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THE BUSIA COUNTY HEALTH SERVICES ACT, 2016

No. 5 of 2016

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Date of Commencement: See Section 1

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THE BUSIA COUNTY HEALTH SERVICES ACT, 2016

AN ACT of the County Assembly of Busia to provide for the consolidation of health services in the County; establish a health service system for efficient and effective delivery of medical and primary health-care services; to provide for the regulation of the services and for connected matters and purposes

ENACTED by the County Assembly of Busia, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Busia County Health Services Act, 2016 and shall come into operation on the 14th day after Gazettement.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation..

“access” in relation to health services, means availability, proximity and or affordability;

“authorized officer” means a person who is appointed as an authorized officer under this Act;

“blood product” means a blood product derived from or produced from blood;

“category 1 condition” means a medical condition listed under category 1 in schedule 1;

“category 2 condition” means a medical condition listed under category 2 in schedule 1;

“category 3 condition” means a medical condition listed under category 3 in schedule 1;

“category 4 condition” means a medical condition listed under category 4 in schedule in schedule 1;

“category 5 condition” means a medical condition listed under category 5 in schedule 1;

“child” means a human person under 18 years of age irrespective of gender whether or not that person is under the care of any other person;

“Constitution” means the Constitution of Kenya 2010;

“County Chief Officer” means the County Chief Officer in the County Executive Department responsible

for health and sanitation appointed by the Governor;

“County Gazette” means a gazette published by the authority of the County government or a supplement of such gazette;

“County Government” means the County Government of Busia;

“disease” refers to a physical or mental condition that causes dysfunction, pain, distress or discomfort to persons inflicted and or affected

“drinking water” means water that is safe and intended, or likely, to be used for human consumption or for purposes connected with human consumption;

such as—

- (a) the washing or cooling of food; or
- (b) the making of ice for consumption, or for preservation of unpackaged food; whether or not the water is used for other purposes;

“e-health” means the employment and combined use of electronic communication and information technology in the health sector;

“Executive Member” means the Member of the County Executive Committee in charge of health and sanitation;

“exercise” a function includes performance of a duty;

“function” includes a power, authority or duty;

“Governor” means the Governor of the County, elected pursuant to and in accordance with the Constitution;

“health means a state of mental, physical or social wellbeing and absence of diseases;

“health care professional” means a person who has undergone professional training and education in matters of health and attained requisite qualifications therein;

“health care services” health related services;

“health care workers” include health professionals and any person qualified and versed in matters of health who provides health services at any level;

“health facility” means an institution at which health

services are provided;

“health practitioner” has the same meaning as it has in the national health Act;

“health system” means a mechanism to deliver health services to any person whenever and wherever needed;

“noxious article” means any article or animal that—

- (a) has been in contact with a person who has an infectious disease that is transmissible by contact with the article or animal or
- (b) is or likely to be infested with vermin, or
- (c) is or is likely to be a risk to health as a result of its having been in contact with any article, person or animal that is infested with vermin;

“occupier” of premises or a part of premises (including premises that are vacant) means—

- (a) except as provided by paragraph (b), the owner of the premises or part, or
- (b) if any other person is entitled to occupy the premises or part to the exclusion of the owner, the person so entitled.

“safe water advice” for drinking water means advice to the effect that water should not be used for human consumption (or for purposes connected with human consumption) until after it has been boiled or otherwise treated;

“premises” includes any land, temporary structure, vehicle or vessel;

“public authority” means an incorporated or unincorporated body constituted by or under an Act for a public purpose;

“public health establishment ” or “public health facility” means an establishment or facility where health services are provided which is wholly or partly run and maintained by public funds;

“public health officer” means a public health officer appointed under this Act;

“public place” means a place (including a place in any vehicle or vessel) that the public, or a section of the public,

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is entitled to use or that is open to or is used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise);

“scheduled medical condition” means any medical condition listed in schedule 1;

“skin penetration procedure” means any procedure (whether medical or not) that involves skin penetration (such as acupuncture, tattooing, ear piercing or hair removal), and includes any procedure declared by the regulations to be a skin penetration procedure;

“temporary structure” includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure;

“treatment” of water means any process or technique used to improve the quality of water;

“unsafe water” means—

- (a) drinking water that the public health officer suspects to be unfit for human consumption, or
- (b) any other water that the Public Health officer suspects is, or likely to be, a risk to public health.

“treatment” of water means any process or technique used to improve the quality of water;

“unsafe water” means—

- (a) drinking water that the public health officer suspects to be unfit for human consumption, or
- (b) any other water that the Public Health officer suspects is, or likely to be, a risk to public health.

3. The objects and purposes of this Act include—

Objects and
purposes of the Act

- (a) to establish a county health service system to facilitate the provision of health services in the County in accordance with the Constitution;
- (b) to create a system and mechanism for improvement, promotion and provision of a high standard of health services in the County;
- (c) to establish a County health care system that encompasses both the public and private sector

actors;

- (d) to facilitate the establishment of a collaborative mechanism for the County in the management of a health service and care delivery system that ensures the realization of the highest attainable standards of health;
- (e) to set out the duties and responsibilities for different players in the County Health Services delivery system;
- (f) to decentralize, promote ensure provision of effective, efficient, proximate, easily accessible and cost-effective health services delivery in the County;
- (g) to establish, maintain and guarantee for the people of the County a safe and healthy environment;
- (h) to promote the prevention and control the spread and risk of infectious diseases;
- (i) to collaborate with national and other institutions engaged in the provision of health services and health care in the County.

4. (1) The County Government shall have the primary duty and responsibility for the provision, promotion, and protection of health and health care services in the County that are of quality, safe, accessible, affordable and proximate.

The duty of the County Government to provide high standards of health

(2) In discharging its responsibility under subsection (1), the County Government shall take progressive measures for the realization by the people of their constitutional right to the highest obtainable standards of health.

(3) For the purpose of subsection (2), the County Government shall—

- (a) develop policies, enact laws and implement measures necessary to ensure the promotion, improvement, investment in and maintenance of health services in the County;
- (b) ensure effective and efficient provision of health services at affordable cost for the people of the County;

- (c) encourage and promote private sector participation and investment in the provision of health services and care through—
 - (i) affording the creation of a conducive legal and institutional frameworks for the private sector to establish and operate facilities and provide health services in the County;
 - (ii) collaborate and establish partnerships with the private sector to provide comprehensive health services in the County;
- (d) promote, protect and improve public health in the County and control the risks to public health;
- (e) co-operate and collaborate with national and international health organizations and agencies to curtail and prevent transnational disease spread and infections.

5. (1) The measures undertaken under section 4 of this Act shall aim at providing health services and care that address the prevention, the promotion, treatment and rehabilitation services for the people of the County.

Measures to aim at improvement to health services

(2) The Executive Member shall cooperate and collaborate with national and international disease control and management agencies to establish centers to prevent, detect, monitor, control and manage the spread and transmission of trans-boundary diseases and infections.

6. (1) The County Government shall, in consultation and collaboration with other County and national agencies and institutions, devise, initiate and implement strategies and programs to prevent and counter influences that adversely affect health that include—

Promotion of environmental health

- (a) the burden of communicable diseases;
- (b) poor maternal and child health care;
- (c) environmental health care;
- (d) poor or inadequate nutrition;
- (e) HIV and AIDS;
- (f) lack of access to e-health; and
- (g) other medical/surgical conditions.

(2) The County Government shall take measures to

manage environmental risk factors and improve public health with a view to forestalling, curtailing and reducing the occurrence, distribution, spread and transmission of water and vector-borne diseases, HIV aids and other communicable and or infectious diseases.

(3) The County Government shall in particular, adopt measures, policies and programs directed at promoting interventions in relation to—

- (a) maternal and child health care;
- (b) HIV/AIDS and Tuberculosis control and management;
- (c) nutrition, food safety and security; drug resistance;
- (d) alcohol, tobacco use, obesity and physical inactivity that highly contribute towards rise in non communicable disease conditions.

7. (1) In promoting e-health, the County Government shall ensure that any national law relating to e-health services and e-medicine are adhered to and complied with.

Provision of e-health and national law.

(2) Any person or health service provider who engages in the provision of e-health services in contravention of the national law or regulation with regard thereto commits an offence and, in addition to any other penalty provided by such law, may have his/her or its license to operate in the County revoked upon conviction.

8. (1) To ensure access to blood transfusion and other product services in the County, the County Government shall establish and maintain a functional and continuously stocked blood and blood products bank in the County and may, for that purpose—

County blood transfusion service

- (a) establish blood transfusion services in the County at such centers as may be desirable; or
- (b) collaborate or cooperate with any blood transfusion service agency in the provision of that service in the County; or
- (c) license the Kenya national Blood Transfusion Centre or Service to offer and provide blood transfusion services in the County.

(2) Any person or agency providing blood transfusion

services in the County shall adhere to and comply with existing national law and standards regarding the provision of such services and shall only withdraw from a living human person and use tissue, blood, blood products or other genetic material for prescribed medical or dental purposes.

(3) No person may use for any other purpose, a body tissue, blood, blood product or other genetic material withdrawn from a living person for the purpose of subsection (2) without the consent of the Executive Member and in accordance with the national laws in respect thereof.

9. (1) In accordance with national law in that regard and subject thereto, the County Government may enter into an agreement or other collaborative arrangement with the national or other research agency or person to—

Health research in
the County

- (a) support research in a particular health or medical field, study or experiment;
- (b) establish a research or training institution in the field of health.

(2) Notwithstanding any other law to the contrary, no research activity in the area of health shall be undertaken in the County without the prior notice to and consent of the Executive Member.

(3) The County Executive Member shall ensure that the findings of any research conducted under this section shall be published, shared and used in the County.

(4) The County Executive member shall create a local/regional ethical committee to oversee/approve all researches conducted in the County.

PART II—COUNTY HEALTH SERVICES AND CARE SYSTEM

10. (1) The County Health Services and Care System shall include—

County health
service and care
system

- (a) the County Department responsible for health and sanitation;
- (b) all the levels of healthcare service delivery;
- (c) health workers and providers both in the public and

private sectors, traditional and alternative medicine;

(d) disaster Preparedness and response committee; and

(e) other health care providers engaged in the promotion of health, prevention and treatment of illnesses or rehabilitation health services.

(2) The County Health Service and Care System and every person working therein shall work in a manner that respects and complies with the objects and principles of devolution and shall progressively seek the realization of the objectives.

(3) The County Health service and care system shall aim at facilitating the establishment and maintenance of a comprehensive, inclusive and participatory approach to harness health services delivery at all levels by engaging all actors.

11. Every person and institution within the County Health System shall—

The role of
participants in the
County Health and
Care System

- (a) Co-operate *inter-se* and with the national and international organizations and institutions on issues pertaining to health in the County;
- (b) work to guarantee the people of the County an environment that is healthy and conducive to the enjoyment of the right to the highest standard of health;
- (c) co-operate and collaborate with other stakeholders to create awareness, promote and improve public health in the County;
- (d) progressively, endeavor to realize the objectives and purposes of this Act; and
- (e) ensure effective and efficient performance by the County of its functions under Part 2 of the Constitution.

12. Member of the Executive Committee shall be responsible for—

The responsibilities
of the Executive
Member in the
County Health
System

- (a) the development, review and implementation of policy on health in the County;
- (b) the promotion, protection and improvement of the health and well-being of the people;

- (c) the implementation of both the County and national policy on health services and care and ensure compliance therewith, this Act and relevant national laws;
- (d) promotion of collaboration with the national and international institutions and other interested parties in prioritization of health issues and investment in the health sector in the County;
- (e) decentralization and coordination of health services and appointment of authorized officers to perform the functions and for effective and efficient delivery of services exercised under this Act;
- (f) set out the duties and responsibilities of different players in the County Health Services and Care System;
- (g) provision of infrastructure in public health facilities, equipment, and human resource;
- (h) put in place measures to guarantee healthy and hygienic environment and sanitary living conditions;
- (i) ensuring that proximate health services are available and accessible to the public;
- (j) ensuring that the right to the highest standard of health services in the County by County Government is promoted observed and respected;
- (k) providing and ensuring availability of adequate financing for the performance by the County of its functions in the health sector under the Constitution.

13. (1) Without prejudice to section 12, the Executive Member shall ensure that public health facilities and establishments in the County—

Provision of infrastructure for public health facilities

- (a) are established at decentralized levels and units so as to provide proximate, accessible and cost effective health services;
- (b) have proper and adequate infrastructure suitable for the provision of quality health services and care at the decentralized units;
- (c) are sufficiently and adequately equipped with

facilities and equipment (including ambulances) to provide requisite health services and care;

- (d) have pharmacies with all important and essential medicines, vaccines, diagnostics and other medical goods;
- (e) are staffed with adequate, qualified, competent and skilled human resource necessary for efficient and effective health services delivery;
- (f) have human resource for health development programmes;
- (g) have modern health information systems capable of delivering e-health services.

(2) For the purposes of subsection (1), and in order to ensure access to essential medicines and pharmaceutical services in the County, the Executive Member shall, in collaboration with the boards, cause to be established in every health facility a pharmacy that shall be continuously stocked with all important and essential medicines, subject to availability of resources.

14. (1) To ensure availability of essential and important medicines in all public health facilities in the County, the procurement and storage of medicines, vaccines, diagnostics and other medical goods for the public health facilities in the County shall be the responsibility of the Executive Member.

Primary responsibility for procurement and storage of essential medicines.

(2) Upon such other terms and conditions as may be agreed, the County may, either alone or in conjunction with another county or counties or bodies, procure the supply of such medicines, vaccines, diagnostics and or other medical goods through the Kenya Medical Supplies Agency, Mission for Essential Drugs and Supplies or such other source as may be decided.

15. (1) The procurement of pharmaceutical products and medicines shall be done in a transparent and accountable manner in accordance with the law on procurement subsisting and applying in County.

Guidelines in procurement distribution and storage of essential medicines.

(2) Medicines and pharmaceutical products shall be stored, dispensed and sold in the County in accordance with this Act, the national regulations and guidelines and the

conditions of the license issued by the Executive Member under this section.

(3) No person may procure, import into, distribute or dispense in the County any medicine or pharmaceutical product that is not approved and authorized by the Pharmacy and Poisons Board in accordance with the law in force.

(4) Every person intending to or conducting any business in the County to store, distribute, dispense or sell any medicine or pharmaceutical product shall first apply for and obtain a license in accordance with regulations made by the Executive Member and passed by the County Assembly.

(5) The County Government shall, in consultation with the relevant national institutions and agencies, provide guidelines for the procurement, distribution, storage and management of essential medicines at all public County health facilities.

16. Without prejudice to any other roles and responsibilities stated under this Act, the Executive Member shall—

Additional roles
and responsibilities
of the Executive
Member.

- (a) in consultation with the County Public Service Board and the national regulatory authority or authorities responsible for regulation in the medical and related professions—
 - (i) continuously conduct medical human resource analysis, mapping and rationalization;
 - (ii) project training needs in the County health sector;
 - (iii) plan and implement health human resource development strategy.
- (b) recommend recruitment and retention of competent staff in the health sector;
- (c) in consultation with the national regulatory authority or authorities responsible for regulation in the medical and related professions, advise the County government on development and implementation, in the health sector, of—

- (i) human resource manuals;
- (ii) staffing norms and standards;
- (iii) codes of regulations for health workers;
- (iv) recruitment, deployment and redeployment policies and guidelines;
- (v) schemes of service;
- (vi) performance management;
- (vii) disciplinary measures and appeals with regard to professional Code of Conduct.

17. (1) Health service and care personnel in the County shall—

Responsibilities
and rights of
Health service and
care personnel

- (a) conscientiously and to the best of their knowledge and professional ability, provide health services and or care to every person entrusted to their care or seeking their service and or support;
- (b) provide emergency medical treatment;
- (c) be entitled to safe working conditions and environment;
- (d) not be unfairly discriminated against on any account;
- (e) have a right to refuse to treat a patient or health user who is physically or verbally abusive or who sexually harasses a health service provider or care personnel unless in an emergency situation where no alternative is available;

(2) Health service and care personnel in the County shall inform a user of the County Health Care System in the manner that he or she understands, that user's health status and—

- (a) available diagnostic procedures and treatment options and costs thereof;
- (b) the benefits, risks, costs and consequences that could be associated with each option; and
- (c) the user's right to decline any treatment or procedure.

18. It shall be the duty of every user of the County Health Service and Care System to—

Duties and
responsibilities of
health users.

- (a) adhere to the guidelines, rules and regulations of a health establishment at which the health care service is being provided;
- (b) adhere to the medical advice and treatment provided by the health establishment or provider;
- (c) cooperate with and give to the health service provider full and accurate information relating to his or her health status; and
- (d) respect and treat health care service providers with dignity.

PART III—RIGHTS, DUTIES AND RESPONSIBILITIES

19. (1) Every person has a right to the highest attainable standard of preventive, promotive, curative and rehabilitative health services in the County. Right to health

(2) The County Government and every person working within the County Health Services and Care System shall work for the progressive realization of the right.

(3) The Executive Member shall—

- (a) decentralize health services to the decentralized units in the County to facilitate provision of proximate and easily available efficient and effective health services;
- (b) collaborate with other County Government and national Government departments and agencies, the communities, civil society and development partner in the provision of health services; and
- (c) mobilize financial and other resources for the provision of quality and effective health services.

20. (1) In accordance with the Constitution, every person in the County has a right to emergency medical treatment and no health service provider of first contact shall deny emergency treatment to any person. Right to emergency treatment

(2) Emergency medical treatment shall include—

- (a) pre-hospital care for stabilizing the health status of an individual; and

- (b) arranging for transfer of the individual in cases where the health provider of first contact does not have facilities or capability to stabilize the health status of the individual.

21. For the purpose of enhancing access to health services, the County Government shall promote community health services by—

Community health services.

- (a) employing and deploying Community Health Assistants at decentralized units of the County;
- (b) seeking to engage community health workers;
- (c) establishing health clinics in the decentralized units;
- (d) establishing pharmacies for essential medicines and other medical stores at the decentralized units; and
- (e) promoting community and public health services in the decentralized units.

22. (1) A patient or health user seeking or getting health services from a health provider or medical practitioner shall be entitled to information from the provider or practitioner about his or her condition relating to—

Right to information

- (a) health status;
- (b) range of available promotive, preventive, and or diagnostic procedures and treatment options; and
- (c) the benefits or risks attendant to and costs implied in one or other options of treatment or procedures available.

(2) Where the patient or user is a minor, such information as he or she may be entitled to under subsection (1) may be given to the minor's parent or guardian.

23. Every health provider and or medical practitioner providing health or medical services to a patient or health user shall, before providing such service obtain informed consent of the patient in respect thereof unless—

Consent of patient to treatment.

- (a) the patient is unable to give such consent in

which case—

- (i) the patient's guardian, may give such consent, with the written authorization of the patient; or
- (ii) the next of kin where the patient is unable to give the consent and there is no written authorization; or
- (b) the patient is unable to give consent and the law authorizes the giving of such service without the consent; or
- (c) the patient is being treated in an emergency situation ; or
- (d) failure to give the treatment may result in a serious risk to the health of the public or
- (e) failure to give the treatment may result in the death or irreversible damage to the patient.

PART IV—QUALITY AND STANDARDS IN HEALTH SERVICES DELIVERY

24. Without prejudice to the provisions of the Constitution and any right by a professional regulatory authority to regulate matters relating to the profession, the Executive Member shall, in consultation with the relevant County and national regulatory authority or authorities—

The Executive Member to consult on issues of quality.

- (a) facilitate the accreditation of health facilities to be established and providers to render health service and or care in the County;
- (b) in accordance with such law, regulations and criteria relating thereto, designate County referral hospitals;
- (c) establish and publish a complaint system relating to health service and care delivery in the County;
- (d) establish and publish the procedure for the laying of complaints within the public and private health care providers; and
- (e) provide the procedure for reference to the professional regulatory body (1) For the purpose

of ensuring delivery of quality, effective and efficient health services and care in the County.

25. In consultation with the national regulatory authority or authorities responsible for regulation in the medical and related professions, the Executive Member shall—

Role of the Executive Member in regulation of quality in health

- (a) advise the County government on development and implementation, in the health sector;
- (b) promote, improve and maintain the standards of health in the County; and
- (c) ensure that the health services provided in the County are of the highest attainable standards.

26. (1) Every health service practice established in the County shall conform to and comply with the national law and regulatory regime pertaining to the health service sector or the section thereof in Kenya to which the health service business or practice relates.

Health service practise to be governed by national law and conform therewith

(2) Any person who contravenes this section or section 27 commits an offence.

27. Every person intending to and carrying on business or practice as a health provider or practitioner in the County shall—

Health services to be licensed

- (a) be authorized by the relevant regulatory authority to conduct the intended business or practice;
- (b) possess, either as an owner or tenant, premises in the County from which that person will conduct the business or practice; and
- (c) apply for and obtain a license to conduct the business or practice in accordance with the rules and regulations made by the Executive Member.

28. (1) The Executive Member shall cause to be established in every health facility or establishment in the County, a board called the Health Management Board comprising and consisting of—

Establishment and composition of Health Management Boards

- (a) the medical head of the health facility as the secretary;
- (b) one person, qualified and experienced in matters

of health or public administration, nominated by the Executive Member in consultation with the Association of Health Professionals in the County to represent health professionals;

- (c) seven persons, qualified and experienced in matters of health or public administration nominated by the Executive Member in consultation with the local community to represent the local leadership within which the health facility is situate; and
- (d) one person to represent development partners engaged and working in the health sector in the County.
- (e) the chairperson who shall be elected from amongst the seven nominated members.

(2) Members of a board established under subsection (1) shall be appointed by the Executive Member and be responsible and shall be immediately responsible to the Chief Officer.

(3) In making appointments under subsection (1), the Executive Member shall ensure gender balance and representation of youth, persons with disability and minorities and marginalized groups.

29. A board established under section 28 shall be responsible for, at the health facility or establishment—

Functions of Health
service Boards

- (a) provision of oversight in the management of affairs of the health facility or establishment;
- (b) implementation of County health policy and ensure maintenance of quality and standards;
- (c) ensuring due compliance with the provisions of this Act, other laws and regulations and the standards set in the health sector;
- (d) superintending and ensuring adherence by the health facility, its workers and others to the policies and guidelines provided;
- (e) liaising and cooperating with the community, other County and national agencies on issues of health services and care delivery.

30. (1) On such terms and conditions as may be agreed and subject to any relevant law, a board established under this Part may, with the consent of the Executive Member, enter into a partnership with any person for the purpose of establishing and enhancing health services delivery at a health service facility or establishment.

Partnerships by
Boards.

(2) The Executive Member shall make rules and regulations to govern and guide partnerships established pursuant to sub-section (1).

31. Where a person is convicted of an offence under this Act for which no penalty is expressly provided, the person shall be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

General penalty