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THE LAMU COUNTY MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2016

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THE LAMU COUNTY MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2016

A Bill for

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

ENACTED by the County Assembly of Lamu, as follows —

PART I — PRELIMINARY PROVISIONS

Citation and
Commencement. **1.** This Act may be cited as the Lamu County Maternal,
Newborn and Child Health Act, 2016.

Interpretation. **2.** In this Act, unless the context otherwise requires:
“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, fertilisation 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 authorised 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.

Objects and
Purposes of
Act.

3. The object and purpose of this Act is:

- (a) to provide a framework for the protection and advancement of maternal, newborn 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
- (d) to ensure access to quality and comprehensive provision of health services to women and children.

PART II — MATERNAL CARE

Persons
authorised to
offer maternal
care.

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

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

Adequate
medical care.

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

Regulations.

6. The County Executive Committee member, in consultation with health care providers within Lamu County may make regulations and approved by the County Assembly—

- (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.

Termination of
pregnancy.

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—

- (i) The continued pregnancy would pose a risk of injury to the woman's physical or mental health; or
- (ii) There exists a substantial risk that the foetus would suffer from a severe physical or mental abnormality; or
- (iii) The pregnant woman, on account of being a mentally challenged person, is not capable of appreciating pregnancy.

(2) The termination of the pregnancy shall only be carried out by a health care service provider in a facility authorised by the Medical Practitioners and Dentists Board.

(3) Health providers shall offer non-mandatory and non-directive counselling, before and after the termination of a pregnancy.

(4) Any person who violates the provisions of section 7(2) 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.

Consent of
pregnant
woman.

8. (1) Subject to section 7(1), termination of pregnancy may only take place with the consent of the 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 challenged person, the health care service provider shall consult with the guardian over the said person before the pregnancy is terminated.

(4) 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.

Duty to
forward
information.

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 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.

Information on
HIV/AIDS.

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 HIV.

(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.

Information,
access to
treatment and
counselling.

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

- (a) regularly disseminate accurate and comprehensive information to members of the public about HIV and AIDS, including prevention of Mother to child transmission, Maternal Infant and Child Nutrition 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 — NEWBORN HEALTH

Child birth.

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 newborn, the mother and the family.

Length of
post-delivery.

13. (1) The length of post-delivery hospital stay should be based on the unique characteristics of each mother and her newborn child, taking into consideration the health of the mother, the health and stability of the newborn, the ability and confidence of the mother and the father to care for their newborn, the adequacy of support systems at home, and the access of the mother and her newborn to appropriate follow-up health care; and

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

Restrictions.

14. (1) No health care provider may—

- (a) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn 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 newborn child, following a caesarean section, to less than 96 hours.

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

Exception.

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

Provided that a healthcare provider shall not—

- (a) deny to the mother or her newborn 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) penalise the mother or otherwise reduce or limit the reimbursement of a mother because such mother changed her mind over reducing stay.

Protection of mothers.

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

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

PART IV — CHILD HEALTH

Child health
care.

17. Every child has a right to health care, of which parents, National Government and the County Government shall have the responsibility of providing.

Immunisation,
vaccination and
de-worming.

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

Annual check
up.

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

Medical
training.

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.

Consent of a
child.

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).

(2) A child may consent to his or her own medical treatment or to the medical treatment of 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 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
 - (c) 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 based on religious zeal, retrogressive cultural practices and traditions;
 - (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 sub-sections (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.

HIV Testing.

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

- (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—
 - (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 test; 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
- (f) 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.

HIV-testing for foster care or adoption purposes.

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

Counselling before and after HIV-testing.

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

- (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.

Confidentiality
of information
on HIV/
AIDS status of
children.

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

- (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 a court order.

(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.

Access to
contraceptives.

26. (1) No person may refuse—

- (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

Medical
facilities.

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

Lamu County
referral
hospital.

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

Emergency
services.

29. (1) The hospital mentioned in section 28 shall have at least 3 ambulances.

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

Hospital
equipment.

30. A level five hospital shall be fully equipped to handle—

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

Medical
practitioners.

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

PART VI — MISCELLANEOUS PROVISIONS

Power of
County Execu-
tive Commit-
tee member to
make Regula-
tions.

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.

(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.

Offense where
penalty not
provided.

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 three hundred thousand shillings, or to both.

Savings.

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.

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to make provision for the regulation of maternal, newborn and child health care rights, and partly, the actualisation of reproductive rights. It also seeks to protect mothers, newborns 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, newborns 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 this 4th Day of January 2016.

MCA ATHMAN MOHAMED AMIN

Chairperson, Health Services and Environment Committee