

SPECIAL ISSUE

Kilifi County Gazette Supplement No. 19 (Bills No. 18)



REPUBLIC OF KENYA

**KILIFI COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2016

NAIROBI, 31st March, 2016

CONTENT

Bill for Introduction into the Kilifi County Assembly—

PAGE

The Kilifi County Maternal, New Born and Child Health Bill, 2016 1

**THE KILIFI COUNTY MATERNAL, NEWBORN AND CHILD
HEALTH BILL, 2016**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1— Citation and Commencement
- 2— Interpretation
- 3— Objects and Purposes of Act

PART II—MATERNAL CARE

- 4— Persons authorized to offer maternal care
- 5— Adequate medical care
- 6— Regulations
- 7— Termination of pregnancy
- 8— Consent of pregnant woman
- 9— Duty to forward information
- 10— Information on HIV/AIDS
- 11— Information, access to treatment and counselling

PART III—NEW BORN

- 12— Child birth
- 13— Length of post—delivery
- 14— Restrictions
- 15— Exception
- 16— Protection of mothers

PART IV—CHILD HEALTH

- 17— Child Health Care
- 18— Immunization, Vaccination and De—worming
- 19— Annual check up
- 20 — Medical Training
- 21— Consent of a child
- 22— HIV Testing

- 23— HIV—testing for foster care or adoption purposes
- 24— Counselling before and after HIV—testing
- 25— Confidentiality of information on HIV/AIDS status of children
- 26— Access to contraceptives

PART V—HEALTH FACILITIES

- 27— Medical facilities
- 28— Kilifi County referral hospital
- 29— Ambulance services
- 30— Hospital equipment
- 31— Medical Practitioners

PART VI—MISCELLANEOUS PROVISIONS

- 32— Power of County Executive Committee member to make Regulations
- 33— Offense where penalty not provided
- 34— Savings

**THE KILIFI COUNTY MATERNAL, NEWBORN
AND CHILD HEALTH BILL, 2016**

A Bill for

AN ACT of the County Assembly of Kilifi to provide for regulation of maternal, newborn and child health within Kilifi County; to make provision for reproductive health; and to provide for matters connected therewith and incidental thereto

ENACTED by the County Assembly of Kilifi, as follows—

PART I — PRELIMINARY PROVISIONS

1. This Act may be cited as the Kilifi County Maternal, Newborn and Child Health Act, 2016 and shall come into operation upon assent by the Kilifi County Governor.

Citation and
Commencement

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

Interpretation

“Antenatal Care” includes the correct diagnosis of pregnancy, followed by periodic examinations, screening and management of complications during pregnancy;

“child” has the meaning assigned to it in the Children Act, 2001;

“child’s health care rights” means the right of every child to access quality health and medical care;

“Clinical Officer” means a person duly registered as a Clinical Officer under the Clinical Officers (Training, Registration and Licensing) Act;

“Conscientious objection” means to object in principle to a legally required or permitted practice;

“Contraception” Means the deliberate prevention of pregnancy by measures that prevent the normal process of ovulation, fertilization and implantation;

“Emergency contraception” means contraceptive methods used by women immediately following unprotected sexual intercourse to prevent pregnancy;

“Health Care Provider” means any person or institution that has been duly authorized to deliver health care services;

“Informed Consent” means consent obtained freely, without threats or improper inducement, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient/ client;

“Informed choice” means voluntary decision by a client to use, or not to use, a contraceptive method or to accept a sexual and reproductive health service, after receiving adequate information regarding options, risks, advantages and disadvantages of all the available methods.

Intra partum care includes the correct diagnosis of labour, appropriate examination and screening for and management of complications during child birth;

“Maternal care” includes health care of a woman during pregnancy, childbirth and 42 days after childbirth;

“Maternal death” is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy or delivery, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes;

“Maternal morbidity” refers to severe diseases, (physical or emotional or psychological) or disabilities caused by pregnancy related complications;

“Medical practitioner” means a person duly registered as a medical practitioner under the Medical Practitioners and Dentists’ Act Cap 253;

“County Executive Committee member” means the County Executive Committee member in the mean time responsible for health;

“Nurse” means a person duly registered as a nurse under the Nurses Act Cap 257;

“Post—abortion care” includes:

- (a) Treatment of incomplete and unsafe abortion and complications that are potentially life—threatening;
- (b) Post—abortion counselling to assess the woman’s emotional and health needs;

- (c) Post—abortion family planning counselling and contraception services;
- (d) Referral to reproductive and other health services; and
- (e) Community linkages for appropriate support.

“Postpartum care” includes screening for and management of complications during the first 42 days after delivery;

“Pregnancy” means the presence of a foetus in the womb;

“Provider—Initiated Health Care or testing” means the provision of care or testing to ensure public health or advancement of medicine;

“Reproductive health” means a state of complete physical, mental and social well—being in all matters relating to the reproductive system and its functions and processes, and is not merely the absence of disease or infirmity;

“Right to safe motherhood” means the right to access to information and quality service by women throughout pregnancy and childbirth with the desired outcome of a live and healthy mother and baby;

“Termination of pregnancy” for the purpose of this Act means the separation and expulsion, by medical or surgical means, of the contents of the uterus of a pregnant woman before the foetus has become capable of sustaining an independent life outside the uterus.

“Unsafe abortion” means an induced abortion or termination of pregnancy conducted either by persons lacking the necessary skills or in an environment lacking the minimal medical standards.

3. The object and purpose of this Act is—

- (a) to provide a framework for the protection and advancement of maternal, new born and child health;
- (b) to promote women’s health and safe motherhood;
- (c) to achieve a rapid and substantial reduction in maternal morbidity and mortality; and

Objects and
Purposes of Act

- (d) to ensure access to quality and comprehensive provision of health services to women and children.

PART II: MATERNAL CARE

4. The following persons shall be authorized to offer maternal care:

Persons authorized
to offer maternal
care

- (i) Medical practitioners;
- (ii) Clinical Officers;
- (iii) Nurses; and
- (iv) Community health workers.

5. Any person offering maternal care shall operate in an environment that ensures adequate medical care to women.

Adequate Medical
Care

6. The County Executive Committee member, in consultation with health care providers within Kilifi County shall make regulations—

Regulations

- (a) To promote best practices on safe motherhood;
- (b) For the registration and licensing of facilities and service providers; and
- (c) To facilitate the provision of affordable maternal care in all health institutions.

7. (1) A pregnancy may be terminated if a trained and Certified Health Care Provider, after consultation with the pregnant woman, is of the opinion that—

Termination of
Pregnancy

- (i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health; or
- X (ii) there exists a substantial risk that the foetus would suffer from a severe physical or mental abnormality; or
- X (iii) where the pregnancy resulted from sexual assault, defilement, rape, or incest; or
- X (iv) the pregnant woman, on account of being a mentally disordered person, is not capable of appreciating pregnancy; or
- X (v) Extreme social—economic deprivation of the

woman.

(2) A statement by a pregnant woman to the medical practitioner concerned or proof of report of the incidence is adequate to prove that her pregnancy is as a result of sexual assault, rape, defilement or incest.

(3) The termination of the pregnancy shall only be carried out by a health care service provider in a facility authorized by the Medical and Dentist Practitioners' Board.

(4) Health providers shall offer non—mandatory and non—directive counseling, before and after the termination of a pregnancy.

(5) Any person who violates the provisions of section 7 (3) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty thousand shillings or an imprisonment term not exceeding three years or both.

8. (1) subject to section 7(1), termination of pregnancy may only take place with the consent of the pregnant woman.

Consent of pregnant woman

(2) In the case of a pregnant minor, a health care service provider shall advise the minor to consult with her parents, guardian or such other persons with parental responsibility over the said minor before the pregnancy is terminated, provided that the best interest of the minor shall prevail.

(3) In the case of a mentally disordered person, the health care service provider shall consult with the guardian over the said person before the pregnancy is terminated.

Provided that a health care service provider who has a conscientious objection to the termination of pregnancy has a legal duty to refer the pregnant woman to a service provider who is willing to provide this service. Refusal or deliberate failure to do so shall constitute an offense whereupon conviction shall be liable to a fine not exceeding two hundred and fifty thousand or an imprisonment term not exceeding three years or both.

9. (1) A health care provider shall, as soon as is practicable, but not later than three months after the termination of a pregnancy in the prescribed form, collate the information and forward to the relevant authority under

Duty to forward information

cover of confidentiality.

(2) Any person who violates any conditions set out in subsection (1) commits a criminal offence and shall be liable upon conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or both.

10. (1) A medical practitioner attending to a pregnant woman shall provide her with information about HIV/AIDS, and specifically inform her about mother to child transmission of AIDS.

Information on
HIV/AIDS

(2) No pregnant woman shall be tested for HIV/AIDS without her informed consent except in the circumstances of Provider Initiated Testing.

(3) The confidentiality of test results shall be carefully protected.

11. The County Executive Committee shall in conjunction with the relevant health care providers within Kilifi County—

Information, Access
to Treatment and
Counselling

- (a) regularly disseminate accurate and comprehensive information to members of the public about HIV and AIDS, including prevention of parent to child infection and the options available to infected pregnant women;
- (b) ensure access to continuous and regular medical treatment of children born with HIV;
- (c) ensure counselling of pregnant women and their partners infected with HIV or suffering from AIDS on how to promote and sustain their reproductive health.

PART III: NEW BORN HEALTH

12. For purposes of this Act, childbirth is one part of a continuum of experience that includes pre—pregnancy, pregnancy and prenatal care, labour and delivery, the immediate postpartum period, and a longer period of adjustment for the new born, the mother, and the family.

Child Birth

13. (1) The length of post—delivery hospital stay should be based on the unique characteristics of each mother and her new born child, taking into consideration the health of the mother, the health and stability of the new

Length of Post-
Delivery

born, the ability and confidence of the mother and the father to care for their new born, the adequacy of support systems at home, and the access of the mother and her new born to appropriate follow-up health care; and

(2) The timing of the discharge of a mother and her new born child from the hospital should be made by the attending provider in consultation with the mother.

14. (1) No health care provider may —

Restrictions

- (a) restrict benefits for any hospital length of stay in connection with childbirth for the mother or new born child, following a normal vaginal delivery, to less than 48 hours, or
- (b) restrict benefits for any hospital length of stay in connection with childbirth for the mother or new born child, following a caesarean section, to less than 96 hours; or

(2) Notwithstanding the provisions of sub-section (1) a healthcare provider may obtain authorization from the County Executive Committee member prescribing any length of stay required under sub-section (1).

15. Notwithstanding the provisions of section 13(1), a health care provider may discharge a mother or her new born prior to the expiration of the minimum length of stay where the decision is made in consultation with the mother.

Exception

Provided that a healthcare provider may not —

- (a) deny to the mother or her new born child eligibility, or continued eligibility, to extend stay at the hospital beyond the agreed time;
- (b) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under Section 13(1); or
- (c) penalize the mother or otherwise reduce or limit the reimbursement of a mother because such mother changed her mind over reducing stay.

16. Nothing in this Part shall be construed to require a mother —

Protection of
mothers

- Be given* (a) to give birth in a hospital; or

Be
Jules

- X (b) to stay in the hospital for a fixed period of time following the birth of her child.

PART IV—CHILD HEALTH

17. Every child has a right to health care, of which parents, national government and the county government shall have the responsibility of providing.

Child health care

18. Every child has a right to free immunization, vaccination and de—worming at any public hospital.

Immunization, vaccination and de—worming

19. Any child below the age of five years is entitled to a free annual medical check up at any public hospital.

Annual check up

20. The County Executive Member responsible for health in the County shall facilitate training to the formal and informal community based midwives and health care providers in basic maternal and child health services to improve ante—natal and post—natal care for women and children.

Medical training

X 21. (1) A child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either subsection (2), (3), (4), (5), (6) or (7).

Consent of a child

(2) A child may consent to his or her own medical treatment or to the medical treatment of his or her child if—

- X (a) the child is over the age of 18 years; and
(b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.

(3) A child may consent to the performance of a surgical operation on him or her or his or her child if—

- (a) the child is over the age of 18 years; and
(b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and
(c) the child is duly assisted by his or her parent or guardian.

(4) The parent, guardian or care-giver of a child may,

subject to section 31, consent to the medical treatment of the child if the child is—

- (a) under the age of 18 years; or
- (b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the treatment.

(5) The parent or guardian of a child may consent to a surgical operation on the child if the child is—

- (a) under the age of 18 years; or
- (b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the operation.

(6) The superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent may consent to the medical treatment of or a surgical operation on a child if—

- (a) the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and
- (b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.

(7) The County Executive Committee may consent to the medical treatment of or surgical operation on a child if the parent or guardian of the child—

- (a) unreasonably refuses to give consent or to assist the child in giving consent;
- (b) is incapable of giving consent or of assisting the child in giving consent;
- (c) cannot readily be traced; or
- (d) is deceased.

(8) The County Executive Committee member may consent to the medical treatment of or surgical operation on a child if the child unreasonably refuses to give consent.

(9) A High Court or children's court may consent to

the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent.

(10) No parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (3) or withhold consent in terms of subsections (4) and (5) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

 22. (1) Subject to Section 20, no child may be tested for HIV except when—

HIV Testing

- (a) it is in the best interests of the child and consent has been given in terms of subsection (2); or
- (b) the test is necessary in order to establish whether—
 - i. a health worker may have contracted HIV due to contact in the course of a medical procedure involving contact with any substance from the child's body that may transmit HIV; or
 - ii. any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court.

(2) Consent for a HIV—test on a child may be given by—

- (a) the child, if the child is—
 - i. 18 years of age or older; or
 - ii. under the age of 18 years and is of sufficient maturity to understand the benefits, risks and social implications of such a test;
- (b) the parent or care-giver, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

- (c) a Welfare Officer, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
- (d) a designated child protection organisation arranging the placement of the child, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
- (e) the superintendent or person in charge of a hospital, if—

3. The child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and

4. The child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

- (a) a children's court, if—
 - i. consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or
 - ii. the child or the parent or care-giver of the child is incapable of giving consent.

23. If HIV-testing of a child is done for foster care or adoption purposes, the County Government must pay the cost of such tests where circumstances permit.

HIV — testing for
foster care or
adoption purposes

24. (1) A child may be tested for HIV only after proper counselling, by an appropriately trained person, of—

Counselling before
and after HIV —
testing

- (a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; and
- (b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

(2) Post—test counselling must be provided by an appropriately trained person to—

- (a) the child, if the child is of sufficient maturity to understand the implications of the result; and

- (b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

~~25~~25. (1) No person may disclose the fact that a child is HIV—positive without consent given in terms of subsection (2), except—

Confidentiality of
information on
HIV/AIDS status of
children

- (a) within the scope of that person's powers and duties in terms of this Act or any other law;
- (b) when necessary for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings; or
- (d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV—positive may be given by—

- (a) the child, if the child is—

- i. 18 years of age or older; or
- ii. under the age of 18 years and is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

- (b) the parent or care-giver, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

- (c) a designated child protection organisation arranging the placement of the child, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

- (d) the superintendent or person in charge of a hospital, if—

- i. the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and
- ii. the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

- (e) a children's court, if—
 - i. consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interests of the child; or
 - ii. the child or the parent or care-giver of the child is incapable of giving consent.

26. (1) No person may refuse—

Access to
contraceptives

- (a) To sell condoms to a child over the age of 18 years; or
- (b) To provide a child over the age of 18 years with condoms on request where such condoms are provided or distributed free of charge.

(2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child if—

- (a) The child is at least 18 years of age;
- (b) proper medical advice is given to the child; and
- (c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.

(3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect.

PART V—HEALTH FACILITIES

27. A person offering maternal and child health care services shall operate in an environment with adequate medical facilities.

Medical facilities

28. There shall be a level five hospital in Kilifi County responsible for offering county referral services.

Kilifi County referral
hospital

29. (1) The hospital mentioned in section 28 shall have at least five ambulances.

Emergency services

(2) No woman or child shall be denied emergency medical treatment in whatever circumstance, including inability to pay.

30. A level five hospital shall be fully equipped to

Hospital equipment

handle—

- (a) child-birth emergencies; and
- (b) intensive care patients.

31. The hospital shall have such number of medical practitioners, clinical officers and nurses as the county executive member for health in consultation with health care providers within the county, shall from time to time determine.

Medical practitioners

PART VI—MISCELLANEOUS PROVISIONS

32. (1) The County Executive Committee member at the time being responsible for health shall make such regulations as may be necessary for the implementation of this Act.

Power of County
Executive
Committee member
to make Regulations

(2) Subject to the provisions of this Act, the County Executive Committee member may make regulations:

- (a) any matter which is required or permitted by this Act to be prescribed by regulations;
- (b) the inter-sectional implementation of this Act;
- (c) any other matter which is necessary or expedient in order to achieve or promote the objects of this Act;

(3) Any person who is aggrieved by any decision made under this Act or regulations made hereunder may make a reference to the High Court of Kenya.

33. A person convicted of an offence under this Act for which no penalty is provided shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred thousand shillings, or to both.

Offence where
penalty not provided

34. Where the provisions of this Act or any regulations made hereunder are inconsistent with the provisions of any other written law, the provisions of this Act or such regulations shall prevail.

Savings

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to make provision for the regulation of maternal, new born and child health care rights, and partly, the actualization of reproductive rights. It also seeks to protect mothers, new borns and children from adverse medical practices.

The Bill also seeks to deal with the issue of inadequate facilities at county government hospitals, especially in terms of emergency services including but not limited to ambulance services and equipment for intensive care services and gynaecological services as well.

The Bill seeks to bring forth the issue health for women, new borns and children which has been neglected for some time. It gives for guidance. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

The Bill concerns county governments in terms of Article 110(a) of the Constitution as it affects the functions and powers of County Governments set out in the Fourth Schedule. The issue of health care and especially provision of health facilities affect the functions of county governments.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 30th March 2016.

ALBERT HARE KIRAGA,
Chairperson Health Committee.