the purposes of this Act, in determining what is in a person's best interests, the person making the determination must not make it merely on the basis of—

(i) the person's nationality, race, colour, tribe, place of birth, ethnic or social origin, age, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, pregnancy, disability, or economic or social status, or whether they are born in or out of wedlock or appearance, or

(ii) a condition of their, or an aspect of their behaviour, which might lead others to make unjustified assumptions about what might be in their best interests.

(b) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps. They must consider—

(i) whether it is likely that the person will at some time have capacity in relation to the matter in question, and

(ii) if it appears likely that s/he will, when that is likely to be.

(iii) whether it will be detrimental to their health if the service provision is delayed until they have the capacity in relation to the matter in question

(c) They must, so far as reasonably practicable, permit and encourage the person to participate, or to improve their ability to participate, as fully as possible in any act done for them and any decision affecting them.

(d) Where the determination relates to life-sustaining treatment they must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about their death.

(e) They must consider, so far as is reasonably ascertainable—

(i) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by them when they had capacity),

(ii) the beliefs and values that would be likely to influence their decision if they had capacity, and

(iii) the other factors that they would be likely to consider if they were able to do so.

(f) They must take into account, if it is practicable and appropriate to consult them, the views of—

(i) any parent, close relative, sibling, friend or independent advocate of the person concerned.

(ii) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,

(ii) anyone engaged in caring for the person or interested in his welfare,

(iii) any person appointed for the person by the court,

as to what would be in the person's best interests provided that medical services must not be denied to any person merely on account of not having made the consultations upon the patient being advised of the need to so consult.

(g) For the purposes of this Act, an Independent Advocate includes the health care provider primarily responsible for the patient's treatment, the head of any health institution concerned, or other person to whom that authority has been granted by the health institution concerned.

8K (3) new provisions proposed)

No health care service provider who acts reasonably, in good faith and without culpable ignorance or negligence shall be held liable for any act done in terms of this Act.

8L: Act to Prevail (new clause and provisions proposed)

This Act shall prevail over any other enactment inconsistent with it except in so far as the determination of the best interests of the child is concerned.

9.2 **Amendment of section 35 of the Public Health Act [Chapter 15:17] (new clause and provisions proposed).**

Section 35 of the Public Health Act [Chapter 15:17] is amended as follows: -

(a) By the deletion of the word “legal” in subsection 1

(b) By the deletion of subsection 4