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THE MAKUENI COUNTY OLDER PERSONS BILL, 2016

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THE MAKUENI COUNTY OLDER PERSONS BILL, 2016

A Bill for

AN ACT of the County Assembly of Makueni to establish a framework for the empowerment and protection of older persons and the maintenance of their well-being, to alleviate poverty and reduce economic vulnerability, and for connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

Short title and Commencement

1. (1) This Act may be cited as the Makueni County Older Persons Act, 2016.

Interpretation.

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

“beneficiary” means an older person who receives the older persons grant;

“county executive committee member” means the County Executive Committee Member responsible for social welfare and development;

“county government” means the County Government of Makueni;

“grant” means the Older Persons Grant;

“home-based care” means care provided or services rendered at the place where an older person resides, excluding at a residential facility, by a care giver in order to maintain the older person’s maximum level of comfort;

“officer in charge” means an officer appointed by the County Executive Committee Member to be in charge of administration of the older persons grant within the county;

“older person” means a person who has attained the age of sixty five years; and

“old persons grant” means an amount of cash given to an older Person or for the benefit of an older person.

Object and Purposes

3. The object and purposes of this Act are to—

- (a) provide a framework that promotes the rights of older persons as enshrined under the Constitution;
- (b) promote and protect the status of older persons;
- (c) prevent the abuse of older persons.

PART II—CARE OF OLDER PERSONS

Rights of Older Persons

4. Every older person has the right to—
- (a) fully participate in the affairs of the community based on the older person's interests and capabilities;
 - (b) take part in activities that enhance the older person's personal development and build capacity to generate income and to take part in activities that advance the older person's economic development;
 - (c) access social and legal services for the enhancement of the protection of the older person's rights under the Constitution;
 - (d) take part in activities that promote the older person's social, physical, mental and emotional well-being; and
 - (e) receive reasonable care, assistance and protection from their family and the State.

Obligations of the County Government

5. The county government shall—
- (a) implement the national policy and strategies relating to older persons within the county;
 - (b) formulate and implement county specific programmes for the care and protection of older persons within the county;
 - (c) deliver social services for the care and protection of older person within the county as they may consider appropriate;
 - (d) monitor and supervise institutions, organisations and such other persons involved in the delivery of social services to older persons in the county and coordinate the delivery of such services within the county; and
 - (e) put in place programmes and projects that promote the generation of income by older persons and that enable older persons to, as far as possible, lead independent lives.

Delivery of services concerning Older Persons

6. Any person providing services concerning older persons within the County shall—

- (a) recognise the social, cultural and economic contributions of older persons;

- (b) promote the participation of older persons in decision making processes at all levels;
- (c) recognise the multi-dimensional needs of older persons and promote the fulfilment of such needs;
- (d) promote the development and basic care of older persons;
- (e) promote the prevention of exploitation and abuse of older persons; and
- (f) ensure, as far as is practicable, that services and facilities are accessible to older persons.

Right to family and Community Care

7. An older person has the right to—

- (a) reside at home for as long as is possible; and
- (b) benefit from family and community care and protection in accordance with the society's system of cultural values.

Community Based Programmes

8. (1) The county government shall establish and implement community based programmes for the care and protection of older persons residing within the county.

(2) Community Based Programmes established under subsection (1) shall comprise—

- (a) prevention and promotion programmes that seek to promote the independent living of older persons residing within the county; and
- (b) home based care programmes that ensure that older persons residing within the county who suffer from any form of physical or mental infirmity and are unable to care for themselves receive care.

(3) The community based care programmes implemented pursuant to subsection(1) by the County Government shall—

- (a) comprise county specific interventions that address the needs of older persons within the county;
- (b) promote family and community awareness on the care of older persons within the county and sensitize them on the care and support of older persons;
- (c) empower the older persons economically to enable them sustain themselves;

- (d) include the delivery of spiritual, cultural, medical, civic and social services to older persons within the county;
- (e) integrate community care and development systems for older persons.

(2) The County Government may put in place such infrastructure, including community centres and facilities, for the purpose of providing community based care and support services under this Act.

Prohibition of Abuse

9. (1) A person shall not abuse or subject an older person to any form of physical or mental abuse.

(2) Any conduct or lack of appropriate action occurring within a relationship in which there is an expectation of trust which causes harm or distress or is likely to cause harm or distress to an older person constitutes abuse under subsection (1).

(3) For the purposes of subsection (1) and (2), “abuse” includes—

- (a) physical abuse which means any act or threat of physical violence towards an older person;
- (b) any conduct that violates the sexual integrity of an older person;
- (c) psychological abuse which means any pattern of degrading or humiliating conduct towards an older person, including—
 - (i) repeated insults, ridicule or name calling;
 - (ii) repeated threats to cause emotional pain; and
 - (iii) repeated invasion of an older person’s privacy, liberty, integrity or security;
- (d) economic abuse including—
 - (i) the deprivation of economic and financial resources to which an older person is entitled under any law;
 - (ii) the unreasonable deprivation of economic and financial resources which the older person requires out of necessity; or
 - (iii) the disposal of household effects or other property that belongs to the older person without the older person’s consent.

(4) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding one million or to both such fine and imprisonment.

PART III—OLDER PERSONS GRANT

Amount of Older Persons Grant

10. The older persons grant shall not be less than one thousand Kenyan shillings per month.

Qualifications for Grant

11. A person qualifies for an older persons grant if the person—
- (a) is a Kenyan citizen;
 - (b) is a permanent resident of Makueni county;
 - (c) has attained the age of 65;
 - (d) has no ascertainable means of support or income; and
 - (e) is not a beneficiary of any other program with similar benefits.

Application for Older Persons Grant

12. (1) Applications for the older persons grant shall be submitted to the office of the county executive committee member.

(2) The county executive committee member shall designate an office within the department to receive and process applications for older persons grant.

(3) A person may apply for the older persons grant in the prescribed manner and form.

(4) Where an application is made by a person in accordance with this section, the officer in charge may conduct an investigation to verify that the person is eligible and may request for additional information if necessary.

(5) If the applicant does not qualify for issuance of grant in terms of this Act, the officer in charge shall in writing, inform the applicant—

- (i) that the applicant does not qualify for a grant in terms of this Act; and
- (ii) of the reasons why the applicant does not qualify.

(6) The officer in charge shall convey the decision to the applicant within one month from the time the application is received.

Abuse of Older Persons Grant

13. If in the opinion of the officer in-charge a beneficiary abuses the grant, the officer in charge in consultation with the County Executive Committee Member may—

- (a) suspend payment of grant: or
- (b) appoint a person to receive the grant on behalf of the beneficiary and to apply it, subject to the prescribed conditions and any other conditions that the county executive member may determine, for the benefit of the beneficiary.

14. (1) The officer in charge may in consultation with the County Executive Member terminate payment of the grant to or on behalf of an older person if the—

- (a) older person is absent from the county, for a continuous period of six months or longer;
- (b) grant was obtained through misrepresentation, deceit, fraud or failure to disclose any material information;
- (c) grant is in excess of amounts permitted by this Act and Regulations made pursuant to this Act; and
- (d) grant was approved and granted in error.

(2) The County Executive Member may reinstate the provision of grant suspended under subsection (1) where the County Executive Member is satisfied that the reasons advanced by the applicant justify the reinstatement.

Lapse of Older Persons Grant

15. Older persons grant lapses when the beneficiary—

- (a) dies;
- (b) is admitted to a residential institution; or
- (c) is able to support himself or herself due to change in their economic circumstances.

MISCELLANEOUS PROVISIONS

General Penalty

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

Regulations

17. The County Executive Committee Member may, make regulations generally for the better carrying out of the provisions of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principle object of the Bill is to provide for the protection and care of older persons within the county. It recognises the fact that for a long time, older persons, particularly those who are unable to care for themselves, have often been neglected and are unable to lead decent lives.

The Bill therefore provides as follows—

PART I—deals with the preliminaries of the Act including the short title, interpretation of words used in the Act, the objects and purposes of the Act and the principles to guide in the implementation process.

PART II—provides for the care of older persons. In particular, it provides for the establishment and implementation of community and home based care programmes for older persons and prohibits the abuse of older persons and defines which acts constitute abuse.

PART III—makes provision of an older persons grant which is to be disbursed to eligible older persons monthly or as may be prescribed by the County Executive Committee Member in-charge of social welfare and development.

The enactment of this Bill will occasion additional expenditure of public funds.

Dated the 10th February, 2016.

LIZER ZACHARIAH,
Member of County Assembly.

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