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MERU COUNTY BILLS, 2019

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THE MERU COUNTY CANCER INSTITUTE BILL, 2019

A Bill for

AN ACT of the County Assembly of Meru to provide a legal framework for establishment of the Meru County Cancer Institute for the prevention, treatment and control of cancer and for connected purposes; and for matters connected therewith and incidental thereto.

PART I—PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Meru County Cancer Institute Act, 2019 and shall come into operation upon publication in the Gazette.

Interpretation

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

“Board” means the Board of Trustees of the Institute established under section 6;

“Chairperson” means the Chairperson of the Board appointed under section 6(3);

“Chief officer” means the Chief Officer for the time being responsible for health services;

“Department” means the county department for the time being responsible for health services;

“Executive Member” means the member of the County Executive Committee Member for the time being responsible for health services;

“Institute” means the Meru County Cancer Institute established by section 4;

“Medical Institution” means a hospital, clinic, dispensary or other place where a diagnosis of cancer is made and includes a medical practitioner practicing in his or her own name;

“Medical Practitioner” has the meaning assigned to it under the Medical Practitioners and Dentists Act (Cap. 253);

“Person With Cancer” means a person diagnosed as having cancer.

PART II—ADMINISTRATION

Objects and purpose of the Act

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

- (a) promote public awareness about the causes, consequences, means of prevention and control of cancer;
- (b) extend to every person with cancer full protection of his human rights and civil liberties by—
 - (i) guaranteeing the right to privacy of the individual;
 - (ii) outlawing discrimination in all its forms and subtleties;
 - (iii) ensuring the provision of basic health care and social services;
- (c) promote utmost safety and universal precautions in practices and procedures that relate to the treatment of cancer;
- (d) positively address and seek to eradicate conditions that cause and aggravate the spread of cancer;
- (e) promote access to quality and affordable diagnostic and treatment services for persons with cancer; and
- (f) ensure sustainable capacity for the prevention and control of cancer.

Establishment of the Institute

4. (1) There is established a corporation to be known as the Meru County Cancer Institute which shall be a body corporate with perpetual succession and a seal and capable of—

- (a) suing and being sued in its corporate name;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the Institute

5. The functions of the Institute shall be to—

- (a) advise the Executive Member on matters relating to the treatment and care of persons with cancer and to advise on the relative priorities to be given to the implementation of specific measures;

- (b) encourage and secure the establishment of hospitals, vocational treatment and care centres and other institutions for the welfare and treatment of persons with cancer in all sub-counties of the County;
- (c) encourage and secure provision of diagnostic, treatment, rehabilitation and other medical care to persons with cancer in those institutions;
- (d) co-ordinate services provided in Meru County for the welfare and treatment of persons with cancer and to implement programmes for vocational guidance and counselling;
- (e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer;
- (f) collaborate with national and international institutions for the purpose of collecting for the Register and cataloguing, storing and disseminating the results of cancer research undertaken in any country for the use of any person involved in cancer research in any country;
- (g) establish and support the large scale production or distribution of specialized biological materials and other therapeutic substances for research and set standards of safety and care for persons using such materials;
- (h) ensure that accurate figures of persons with cancer are obtained in the county for purposes of planning;
- (i) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with cancer, including those controlled and managed by the Government;
- (j) encourage and secure the care of persons with cancer within their communities and social environment;
- (k) establish and support measures that seek to eradicate conditions that cause and aggravate the spread of cancer;
- (l) recommend measures to prevent discrimination against persons with cancer;
- (m) generally to carry out measures for public information on the rights of persons with cancer and the provisions of this Act;
- (n) encourage and participate in the provision of training on cancer prevention and control; and

- (o) carry out aggressive awareness campaigns/education on cancer prevention and treatment.

5. Board of Trustees

- (1) The Institute shall be administered by a board to be known as the Board of Trustees of the Institute.
- (2) The Board shall consist of the following persons appointed by the Executive Member—
 - (a) The Chairperson;
 - (b) the Chief Officer for the time being responsible for matters relating to health or his designated alternate not being below the level of Director;
 - (c) the Chief Officer for the time being responsible for matters relating to finance or his designate alternate not being below the level of Director;
 - (d) one person nominated by the registered cancer associations in such manner as may be prescribed;
 - (e) a representative of the National Council for Science and Technology;
 - (f) one person nominated by the Media Owners Association in such manner as may be prescribed;
 - (g) one prominent philanthropist or industrialist of good standing;
 - (h) one person nominated by the universities teaching medicine in such manner as may be prescribed;
 - (i) one person nominated by institutions conducting medical research in such manner as may be prescribed;
 - (j) the Attorney-General or his representative who shall be an ex officio member; and
 - (k) the Chief Executive Officer who shall be an ex officio member and Secretary to the Board.
- (3) No person shall be appointed under subsection (2)(a) unless such person is a registered medical practitioner and is a recognized medical specialist of not less than ten years' experience in leadership at national institutional level.
- (4) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Board or with the authority of the Board shall be deemed to have been done by the Institute.

(5) No person shall be appointed as a member of the Board unless such person meets the requirements of Chapter Six of the Constitution.

7. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

8. Powers of the Board

(1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

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

- (a) control, supervise and administer the assets of the Institute in such manner as best promotes the purpose for which the Institute is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Institute;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) open such banking accounts for the funds of the Institute as may be necessary;
- (e) invest any funds of the Institute not immediately required for its purposes in the manner provided in section 19;
- (f) establish such directorates, departments and regional centres of the Institute to deal with such specific matters as may be necessary; and
- (g) undertake any activity necessary for the fulfilment of any of the functions of the Institute.

(3) Without prejudice to the generality of paragraph (f) of subsection (2), the Institute shall decentralize its services to all sub-counties of the County.

Remuneration of Board Members and Staff of the Institute

9. The Board shall pay its members and staff such remuneration or allowances as it may determine upon the advice of the Salaries and Remuneration Commission.

Chief Executive Officer

10. There shall be a Chief Executive Officer who shall be appointed by the Board and whose terms and conditions of service shall—

- (a) be determined by the Board, upon the advice of the Salaries and Remuneration Commission;
- (b) be stated in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person has—

- (a) a masters degree in matters relating to cancer from a recognized university;
- (b) at least ten years post qualification managerial working experience.

(3) The Chief Executive Officer shall—

- (a) be the secretary to the Board; and
- (b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Institute.

Staff of the Institute

11. The Institute may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Delegation by the Board

12. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Institute, the exercise of any of the powers or the performance of any of the functions or duties of the Institute under this Act or under any other written law.

Protection from Personal Liability

13. (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Institute of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power

conferred by this Act or by failure, whether wholly or partially, of any works.

Common Seal

14. (1) The common seal of the Institute shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Institute shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

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

PART III—FINANCIAL PROVISIONS

Funds of the Institute

15. (1) The funds of the Institute shall comprise—

- (a) grants, gifts or donations that the Institute may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions.
- (b) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law;
- (c) all monies from any other lawful source provided for or donated or lent to the Board; and
- (d) such sums as may be appropriated by the County Assembly for the purposes of the Institute.

(2) The funds of the Institute and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes for which the Institute is established.

- (3) The Funds under this section shall be managed in accordance with the Public Finance Management Act (2012).

Financial Year

16. The financial year of the Institute shall be the period of twelve months ending on the thirtieth of June in each year.

Annual Estimates

17. (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 Institute for that year.

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

- (a) the payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Institute;
- (b) the payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Institute;
- (c) the proper maintenance of the buildings and grounds of the Institute;
- (d) the maintenance, repair and replacement of the equipment and other property of the Institute; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(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 County Executive Committee for approval and after the County Executive Committee's approval, the Board shall not increase the annual estimates without the consent of the County Executive Committee.

Accounts and Audit

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

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Institute together with—

- (a) a statement of the income and expenditure of the Institute during that year; and

(b) a balance sheet of the Institute on the last day of that year.

(3) The accounts of the Institute shall be audited and reported upon in accordance with the Public Audit Act, 2015.

PART IV—CANCER REGISTRY

Cancer Register

19. (1) The Institute shall cause to be kept and maintained a County Cancer Register containing the particulars specified under subsection (2).

(2) The Register shall contain particulars on—

(a) the incidence, preference, trends, type and geographical location of which due notification has been given pursuant to section 21;

(b) institutions, associations and organizations, including those controlled and managed by the national, and county governments, that provide care and treatment services for persons with cancer; and

(c) such other matters as the Board may prescribe.

(3) All particulars under subsection (1) and changes in such particulars shall be entered in the Register by the Chief Executive Officer as soon as is practicable after receiving notification thereof.

(4) The Chief Executive Officer may supply a copy of any entry in the Register upon payment of such fee as the Board may prescribe.

Notification of Institute

20. (1) Every medical institution shall, as soon as reasonably practical after making a diagnosis of cancer on a person, deliver a notification to the Institute for purposes of section 20(2)(a).

(2) A notification under subsection (1) shall—

(a) be in such form as may be prescribed;

(b) specify the type and geographical location of persons with the cancer;

(c) not disclose the name of the person with cancer unless with the consent of the person or his guardian where such person is a minor;

(d) be given not later than sixty days after the diagnosis.

(3) Any person who contravenes the provision of this section commits an offence.

Alteration of Register

21. (1) The Board may, at any time, direct that correction be made in respect of any entry which has been incorrectly or fraudulently made.

PART V—MISCELLANEOUS PROVISIONS**Consent to Research**

22. (1) No person shall undertake any cancer related human biomedical research on another person or on any tissue or blood removed from such person except—

- (a) with the written informed consent of that other person; or
- (b) if that other person is a child, with the written informed consent of a parent or legal guardian of the child;
- (c) If that person is incapacitated by infirmity, by the legal guardian.

(2) The person whose consent is sought to be obtained under subsection (1) shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

(3) A person who contravenes any of the provisions of this section commits an offence.

General Penalty

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

Power to make Regulations

24. The Executive Member may make such regulations as may be necessary for the implementation of this Act.

Reporting

25. The Board shall prepare an annual report on the progress of the implementation of this Act, and table the same before the County Executive Committee, which shall deliberate on and forward the same to the County Assembly.

SCHEDULE

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

Tenure of office

1. The Chairperson or a member of the Board other than *ex officio* members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further and final term of three years.

Appointment

2. The Chairperson and Members of the Board, shall be competitively recruited and appointed by the Governor.

Vacation of office

3. A member of the Board other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing, in the case of the Chairperson, to the Governor, and in the case of any other member, to the Executive Member;
- (b) be removed from office by the Governor or the Executive member as the case may be, if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) commits an act or acts of gross misconduct;
 - (v) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (vi) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
 - (vii) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
 - (viii) fails to comply with the provisions of this Act relating to disclosure; or
 - (ix) is otherwise unable or unfit to discharge his or her functions as member of the Board.

Vice-Chairperson

4. At the first meeting of the Board, the members shall elect a vice-Chairperson, from among the members appointed under this Act.

Meetings

5. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

Notice of meeting

6. Other than in the case of a special meeting or unless three quarters of members agree, every member of the Board shall be given at least seven days written notice of every meeting of the Board.

Quorum

7. The quorum for the conduct of business of the Board shall be half of total members including the Chairperson or the person presiding; and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

Chairperson to preside

8. The Chairperson shall preside over all meetings of the Board in which he or she is present, but in his or her absence, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members present shall elect one of their members who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson

Committees of the Board

9. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

MEMORANDUM OF OBJECTS AND REASONS

Cancer is a significant cause of mortality worldwide with approximately 14 million new cases diagnosed in 2012. In Kenya, cancer is the 3rd leading cause of death after infectious and cardiovascular diseases, with an estimated 40,000 new cancer cases and 28,000 cancer deaths occurring each year. In Meru County an estimated 1,633 new cancer cases occurred between 2015 and 2016, and this number increases each year.

Cancer incidence is expected to rise by 70% in the next 20 years, with a majority of cases occurring in low-and middle-income populations. The burden of cancer is huge with financial, physical and emotional burdens placed on families and caregivers of cancer patients. This is compounded by a severely limited capacity to provide the necessary health care. Late-stage presentation and inaccessible diagnosis and treatment are also common.

Article 43 of the Constitution of Kenya, 2010 confers on every person the right to the highest attainable standard of health, which includes the right to health care services. With the devolution of health services, counties have a bigger responsibility in prioritization, planning and allocation of resources based on their unique needs. The development, review and monitoring of policies that enable coordination of cancer diagnosis, registration and surveillance is thus critical to the protection of this right for the people of Meru County.

To this end, the County Government of Meru, through this Bill, seeks to provide a legal framework for establishment of the Meru County Cancer Institute, as well as establishing hospital-based cancer registries in cancer treatment facilities in Meru County.

This will go a long way in reducing cancer incidence and mortality; and increasing cancer down-staging and survival rate in Meru County through primary prevention and early detection, quality diagnostics, treatment and the improvement of the quality of life for cancer patients in the county.

PART I of the Bill provides for preliminary provisions. This Part provides for the purpose of the Bill as the establishment of the Meru County Cancer Institute to provide education and training in health services; and for matters connected therewith and incidental thereto.

PART II of the Bill sets out the Administrative provisions of the Act. The Part provides for the establishment of the Meru County Cancer Institute, functions of the Institute and prescribes creation of a Board of Trustees to manage the affairs of the Institute. The mode of appointment

and powers of the Board as well as the Chief Executive Officer of the Institute are highlighted.

PART III of the Bill provides for financial provisions, which include a provision on funds for the administration of this Act. It also looks at auditing of the accounts to ensure fiscal responsibility.

PART IV of the Bill provides for the establishment of a County Cancer Register, notification of all cancer diagnosis to the Institute and alteration of the Register.

PART V of the Bill provides for miscellaneous provisions which includes the requirement of obtaining consent from persons with cancer to carry out cancer research, general penalty for offences committed against the Act, the Executive Member's power to make regulations and reporting on the progress of the implementation of the Act.

The enactment of this Bill will result in additional expenditure of public funds to be provided for through the annual budget estimates.

Dated the 22nd October, 2019.

MARTIN MWORIA MUTHURI,
Chairperson, Sectoral Committee on County Health Services.