



Kenya Medical Association

Champion the Welfare of Doctors and Quality Healthcare in Kenya

PRESS STATEMENT

IMPLEMENTATION OF THE ELECTRONIC TAX INVOICE MANAGEMENT SYSTEM (ETIMS) BY DOCTORS

1. We, the Medical Practitioners & Dentists community wish to bring to the attention of the Kenyan people that the Government of Kenya through the KRA is interfering and crippling the delivery of Health Services in Kenya.
2. With the introduction of the the Electronic Tax Invoice Management System (eTIMS) through the Finance Act, 2023 and in the public notice dated 07/11/2023, KRA is seeking to force Medical Practitioners to disclose patient data including patients names, sex, hospitalization and treatment details to the Kenya Government through the KRA eTIMS system. This will expose the public prejudice in employment opportunities and public service provision. We all recently read in the media how KRA used medical and pregnancy tests to deny deserving employment to Kenyans.
3. The implementation of the KRA eTIMS to medical services is a clear and self-evident breach of the Constitution of Kenya, 2010 which stipulates that every person in Kenya is bound under the Bill of Rights in Chapter IV of the Constitution. The right to health is a fundamental human right guaranteed in the Constitution of Kenya but eTIMS is designed to cripple the provision of Medical Services in Kenya.
4. Article 43 (1) (a) of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care and privacy. Every person has a right to privacy which includes the right not to have the privacy of their communications infringed. The KRA eTIMs is designed to get information on the patient attended to by Doctors, their diagnosis and treatment by becoming the communication hub between Doctors, Hospital and payers including Insurance Companies. This is an infringement of the private communications of Doctors, patients and their payers, including insurance companies.
5. Section (2) of the Health Act explains that every person shall have the right to be treated with dignity, respect and have their privacy respected in accordance with the Constitution. Under Section 11 (1) the Health Act provides that health information concerning a user, including

information relating to his or her health status, treatment or stay in a health facility is confidential.

6. Chapter one of the Ministry of Health patients Right Charter of 2013, provides that the right to confidentiality shall be upheld, except where consent has been expressly given, or disclosure is allowed by law or in public interest. Confidentiality shall be maintained even after the patients' death. The eTIMS system is in breach of the above and exposes patient data to unauthorized third parties. Section 11(2)(a-c) Subject to the Constitution and this Act, no person may disclose any information unless the user consents to such disclosure in writing in the prescribed form; a court order or any applicable law requires such disclosure; or non-disclosure of the information represents a serious threat to public health.
7. In Kenya, the Data Protection Act, 2019 provides for Administrative fines of up to KShs 5 million, or in the case of a business, up to 1% of its annual turnover of the preceding financial year, whichever is lower for breach of data privacy. ETIMS implementation will expose Doctors to dangers of these penalties because it is now forcing Doctors to disclose confidential patient information. Implementation of KRA eTIMS system is designed to cause Doctors, Hospitals and Insurance companies to violate the law with impunity. This is unacceptable and no law that violates the Constitution can stand scrutiny.
8. The public need to be beware of extraterritorial application of the laws relating to data protection can lead to administrative fines that can be imposed by foreign authorities. The European Union's (EU) General Data Protection Regulation (GDPR), which protects the data of EU citizens, can fine service providers with fines of up to €20 million for individuals (KShs 3 Billion). In the case of a Hospital or Medical Clinic, the fines can rise up to 4% of their total global turnover of the preceding fiscal year, whichever is higher. In such an instance, Medical Practitioners may also face potential claims being lodged both locally and abroad by data subjects, with the potential liability running into millions of dollars
9. Kenya is a major medical tourism hub and destination with patients coming from the USA, European Union, North & South America and other African Nations. This will be put under danger of compromise by eTIMS.
10. Nairobi is the biggest Diplomatic City in African with over 100 accredited diplomatic missions. These include the UNON, the United Nations Office in Nairobi has over 5,000 employees from 154 Nationalities, with over 15,000 dependants / employees. The ETIMS data disclosure is potentially a violation of the UN Charter that has domiciled the United Nations including UNEP, HABITAT, UNICEF, UNHCR and UNDP in Nairobi. Kenyan Doctors and Hospitals on which these Diplomatic staff depend will no longer qualify as fit to handle them once the eTIMS system is implemented. The Diplomats will be forced to

fly to Uganda or Tanzania for their medical services. In case of emergencies, lives are likely to be lost.

11. We are of the firm view that it is not possible for Medical Professionals and specifically Hospitals, Medical Practitioners, Dentist and Pharmacists to process the Sensitive Health Data required for invoicing under eTIMS without violating the Constitution and the Law as established in the Republic of Kenya including but not limited to the the Health Act, the Patient Rights, the Data Protection Act, the Hippocratic Oath, the Medical Practitioners & Dentists Act and the Digital Health Act. The KRA and Treasury Mandarins appear unaware of the Constitution and these laws that govern Medical Practice in the Republic of Kenya. They are putting taxes before health and money before life. If the peoples' health suffers from lack of Medical Care, and they are unable to work, whose incomes will they tax and for whose benefit?
12. Doctors took an Oath to safeguard among other things Patient Confidentiality and forcing Doctors in the name of Tax Compliance to disclose Patients data is a violation of the Kenya Constitution, a violation of the Data Protection Act and a violation of Human Rights as enshrined in the Kenyan and other Constitutions. International Law would render Kenyan Doctors fugitives if they sought to enforce what is sought in the ETIMS.
13. Implementation of eTIMS will impede Emergency Medical Work as the eTIMS requires that all invoices be raised through KRA's eTIMS system which is often unresponsive and works poorly. Doctors who tried to use it report delays of up to several days to register a single invoice on it.
14. When the KRA eTIMS online system is not working and unavailable, Medical Service delivery will be compromised. Medical services cannot be made dependent on Tax Regulations based on untested software that fails even on simple data entry. To make Medical Services dependent on such system is to risk human life and health. When patients die because the eTIMS system was down, who will compensate the families of such patients? Doctors will not accept to be subjected to systems outside of their professions in rendering lifesaving services.
15. Medical Work cannot be subjected to Section 23A of Tax Procedures Act, 2015 as it will impede the timely management of patients and infringe on the patient rights to privacy and efficient care. There is need to move an amendment in Finance Bill 2024 to exempt the Health Services Sector as a whole; Hospitals, Medical Practitioners, Dentists and Pharmacies must be exempt from this section of the law.
16. There was no adequate public participation, there are no policy guidelines, no enabling provisions / regulations, no research and no regulatory impact assessment done for the Healthcare Sector. KRA's

eTIMS is designed to expose Doctors to the double jeopardy of violating medical and privacy laws without protecting them from the consequences thereof. When Doctors are arrested for violating the Data Protection act, will KRA pay the fines? When Doctors are jailed for violating the law, will KRA staff volunteer to go to jail on their behalf? We cannot have a system or a law that forces citizens – and Doctors are citizens – to violate the law. The rule of law does not condone that.

17. Hospitals and Doctors invoices sometimes take several years to be settled. The NHIF is a good example with Rural and Mission hospitals currently being owed over KShs 20 Billion and some are now physically closing down unable to pay their suppliers, staff and utilities. You can imagine their pain when KRA goes to them to collect taxes on invoices that have not been paid and may never be paid. The current tax framework has the effect of destroying both public and private Medical Services by refusing to pay their bills, collection of taxes against unpaid invoices and constantly engaging medical staff in non-core areas of debt and tax collection. The cost of compliance is unsustainable in a growing economy; every Doctor will now be forced to employ an accountant just to handle the demands of the eTIMS system.
18. The public sector, mainly through the NHIF and now the KRA eTIMS system have been manipulated to undermine and destroy the health service provision in the Republic of Kenya, both Private and Public Healthcare, to the detriment of the Citizen health rights as enshrined in the constitution. Examples are KNH and other Nairobi County Public Hospitals which are owed in excess of KShs 2 Billion by the NHIF which is unable to pay because the Government continues to undermine NHIF by refusing to remit statutory payments from Civil Servants, while forcing Hospitals to continue rendering unpaid for service while KRA collects taxes on the unpaid funds. The situation borders on the absurd!
19. Doctors will not accept the Invoice as a basis for tax computation as the invoice is not an income in the Medical Services Sector where a multiplicity of payers both public and private prefer not to pay for services rendered. The current withholding tax regime has sight of over 80% of medical revenues and should continue. KRA is able to see more than 80 to 90% of all payments made and receives withholding tax on the same enabling them to track payments for tax purposes. This means that eTIMS will not result in additional revenue collection. It will instead drive medical payments into cash systems that are less transparent.
20. If the eTIMS system is implemented, Doctors will decline to see patients of whom they are uncertain they will be paid. The reason for this is that those patients will cost them revenue paid to the KRA as taxes on funds that will never be paid. This will deny patients a constitutional right to health services. Many Doctors will soon revert to

cash-for-services model that the government and the public has been moving away from.

21. The Kenya Medical Association (KMA) and other stakeholders such as the Nairobi Hospital, the Kenya Dental Association (KDA) executives, officials from Kenya Association of Private Hospitals (KAPH), among others have held several meetings with KRA between January and March 2024 to discuss these matters and the peculiar challenges faced by doctors in the implementation of eTIMS.
22. Through these engagements, we have sought to bring to the urgent attention of KRA some of the challenges presented by eTIMS to doctors and other healthcare professionals. Key among the challenges include:
 - (a) **Invoices as evidence of income misleading** – there are serious concerns that the use of invoices as evidence of income is misleading and the fact that this will subject doctors and healthcare facilities to advanced taxes on income not earned will lead to disruption in cashflows and operations, thereby compromising the provision of healthcare as an essential service.
 - (b) **Delays in settlement of medical bills** – medical invoices sometimes take years to be settled. Late payments such as by the NHIF (and soon SHIF), will expose Doctors to significant advance tax burden without having received the actual payment for medical services rendered. Collection of taxes from unpaid medical invoices and constantly engaging medical staff in non-core areas of debt and tax collection will severely negatively impact on healthcare delivery.
 - (c) **Up to 50% of medical doctors' bills go unpaid** – others are discounted when patients are unable to pay or die. In addition, insurance companies often decline the payments due based on their own assessment as a matter of practice and credit notes cannot be issued routinely without proof of inability to collect outstanding invoices. In sum, billed invoices, which will be recorded on eTIMS, cannot be reflective of the actual earnings by Doctors or hospitals.
 - (d) **Potential compromise of patient confidentiality** - doctors have raised concerns that the eTIMS system might compromise patient confidentiality, data privacy and security which will arise from giving external access to a third party and having to provide sensitive information through medical services invoices.
 - (e) **Integration challenges and costs**-healthcare services are unique in nature and involve several stakeholders ranging from suppliers, insurance companies, health regulator and patients, thereby making integration within the eTIMS system complex, costly and administratively tedious and impractical.

- (f) **Infrastructural and technical constraints** - most medical clinics and healthcare facilities are small and medium enterprises and do not have the infrastructural and technical facilities to support healthcare services onboarding onto the eTIMS system.
- (g) **Potential adverse impact on humanitarian aspects of medical treatment** – it is a fact that doctors often treat patients from poor income households on humanitarian grounds and free of charge. Victims of accidents and violent crime victims often require emergency treatment without demonstrating the ability to financially meet the costs of their medical treatment as this is a requirement of the Constitution and the law. In most of these cases, doctors significantly reduce or even wholly waive charges for patients who cannot pay. All these objectives would be repressed by the complex requirements of eTIMS compliance.
- (h) **Taxation of locum doctors** – locum doctors are not full employees of the medical institutions they work in, and often work for little pay. Subjecting them to PAYE at 30% will thus impose a huge tax obligation on them which will in turn affect the availability and affordability of healthcare.
23. It is evident from the issues mentioned above that a blanket enforcement of the eTIMS system without considering the contextual outlay of the medical services sector would be fatal and counterproductive to the realization of the constitutional right to health (Article 43 of the Constitution of Kenya).
24. In light of the above and other issues that are likely to arise from the implementation of the eTIMS system by doctors, KMA calls for **an immediate suspension** by KRA of the roll out of the eTIMS system in the Medical Services Sector for Doctors, Dentists, Pharmacists and Hospitals **within 7 days from today's date** to allow room for further discussions and agreement on a common position on the issues raised, including a complete exemption of the implementation of eTIMS in the healthcare sector. In the event that KRA shall not have so suspended the roll out of ETIMS as aforesated, we will have no choice but to call for a nationwide strike with effect from **Tuesday, 26th March 2024 alongside pursuing an urgent application in court to stop the eTIMS implementation on the grounds that it is clear violation of the Constitutional Rights to Healthcare, Data Protection and Privacy.**

Thank you.

ENDS

DR. SIMON KIGONDU
PRESIDENT, KENYA MEDICAL ASSOCIATION

18 MARCH 2024, NAIROBI, KENYA