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**THE KAKAMEGA COUNTY GENERAL TEACHING AND
REFERRAL HOSPITAL BILL, 2016**

A Bill for

AN ACT of the County Assembly of Kakamega to provide for the regulation, promotion and development of health services generally, to provide for the establishment, powers and functions of the Kakamega County General Teaching and Referral Hospital Board, and for connected purposes

ENACTED by the County Assembly of Kakamega, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County General Teaching and Referral Hospital Act, 2016 and shall come into operation upon publication.

Interpretation

2. In this Act unless the context otherwise requires—

“board” means Kakamega County General Teaching and Referral Hospital Board established under section 4;

“county” means County Government of Kakamega;

“disease” refers to any physical or mental condition that causes pain, dysfunction, distress, social problems or death to a person infected by it or persons in contact with that person;

“emergency treatment” refers to any necessary immediate health care that must be administered to prevent death or worsening of a medical situation;

“executive committee member” means the Executive Committee member for the time being responsible for matters relating to health services;

“health care” means the prevention, management or alleviation of disease, illness, injury or other physical or mental impairment in an individual, delivered by a health care provider through the health care systems;

“health care provider” means an employee of a health institution;

“referral” means the process by which a given health institution that has inadequate capacity to manage a given health condition or event

affecting an individual, seeks the assistance of another health institution to assume responsibility for the case.

Objects and Purpose of this Act

3. The purpose and object of this Act is to—
- (a) establish the Kakamega County General Teaching and Referral Hospital Board to administer, regulate, promote and develop health services within the County General Teaching and Referral Hospital;
 - (b) enable the Board to attract and promote public private partnerships and private investments in provision of Health Services within the Kakamega County General Teaching and Referral Hospital.

PART II—THE HOSPITAL BOARD

Establishment of the Board

4. (1) There is hereby established a Board to be known as the Kakamega County General Teaching and Referral Hospital Board appointed by the Governor which shall perform and exercise the duties, functions and powers specified in this Act.

(2) The Board shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) taking, purchasing, or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act as may lawfully be done or performed by a body corporate.

Functions and Powers of the Board

5. (1) The Board shall be responsible for the administration, management and development of the hospital established in Kakamega as the Kakamega County General Teaching and Referral Hospital—

- (a) the Board shall be the successor of the County Government in respect of all rights, duties, obligations, assets and liabilities concerning the Hospital existing at the date of commencement of this Act;
- (b) all such rights, duties, obligations, assets and liabilities shall be automatically and fully transferred to the Board and any

reference to the County Government or the Executive Committee Member or the Chief Officer, Department of Health or the Chief Officer to the Treasury or the Medical superintendent, Kakamega County General Hospital in connection with the Hospital in any written law or in any contract or document shall for all purposes be deemed to be reference to the Board established under this Act.

(2) Without prejudice to the generality of subsection (1) the Board shall—

- (a) administer the assets and funds of the Hospital in such manner and for such purposes as will promote the best interests of the Hospital in accordance with this Act;
- (b) have power to receive, on behalf of the Hospital, gifts, donations, grants or other money and to make legitimate disbursements therefrom;
- (c) promote the general welfare of the patients and staff of the Hospital;
- (d) have power to enter into association with other hospitals, health institutions, institutions of higher learning and research organizations within or outside Kakamega County as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Hospital is established;
- (e) make rules and regulations for the proper and efficient management of the Hospital which rules and regulations shall be issued by the Director on behalf of the Board and shall not be published in the *Gazette* but shall be brought to the attention of all those affected or governed by them;
- (f) monitor and evaluate the state of health systems in the hospital in relation to the county healthcare goals;
- (g) liaise with the county department of health in all matters relating to health;
- (h) open and operate bank accounts; and
- (i) perform such other functions and exercise such other powers as the Board may deem necessary for the proper discharge of its mandate under this Act.

(3) The Board may where it deems appropriate, delegate any of its functions in this section to any suitably qualified person or body.

(4) For the avoidance of doubt, save as may be provided for under any other written law, the Board shall be the only body with the power to perform the functions set out in this section.

Constitution of the Board

6. (1) The Board shall consist of—

- (a) a non-executive chairperson appointed by the Governor;
- (b) the Director of the Hospital who shall be an *ex officio* member;
- (c) the chief officer of the County Department of Health Services;
- (d) the chief officer of the County Treasury;
- (e) County Attorney;
- (f) the Dean of School of Medicine at Masinde Muliro University of Science and Technology;
- (g) the principal of Kakamega Medical Training College;
- (h) one member representing the Medical Practitioners and Dentists Board; and
- (i) one member representing the Pharmacy and Poisons Board.

(2) The chairperson of the Board under subsection (1) (a) shall be appointed by the Governor from a list consisting of three names submitted by a selection panel appointed by the Executive Committee Member in accordance with subsection (3).

(3) The selection panel referred to in subsection (2) shall comprise of a chairperson and five other persons appointed by the Executive Committee Member as follows—

- (a) one person to represent the County Public Service Board;
- (b) one person to represent National Hospital Insurance Fund;
- (c) one person to represent the Kenya Medical Practitioners and Dentist Board;
- (d) one person to represent the County Government department of health; and
- (e) one eminent scholar from Kakamega County.

(4) The selection panel shall have power to regulate its own procedure.

(5) The selection panel shall advertise the vacancy and publicize the names of applicants and shortlisted candidates in at least two daily newspapers with national circulation.

(6) In determining the nomination criteria for the chairperson of the Board, the selection panel shall have regard to the objectives of the development of healthcare within the County, ensuring that there are balanced competencies and gender equity.

(7) In nominating the chairperson of the Board, the selection panel shall ensure that those nominated shall not have any conflict of interest in serving as chairperson of the Board.

(8) If the Governor rejects the names submitted under subsection (2) (a) the Governor shall inform the selection panel and request for a replacement.

(9) In rejecting the names submitted under subsection (2) (a), the Governor shall attach a memorandum giving reasons for the rejection of the candidates.

(10) The selection panel shall stand dissolved after the appointment of the members of the Board.

Appointment as chairperson or member of Board

7. (1) A person shall be qualified for appointment as a chairperson or member of the Board if the person—

- (a) in the case of the chairperson, holds a Masters degree from a university recognized in Kenya;
- (b) in the case of a member of the Board referred to under Section 3 (1) (g), holds at least a degree from a university recognized in Kenya, and at least five years' experience in leadership, management or medical field.

(2) In addition to the qualifications specified under subsection (1), a member of the Board shall be a person of high moral character and integrity in accordance with Chapter Six of the Constitution and capable of contributing to the management of healthcare in the County.

(3) The chairperson of the Board shall be appointed from persons who, in addition to the qualification specified in subsection (1), have ten years' experience in leadership and management of public or private institutions.

(4) Subject to the provisions of this Act, the chairperson and members of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(5) The members of the Board appointed under section 3 (1) (g) shall at the first meeting after appointment determine by lot which two of their number shall vacate office after a period of two and three years respectively to ensure continuity in the activities of the Board.

(6) All appointments under this section shall be by notice in the Gazette.

Vacancy of Office for chairperson or member

8. (1) Subject to the provisions of this Act, the office of chairperson or member of the Board shall become vacant if the chairperson or member—

- (a) resigns by notice in writing addressed to the Executive Committee Member;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) is absent without the permission of the chairperson for three consecutive meetings;
- (f) fails to meet the requirements of Chapter Six of the Constitution;
- (g) is convicted of an offence and sentenced to imprisonment for a period of six months or more; or
- (h) dies.

(2) Where the office of chairperson or member of the Board becomes vacant, the governor in the case of Chairperson and the Executive Committee Member in the case of member may, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the generality of the foregoing, chairperson or member of the Board suspected of having contravened Chapters 6 or 13 of the Constitution shall vacate office to pave way for investigations.

(4) Where a person who has vacated office under subsection (3) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of a member.

(5) The First Schedule shall apply with respect to the conduct of the business and affairs of the Board.

Allowances for Board members

9. The chairperson and members of the Board shall be paid such allowances as the executive committee member in consultation with the executive committee shall determine.

Power to Issue directions and to remove Board

10. (1) The Governor may give directions of a general or specific nature to the Board with regard to the better exercise and performance of the functions of the Board and the Board shall give effect to those directions.

(2) Notwithstanding subsection (1), directions under this section may require that any rules or regulations made be amended to conform with any requirement of this Act where the same are inconsistent therewith.

(3) Notwithstanding the provisions of this Act or any other written law, the governor may, if at any time it appears to him that the Board has failed to carry out its functions in the interest of the county, revoke the appointments of chairperson and members of and dissolve the Board and may himself constitute a new Board for such period as he shall, in consultation with the Executive Committee determine.

The Director

11. (1) There shall be the Director of the Kakamega County General Teaching and Referral Hospital who shall be appointed by the governor on the recommendation of the Board following a competitive recruitment process and who shall serve for a period of five years, which term may be renewable once.

(2) The Director shall be the chief executive officer and secretary to the Board and shall be responsible for the day to day management of the affairs of the Board on such terms and conditions of service as the Governor shall, in consultation with the Board and the Salaries and Remuneration Commission, determine.

Removal of Director

12. The Director may—

- (a) at any time resign from office by issuing a notice in writing to the chairperson of the Board;
- (b) be removed from office by the Governor on recommendation of the Board for—
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct;
 - (iii) prolonged physical or mental incapacity to perform the functions of the office; or
 - (iv) non-performance.

Deputy Director

13. (1) The Board shall appoint one or more Deputy Directors who shall, under the general authority of the Director, exercise such powers and perform such duties as may be assigned by the Director.

(2) A Deputy Director shall hold office on such terms and conditions as may be specified in the instrument of appointment.

Qualification for Appointment as Director

14. (1) A person shall be qualified for appointment as the Director if the person—

- (a) holds a masters degree from a university recognized in Kenya; and
- (b) has at least ten years' experience in the management of a large organization.

(2) In addition to the qualifications specified under subsection (1) a person appointed in this position shall meet the requirements of Chapter Six of the Constitution.

Other members of staff

15. (1) The Board shall appoint such officers and other staff as are necessary for proper discharge of its functions under this Act, and on such terms and conditions of service as it may determine in consultation with the executive committee member.

(2) All appointments under this section shall be competitive and shall take into account, gender equity, ethnic and regional balance in accordance with the Constitution.

The Common Seal of the Board

16. (1) The common seal of the Board shall be kept in the custody of the Director or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Board, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Board shall be authenticated by the signature of the chairperson of the Board and the Director.

(4) The Board shall, in the absence of either the chairperson or the Director, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the chairperson or the Director.

Protection from personal liability

17. Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board shall, if the court holds that such act was done *bona fide* be paid out of the funds of the hospital, unless such expenses are recovered by him or her in such suit or prosecution.

Liability for damages

18. The provisions of Section 16 shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law.

Public private partnership

19. The Board may enter into public private partnerships in order to effectively carry out its functions in accordance with the Public Private Partnership Act subject to approval by the executive committee.

Functions of the Hospital

20. It is hereby declared that the Hospital is established for the following purposes—

- (a) to receive patients directly or on referral from other hospitals or institutions within or outside Kakamega County for specialized health care;

- (b) to provide facilities for medical training institutions and for research either directly or through other co-operating health institutions;
- (c) to participate, as a County referral hospital, in County health planning.

PART III—FINANCIAL PROVISIONS RELATING TO THE BOARD

Funds of the Board

- 21.** The funds of the Board shall consist of—
- (a) monies allocated by Assembly for the purposes of the Board;
 - (b) fees and charges for services rendered by the Hospital;
 - (c) such monies as may be lawfully earned from income generating activities; and
 - (d) monies granted, donated or other monies which the Board may receive on behalf of the Hospital that are paid to the Board by way of grants.

Financial Year

22. The financial year of the Board shall be the period of twelve months ending on the thirtieth June of each year.

Annual Estimates

23. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Board for the financial year concerned and in particular, shall provide for—

- (a) the operations of the hospital;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the Board;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Board;
- (d) the maintenance of the assets of the Board;
- (e) the funding of operations, training, research and development of activities of the Board; and

- (f) the creation of such reserves to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board, may think fit.

(3) The annual estimates shall be approved by the Board, before the commencement of the financial year to which they relate and shall be submitted to the Executive Committee Member for approval and after the Executive Committee Member has given approval, the Board shall not increase any sum provided in the estimates without the consent of the Executive Committee Member.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with funds voted or appropriated by Assembly.

Accounts and Audit

24. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Board.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board in respect of that year together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a statement of the assets and liabilities of the Board on the last day of that financial year.

(3) The annual accounts of the Board shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, No. 34 of 2015.

Annual and Report

25. (1) The Board shall within three months after the end of each financial year prepare and submit to the Executive Committee Member a report of the operations of the Board for the immediate preceding year.

(2) The Executive Committee Member shall lay the report submitted to him or her under subsection (1) before the County Assembly within three months of the day the Assembly next sits after the receipt of the report.

PART IV—SAVINGS AND TRANSITIONAL PROVISIONS

Existing employees of county general hospital

26. Any person who at the commencement of this Act is an employee of the County Government on posted strength of or deployed as a member of staff of Kakamega County General Hospital shall become an employee or member of staff of the Board of the hospital on the same or improved terms and conditions of service as may be specified by the Board in consultation with the executive committee member;

Provided that—

- (a) any such member of staff may retire on the basis of abolition of office in accordance with this Act;
- (b) any such member of staff may be deployed in the county civil service with mutual consent of any such member and the county government.

Disciplinary Proceedings

27. (1) Where on the commencement of this Act—

- (a) any disciplinary proceedings against any member of staff of the hospital are in the course of being heard or instituted, or have been heard or investigated by the hospital but no order or decision has been made thereon;
- (b) any such member of staff is interdicted or suspended, the Board shall—
 - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
 - (ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) Where on the commencement date of this Act, any penalty, other than dismissal, has been imposed on any member of staff of the hospital pursuant to disciplinary proceedings and the penalty has not been, or remains to be served by such member of staff, the member shall upon transfer to the Board, serve or continue to serve such penalty to its full as if it had been imposed by the Board.

Pension

28. (1) A member of staff of the hospital who becomes a member of staff of the Board shall continue to be governed by the existing Government pension scheme.

(2) Where any person whose services are transferred to the Board is, on the commencement of this Act, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Board shall be deemed to be service in the hospital.

Regulations

29. The Executive Committee Member may make regulations generally for the better carrying out of the objects of this Act.

FIRST SCHEDULE

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. The Board shall meet as often as necessary for the transaction of business, but not more than three months shall elapse between the date of one meeting and that of the next meeting.
2. The Chairperson may at any time, and shall upon written request by a majority of the members, call a special meeting of the Board.
3. The Chairperson shall preside at every meeting of the Board at which he is present, but in the absence of the Chairperson the members present may elect one from among their number to preside.
4. The quorum for a meeting of the Board shall be seven members, who shall include four appointed members.
5. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
6. A member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.
7. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.
8. The Director or an officer instructed by him in that behalf, present at a meeting of the Board or a committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the committee, as the case may be, passes a resolution, which in the Director's or officer's opinion, is contrary to his advice or contrary to law.
9. Save as provided in this Schedule the Board may regulate its own procedure.

MEMORANDUM OF OBJECTS AND REASONS

The Bill establishes the Kakamega County General Teaching and Referral Hospital Board to administer, regulate, promote and develop health services within the Kakamega County General Teaching and Referral Hospital. This is aimed at improving services within the hospital and increasing efficiency.

Once established, the Board will ensure compliance with the provisions of this Bill and health standards within the General Hospital. The Board will also have a mandate of attracting and promoting public private partnerships and investments in the hospital to ensure that it performs optimally. All these efforts are aimed at enhancing service delivery and increasing efficiency and public confidence in health services in the hospital.

LUKAS RADOLI,
Chairperson, Health Committee.