



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

**COMMITTEE ON HEALTH, COMMUNITY DEVELOPMENT AND SOCIAL**

**SERVICES**

**ON THE**

**ZAMBIA MEDICINES AND MEDICAL SUPPLIES AGENCY (AMENDMENT)**

**BILL, N.A.B. NO. 14 OF 2024**

**FOR THE**

**FOURTH SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY**

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## FOREWORD

Honourable Madam Speaker, the Committee on Health, Community Development and Social Services, has the honour to present its Report on the consideration of the Zambia Medicines and Medical Supplies Agency (Amendment) Bill, N.A.B. No. 14 of 2024, for the Fourth Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House, as per Standing Order 113 (1) and 210(j) of the National Assembly Standing Orders, 2024.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix II. The Report highlights a summary of submissions from stakeholders and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the Zambia Medicines and Medical Supplies Agency (Amendment) Bill, N.A.B. No. 14 of 2024. Further, appreciation is extended to the Clerk of the National Assembly for the support and guidance rendered throughout the Committee's deliberations.



Dr Christopher Kalila, MP  
**CHAIRPERSON**

November, 2024  
**LUSAKA**

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## **1.0 COMPOSITION OF THE COMMITTEE**

The Committee consisted of Dr Christopher K Kalila, MP (Chairperson); Mrs Marjorie Nakaponda, MP (Vice Chairperson); Mr Paul Chala, MP; Mr Alex Katakwe, MP; Mr Joseph S Munsanje, MP; Mr Masautso Tembo, MP; Mr Leevan Chibombwe, MP; Mr Monty Chinkuli, MP; Mr Heartson Mabeta, MP; and Mr Miles Sampa, MP.

## **2.0. BACKGROUND**

The Bill sought to amend *the Zambia Medicines and Medical Supplies Agency Act, No. 19 of 2019*, in order to redefine medical supplies and to provide for emergency procurement, storage and distribution of medicine and medical supplies.

The definition of medical supplies in the Act, was deemed inadequate to meet emerging needs. Further, there was no provision relating to emergency procurement, storage and distribution of medicine which was necessary in cases of health emergencies to preserve the health of persons in the Republic.

### **3.0. OBJECT OF THE BILL**

The object of the Bill was to amend the *Zambia Medicines and Medical Supplies Agency Act, No. 19 of 2019* so as to -

- (a) redefine medical supplies;
- (b) provide for emergency procurement, storage and distribution of medicines and medical supplies; and
- (c) provide for matters connected with, or incidental to, the foregoing.

#### **4.0. PROVISIONS OF THE BILL**

##### **PART I**

###### **Clause 1 – Short title**

The clause provided the citation of the Act, once enacted.

###### **Clause 2 – Amendment of section 2**

The clause sought to amend section 2 of the principal Act by the deletion and replacement of the definition of “medical supplies” so as to restrict the definition to consumable products. The clause further provides for a new definition of “public health emergency”.

###### **Clause 4 – Amendment of section 7**

The clause sought to amend section 7 of the principal Act by the inclusion of subsection (3) immediately after subsection (2), to permit the Minister to give general or specific directions to the Board regarding the performance of its functions. The Clause further would mandate the Board to give effect to the directions subject to the provisions of the Act.

###### **Clause 5 – Insertion of section 26A**

The clause sought to amend the principal Act by the inclusion of section 26A immediately after section 26 so as to empower the Minister to procure, store and distribute medicine or medical supplies where a public health emergency occurred. The clause further sought to mandate the Minister to obtain Cabinet approval in exercising the additions under section 26A(1). Lastly, the clause sought to subject the procurement of medicine or medical supplies in public health emergencies to *the Public Procurement Act, No. 8 of 2020*.

## 5.0. SUBMISSIONS AND CONCERNS OF STAKEHOLDERS

Stakeholders submitted their concerns as espoused below.

### 5.1. Amendment of Section 2 of the Principal Act

Stakeholders reacted to the proposed changes to the definition of “medical supplies” and insertion on the definition of “public health emergency” as outlined below:

#### a) **Clause 2(a): deletion and replacement of the definition of “medical supplies”**

Stakeholders noted a significant shift in the definition of medical supplies. They compared the proposed definition to the standing definition as follows:

The term “medical supplies” in the Zambia Medicines and Medical Supplies Agency (Amendment) Bill, N.A.B. No. 14 of 2024 was defined as:

*“consumable products or materials used in the delivery of health care services and includes pharmaceuticals, non-pharmaceuticals, nutraceuticals, vaccines and therapeutic antisera, laboratory supplies and reagents, and dental materials.”*

However, in the *Zambia Medicines and Medical Supplies Agency Act No. 9 of 2019*, “medical supplies” was defined as:

*“products or materials used in the delivery of healthcare services and include pharmaceuticals, non-pharmaceuticals, nutraceuticals, vaccines and therapeutic antisera, medical equipment and devices, medical appliances and materials, health technologies, laboratory supplies and reagents, dental materials, hospital consumables, and any other material or equipment as may be necessary for the delivery of healthcare services in Zambia.”*

Stakeholders noted that the proposed deletion and replacement of the definition of “medical supplies” in the Bill, intended to omit “*medical equipment and devices, medical appliances and materials, and health technologies*” from being part of the definition of medical supplies. This meant that the Zambia Medicines and Medical Supplies Agency (ZAMMSA) would no longer be the eligible agent to procure medical equipment, devices, medical appliances, materials and health technologies for the public health sector in Zambia. Stakeholders, further noted that the Bill did not specify who would take the responsibility to procure non-medical equipment. They reasoned that by default, the Ministry of Health would assume the mandate of procuring medical equipment. This notwithstanding, the stakeholders understood the separation of definitions between *medical supplies* and *medical equipment*, however, they opposed the proposal, citing several inadequacies in the Procurement Unit at the Ministry of Health.

The stakeholders further noted that the split to procure medical supplies and equipment between two entities would result in increased procurement inefficiencies and risk of incompatibility of commodities.

**b) Clause 2(a): “Public health emergency”**

The stakeholders also opposed the insertion of “public health emergency” in the Bill. Although the insertion had the same meaning as that assigned in *the Zambia National Public Health Institute Act, 2020*, stakeholders did not see the value of the clause, considering that it was adequately provided for in the principal Act.

**5.2. Amendment of Section 7 of the Principal Act**

Stakeholders expressed discomfort with the unlimited latitude granted to the Minister to direct the Board in clause 7. Stakeholders also noted that the provision would give the Minister, who was also the appointing authority, the opportunity to seize the functions legally accorded to the Board, thereby, abrogating its autonomy. This would also undermine the Board’s technical and expert judgement of matters presented before it. Stakeholders opposed the provision because it did not offer the Board protective powers to challenge the Minister in the event that the directives were inadmissible or unethical.

Further, the stakeholders noted that the Board was a governing body of ZAMMSA and was meant to provide strategic guidance to the Agency. Stakeholders, therefore, affirmed that the relationship between the Board and the Minister was more consultative than operational to warrant performance contracts.

**5.3. Insertion of Section 26A:**

Stakeholders noted that the insertion of section 26A was being proposed to take away the function of ZAMMSA as specified in section 5(a) of the *Zambia Medicines and Medical Supplies Agency Act, No 9 of 2019* and to place them under the Minister of Health.

**a) Insertion of section 26A (1): Emergency procurement, storage and distribution of medicines and medical supplies**

Stakeholders noted that the insertion of section 26A would undermine ZAMMSA’s established and robust procurement mechanism. They were mindful that any procurement outside ZAMMSA risked inefficiency and inaccuracy, leading to wastefulness. Stakeholders noted that insertion of section 26A was in conflict with section 25(1) of *the Public Procurement (Amendment) Act, No. 17 of 2023*. The Act gave the mandate to a procuring entity to manage and undertake all procurement. The stakeholders pointed out that the definition of a "procuring entity" did not include a Minister did, rendering the proposal inconsistent with the *Public Procurement Act*. They further stated that a procuring entity could only undertake procurements on behalf of another entity in accordance with section 36 and section 110 of the *Public Procurement Act*.

Furthermore, stakeholders were concerned that the Bill did not establish alternative proposals to ensure that quality standards were met during emergency procurement of medical commodities.

In addition section 81 (2) provided that:

*"A person who manages stores shall not be involved in procurement within the procuring entity."*

Stakeholders submitted that these provisions entailed that one person could not perform both procurement and stores functions. In this regard, stakeholders were of the view that the provision was not in line with best practice as it gave the mandate to procure, store and distribute medicines and medical supplies to one person.

In addition, stakeholders noted that the provisions of regulation 72 of the Public Procurement Regulations, 2022 were adequate to address a public health emergency that required immediate action to safeguard the health of persons in the Republic. They submitted that Regulation 72 (1) (a) and (b) clearly defined an emergency situation to include circumstances which were threatened by or confronted with a pandemic, compromised life or the quality of life.

Stakeholders pointed out that Regulation 72 could be utilised by procuring entities such as ZAMMSA to procure medical supplies during times of public health emergency. They further pointed out that under sections 79 and 80 of the *Public Procurement Act*, a procuring entity was capable of applying for a waiver from certain procurement procedures or an accreditation of an alternative procurement system. They also argued that ZAMMSA had the experience and expertise to stock up medical commodities, as well as undertake distribution.

**b) Introduction of section 26A (2) to enable the Minister seek the approval of the Cabinet to procure, store, and distribute medicines and medical supplies**

Stakeholders noted that, section 34 (2) of the *Public Procurement Act* restricted approvals authority to a controlling officer, a chief executive officer, or a procurement committee. With this guidance, stakeholders submitted that the proposed amendment was in conflict with this provision because Cabinet was not listed as an approving authority in the Act.

## 6.0. COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

After considering oral and written submissions, the Committee makes the observations and recommendations set out below.

- 6.1. The Committee observes that the deletion and replacement of the definition of “medical supplies” is intended at transferring ZAMMSA’s mandate of procuring non-medical commodities to the Ministry of Health. In light of this, the Committee recommends the following listed hereunder.
  - 6.1.a. The proposed amendment of the definition of “medical supplies” should not be enacted, instead the current definition of medical supplies in *the Zambia Medicines and Medical Supplies Agency Act, No. 19 of 2019* should be maintained; and
  - 6.1.b. The Ministry of Health should, as a matter of urgency build the capacity of ZAMMSA to strengthen its procurement unit.
- 6.2. The Committee notes that the operational encumbrances at ZAMMSA are not as a result of inadequate legal framework but operational in nature. In view of this, the Committee recommends the following:
  - 6.2.a. ZAMMSA should be provided with adequate technical and financial support to ensure operational efficiency in the procurement of medical supplies; and
  - 6.2.b. The Government should allocate 8% of the drug budget to ZAMMSA in order to support last mile distribution of medical supplies by the Agency.
- 6.3. The Committee observes that the enactment of Clause 7 would empower the Minister to give general and specific directions to the Board, which the Board is obliged to execute as long it is consistent with the Act. Taking note of this, the Committee recommends that Clause 7 should be removed as it potentially undermines the Board’s autonomy.
- 6.4. The Committee observes that, the insertion of section 26A, as proposed in clause 5, does not provide sufficient justification for emergency procurement, storage and distribution of medicines and medical supplies by the Minister. On that premise, the Committee recommends the deletion of section 26A on account that there are adequate legal provisions in *the Public Procurement Act, No. 17 of 2023* and Public Procurement Regulations which ZAMMSA can leverage to procure in times of public health emergencies.

## 7.0. CONCLUSION

After consideration of stakeholder's submissions, the Committee does not support the Zambia Medicines and Medical Supplies Agency (Amendment) Bill, N.A.B. No. 14 of 2024, on the grounds that ZAMMSA already has the capacity to procure medical supplies. Further, the Committee is of the view that, where gaps have been identified, it is better to address them by building the capacity of ZAMMSA. Furthermore, the Committee advises against the enactment of the Bill, owing to the fact that the Minister's envisaged power to procure medical supplies during health emergencies is inconsistent with legal provisions of *the Public Procurement Act, No. 8 of 2020*. On that premise, the Committee implores the Government to leverage exiting strategies that would strengthen, rather than weaken the operations of ZAMMSA.



Dr Christopher K Kalila, MP  
**CHAIRPERSON**

November, 2024  
**LUSAKA**

## **APPENDIX I - NATIONAL ASSEMBLY OFFICIALS**

Mrs Doreen N C Mukwanka, Director (Social Committees)  
Mrs Chitalu K Mumba, Deputy Director (Social Committees)  
Mr Darius Kunda, Senior Committee Clerk (SC1)  
Mr Kelezo Lushako, Committee Clerk  
Ms Catherine Chibuye, Administrative Assistant II  
Mr Daniel Lupiya, Senior Committee Assistant  
Mr Muyembi S Kantumoya, Committee Assistant  
Ms Taona Chabinga, Committee Assistant

## **APPENDIX II–LIST OF WITNESSES**

Ministry of Health  
Ministry of Justice  
Zambia Medical Association  
Healthcare Federation of Zambia  
Pharmaceutical Society of Zambia  
Zambia National Public Health Institute  
Churches Health Association of Zambia  
Zambia Medicines and Medical Supplies Agency  
Medicines Research Access Platform  
Zambia Public and Procurement Authority  
Zambia Institute of Purchasing and Supply