

THE MOMBASA COUNTY HEALTH BILL, 2017

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THE MOMBASA COUNTY HEALTH BILL, 2017

A Bill for

**AN ACT of the County Assembly of Mombasa to provide
for the regulation and management of health
care services and for connected purposes.**

ENACTED by the County Assembly of Mombasa as follows—

PART 1— PRELIMINARY

Short title. 1. This Act may be cited as the Mombasa County
Health Act, 2017.

Interpretation 2. In this Act—

“alternative medicine” means complementary
medicine and includes a broad set of health care practices
that are not part of that Country’s own tradition and are not
integrated into the dominant health care system;

“Community health unit” means is a health service
delivery structure within a defined geographic area covering
a population of approximately five thousand people.

“County Executive Member” means the County
Executive Committee Member for the department
responsible for matters relating to health;

“disaster” means but is not limited to an adverse
situation or event, which overwhelms local capacity for
response and recovery, necessitating external assistance;

“disease” refers to any physical or mental condition that causes pain, dysfunction, distress, social problems or death to the person afflicted or similar problems for those in contact with the person;

“e-Health” means the combined use of electronic communication and information technology in the health sector;

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

“health” refers to a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

“health care professional” includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;

“health care services” means the prevention, promotion, management or alleviation of disease, illness, injury, and other physical and mental impairments in individuals, delivered by health care professionals through the health care system’s routine health services, or its emergency health services;

“health facility” means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;

“health technology” refers to the application of

organized knowledge and skills in the form of devices, medicine, vaccines, procedures and systems developed to solve a health problem and improve the quality of life;

“health unit” includes a hospital , nursing home, convalescent home, maternity home, health centre, dispensary, clinic or other institution where health services are rendered, either free or on payment of fees.

“informed consent” refers to a process of getting permission before conducting a health care prevention on a person;

“medical emergency” means an acute situation of injury or illness that poses an immediate risk to life or health of a person or has potential for deterioration in the health of a person or if not managed timely would lead to adverse consequences in the well-being;

“private health services” means provision of health services by a health facility that is not owned by the national or county governments and includes health care services provided by individuals, faith-based organizations and private health institutions;

“public health services” means health services owned and offered by the county government;

“referral” means the process by which a given health facility transfers a client service, specimen and client parameters to another facility to assume responsibility for consultation, review or further management;

“research for health” includes but is not limited to research which seeks to contribute to the extension of knowledge in any health related field, such as that concerned with the biological, clinical, psychological or

social processes in human beings improved methods for the provision of health services; or human pathology; or the causes of disease; or the effects of the environment on the human body; or the development or new application of pharmaceuticals, medicines and other preventative, therapeutic or curative agents; or the development of new applications of health technology;

“risk” means probability or threat of damage, injury, liability, loss or any other negative occurrence caused by external or internal vulnerabilities that may be avoided through pre-emptive action; and

“traditional medicine” includes the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness..

Objects of the Act.

3. The object of this Act is to-

- (a) promote access to health;
- (b) establish a county health system which encompasses public and private institutions and providers of health services in the county and facilitate in a progressive and equitable manner, the highest attainable standard of health services;
- (c) protect, respect, promote and fulfill the health rights of all persons in the County to the progressive realization of their right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment;

Principles of
health service
delivery.

4.(1) Health services shall be available, accessible, acceptable, affordable and of good quality and standard;

(2) Every person shall have the right to be treated with dignity, respect and have their privacy respected in accordance with the Constitution and this Act.

PART II –ADMINISTRATION AND MANAGEMENT OF HEALTH SERVICES

Establishment of
health facilities

5. There shall be—
(a) at least one county hospital
(b) at least one sub county hospital in each sub county
(c) at least one health centre in each ward
(d) such number of dispensaries and community health units in each ward as may be necessary

Establishment and
composition of the
County Health
Board

6.(1) There is hereby established the County Health Board.
(2) The board referred to in subsection (1) above shall consist of—

- (a) a chairperson appointed by the Governor
- (b) the county executive member for the time being responsible for matters relating to health services or his representative duly nominated by him in writing whom shall be an *ex-officio* member;
- (c) chief officer for the time being responsible for finance or his representative duly nominated by him in writing whom shall be an *ex-officio* member;

- (d) chief officer for the time being responsible for health or his representative duly nominated by him in writing whom shall be an *ex-officio* member;
- (e) County director of health who will be the secretary who shall be the secretary; and
- (f) seven persons of whom two shall be women appointed by the Governor and of whom;
 - (i) one shall be appointed by virtue of his or her knowledge or experience in financial management
 - (ii) one shall be appointed by virtue of his or her knowledge or experience in health care delivery management
 - (iii) one shall be appointed by virtue of his or her expertise and experience as a medical practitioner
 - (iv) one person nominated by a health non-governmental organizational network in the county appointed by the Governor
 - (v) one person nominated by faith based organization or network in the county appointed by the Governor
 - (vi) one person from the business community appointed by the Governor; and
 - (vii) one person from the special interest groups appointed by the Governor.

(3) A person shall not be nominated and appointed to the board by the Governor under subsection (2)(a) unless the person;

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) meets the requirements of chapter six of the constitution; and
- (d) has at least ten years experience in matters relating to the provision of public services.

Term of office (5) The term of office of members of the board unless ex-officio shall be three years which may be renewed for one term.

Functions of the board 7. (1) The Board shall be responsible for—

- (a) approving the county consolidated health budgets and work plans prepared before submission to the county executive member responsible for matters relating to health;
 - (b) ensure equitable distribution of resources to the health facilities;
 - (c) review and approve annual financial and non financial statements and reports before submission to the chief officer responsible for the time being for matters relating to health; and
 - (d) providing oversight over the administration of health facilities and units in the county;
- (2) The County Health Management Board may delegate one or more of its functions to an appropriate person where

it deems necessary

(3) The Chairperson of the Health management board may appoint special/ad hoc committees to deal with urgent matters relating to hospital operations when necessary to assist the board in the management of some of its responsibilities.

(4) Members of a special/ad hoc committee need not be members of the board and the tenure of this committee shall be specified upon its appointment.

County Board committees	Health Sub-	8. The County Health Management Board shall have the following sub-committees
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- (i) Executive sub-committee which shall be an ad hoc committee
- (ii) Finance and general purpose sub-committee
- (iii) Quality of health care services sub-committee

Executive committee	sub-	9.(1) The Executive sub-committee shall consist of—
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- (a) chairperson
- (b) vice chairperson
- (c) secretary
- (d) chairpersons of the Finance and General purpose and Quality of health care sub committees

(2) The chairperson of the County Health Management Board shall serve as the executive sub-committee chairperson.

Finance and
General purpose
sub-committee

10.(1) The Finance and General purpose sub-committee shall consist of not more than five persons of whom at least two shall be members of the County Health Management Board.

(2) The members shall elect a chair to the sub-committee who shall be a member of the County Health Management Board.

(3) It shall be the duty of the finance sub-committee to review the annual operating and capital budgets; to review the fiscal management in the hospitals and its assets and liabilities and to move recommendations relating thereto to the County Health Management Board and to perform such other duties as may be assigned by the board

Quality of Health
care services sub-
committee

11.(1) The Quality of health care services sub-committee shall consist of not more than five persons of whom at least two shall be members of the County Health Management Board. The other members shall be drawn from the various hospital departments.

(2) The members shall elect a chair to the sub-committee.

(3) It shall be the duty of the Quality of health care services sub-committee to establish and maintain an effective hospital-wide quality improvement programme, which is broad in scope and measures, assesses, and improves the performance of the hospital and its quality and appropriateness of services.

(4) The committee shall review the hospital quality assessment reports and make recommendations for improvement where problems are identified to the board;

(5) The committee may co-opt not more than three members from the hospital departments as and when necessary.

Establishment and
composition of the
Hospital
Management
Board

12. (1) There is established the Hospital Management board which will work as the link between the Hospital and the community itself.

(2) The board referred to in subsection (1) above shall comprise of—

(a) a chairperson appointed by the Governor on the recommendation of the County Executive member responsible for health

(b) the area officer in charge of county health services for level five or level four hospitals who shall be the secretary;

(c) three persons appointed by the Governor who shall be residents of the area of jurisdiction from the following categories;

(i) accounting officer responsible for matters relating to health

(ii) one person nominated by women groups

(iii) one person nominated by a persons with disabilities organization within the county

(iv) one person nominated by professional organization within the county or sub county.

(3) The vice chairperson shall be elected by the appointed members during their first meeting

(4) A person shall not be nominated and appointed to the board by the Governor under subsection (2) unless the person;

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) meets the requirements of chapter six of the constitution; and
- (d) has at least five years experience in matters relating to the provision of public services.

Functions of the
Hospital
Management
Board

13. The Hospital Management Board shall be responsible for—

- (a) providing oversight to the hospital management team to improve the health status of the community;
- (b) providing necessary checks and balances for the use of all resources available to the hospital;
- (c) making decisions that will improve the hospital, ensure continuity while keeping in line with county government policies;
- (d) projecting the expected annual user fees income, and any other expected income;
- (e) overseeing the prudent utilization and reporting of all resources under their responsibility;
- (f) preparing work plans and budgets

Establishment and Composition of Health Facility Committee	14. There is established the Health Facility Committee which shall comprise of— (a) Chief of the area who shall be an <i>ex officio</i> member (b) Representative of ward administration shall be an <i>ex officio</i> member (c) The officer in charge of the health facility who shall be the secretary (d) The following persons who shall be residents of the health facility catchment area, elected by the community and appointed by the Governor; (i) One person who shall have knowledge and experience in finance and administration matters who shall be with the chairperson (ii) One person to represent the women's groups (iii) One person to represent the youth's groups (iv) One person to represent recognized community based organizations (v) One person to represent persons with disabilities (vi) One person to represent interest groups(vulnerable and marginalized communities, minorities) of whom one shall be a woman
Term of Office	15. The members shall serve for a term of three years which shall be renewable for one term and the chairperson shall serve for a term of five which is not renewable.
Functions	16. The functions of the health facility committee shall be— (a) Oversee the general operations and management of

- the health facility
- (b) Represent, articulate and communicate community interests on matters pertaining to health services at the facility
 - (c) Oversee the administration of the funds allocated to the facility
 - (d) Approve prepared health facility work plans and budget based on estimated expenditures
 - (e) Provide oversight on basic books of accounts and records of accounts of the income, expenditure, assets and liabilities of the facility according to the existing laws and regulations
 - (f) Approve and facilitate timely submission of periodic financial and performance reports to the county director of health and sub-county health management team
 - (g) Keep a record of all deliberations
 - (h) Facilitate feedback process to the community, pertaining to the operations and management of the health facility
 - (i) Ensure safe and good working environment that motivates staff for health service delivery in the health facility

PART III - RIGHTS AND DUTIES

Reproductive health.

15. (1) Every person has a right to reproductive health care which includes—

- (a) the right of men and women of reproductive age to be informed about, and to have access to reproductive health services including to

safe, effective, affordable and acceptable family planning services, except elective abortions;

- (b) access to treatment by a trained health professional for conditions occurring during pregnancy including abnormal pregnancy conditions, such as ectopic, abdominal and molar pregnancy, or any medical condition exacerbated by the pregnancy to such an extent that the life or health of the mother is threatened. All such cases shall be regarded as comprising notifiable conditions.

(2) For the purposes of subsection (1) (b), the term “a trained health professional” shall refer to a health professional with formal medical training at the proficiency level of a medical officer, a nurse, midwife, or a clinical officer.

(3) Any procedure carried out under subsection (1) (a) or (1) (b) shall be performed in a legally recognized health facility with an enabling environment consisting of the minimum human resources, infrastructure, commodities and supplies for the facility as defined in the norms and standards developed under this Act.

Emergency
treatment.

15. (1) Every person has the right to emergency medical treatment.

(2) No person shall be denied emergency treatment by the health service provider of first contact.

(3) For the purposes of this section, emergency medical treatment shall include-

- (a) pre-hospital care;

- (b) stabilizing the health status of an individual; or
- (c) arranging for referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

(4) Any person in charge of a health care provider who fails to provide emergency medical treatment while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding one million shillings or imprisonment for a period not exceeding twelve months or both.

Health
information.

16. (1) Every health care provider shall inform a user or, where the user of the information is a minor or incapacitated, inform the guardian of the -

- (a) user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user;
- (b) range of promotive, preventive and diagnostic procedures and treatment options generally available to the user;
- (c) benefits, risks, costs and consequences generally associated with each option; and
- (d) user's right to refuse recommended medical options and explain the implications, risks,

and legal consequences of such refusal.

(2) The health care provider concerned must, where possible, inform the user as contemplated in subsection (1) in a language that the user understands and in a manner which takes into account the user's level of literacy.

(3) Where the user exercises the right to refuse a treatment option, the health provider may at its discretion require the user to confirm such refusal in a formal manner.

(4) In this section, the word "user" refers to any person who seeks or intends to seek medical care from a health care provider and the expression "health care provider" includes any health facility.

Consent.

17. (1) No specified health service may be provided to a patient without the patient's informed consent unless-

- (a) the patient is unable to give informed consent and such consent is given by a person -
 - (i) mandated by the patient in writing to grant consent on his or her behalf; or
 - (ii) authorized to give such consent in terms of any law or court order;
- (b) the patient is unable to give informed consent and no person is mandated or authorized to give such consent, but the consent is given by the next of kin;
- (c) the provision of a health service without informed consent is authorized by an

applicable law or court order;

- (d) the patient is being treated in an emergency situation;
- (e) failure to treat the user, or a group of people which includes the user, will result in a serious risk to public health; or
- (f) any delay in the provision of the health service to the patient might result in his or her death or irreversible damage to his or her health and the patient has not expressly, or by implication or by conduct refused that service.

(2) A health care provider must take all reasonable steps to obtain the user's informed consent.

(3) For the purposes of this section "informed consent" means consent for the provision of a specified health service given by a person with legal capacity to do so and who has been informed as provided for in this section.

Confidentiality.

18. (1) Information concerning a user, including information relating to his or her health status, treatment or stay in a health facility is confidential except where such information is disclosed under order of court or informed consent for health research and policy planning purposes.

(2) Subject to the Constitution and this Act, no person may disclose any information contemplated in subsection (1) unless-

- (a) the user consents to such disclosure in writing;

- (b) a court order or any applicable law requires such disclosure; or
- (c) non-disclosure of the information represents a serious threat to public health.

(3) Any proposed disclosure of information under subsection 2 (c), shall be subject to regulations published by the County Executive member responsible for health, from time to time

Healthcare providers.

19. (1) The rights and duties of healthcare providers shall include -

- (a) not to be unfairly discriminated against on account of their health status;
- (b) the right to a safe working environment that minimizes the risk of disease transmission and injury or damage to the health care personnel or to their clients, families or property;
- (c) the right to refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her except in an emergency situation where no alternative health care personnel is available;
- (d) the right to apply for and accept a salaried post in the public service or the private sector.

(2) All healthcare providers, whether in the public or private sector, shall have the duty -

- (a) to provide health care, conscientiously and to

the best of their knowledge within their scope of practice and ability, to every person entrusted to their care or seeking their support;

- (b) to provide emergency medical treatment as provided for under section 15;
- (c) to inform a user of the health system, in a manner commensurate with his or her understanding, of his or her health status:

Provided that where this would be contrary to the best interests of the user, then in such cases, the requisite information should be communicated to the next of kin or guardian as case may be.

Duty of users

20. A user of the health system has the duty, in so far as it is within users -

- (a) to adhere to the rules of a health facility when receiving treatment or using the health services provided by the establishment;
- (b) to adhere to the medical advice and treatment provided by the establishment;
- (c) to supply the healthcare provider with accurate information pertaining to his or her health status;
- (d) to cooperate with the healthcare provider;
- (e) to treat healthcare providers and health workers with dignity and respect;
- (f) if so requested, to sign a discharge certificate or

release of liability if he or she refuses to accept or implement recommended treatment.

Complaints.

21. (1) Any person has a right to file a complaint about the manner in which he or she was treated at a health facility and have the complaint investigated appropriately.

(2) The County Executive Member in charge of health shall establish and publish the procedure for the laying of complaints within public and private health care facilities in those areas of the county health system for which they are responsible.

(3) The procedures for laying complaints shall-

(a) be displayed by all health facilities in a manner that is visible for any person entering the establishment; and

(b) be primarily handled by the head of the relevant facility or any person designated by the facility as responsible for handling user complaints.

(4) Every complainant under subsection (1) has a right to be informed, in writing and within a period of three months from the date the complaint was lodged, of the action taken or decision made regarding the complaint.

(5) Where a health facility fails to resolve a complaint to the satisfaction of the complainant, the County Executive Member in charge of health shall take necessary action.

Duties of county government.

22. (1) The county government shall –

- (a) offer technical support with emphasis on health system strengthening;
- (b) develop and implement measures to promote equitable access to health services within the county, with special emphasis on eliminating the disparity in realization of the objects of this Act;
- (c) develop and promote application of norms and standards for the development of human resources for health including affirmative action measures for health workers working in hard to reach areas;
- (d) provide for medical audit of deaths with a special emphasis on maternal and neonatal deaths as a tool for the further development of obstetric and neonatal care;
- (e) develop, through regulatory bodies, standards of training and institutions providing education to meet the needs of service delivery;
- (f) through respective regulatory bodies to develop and ensure compliance on professional standards on registration and licensing of individuals in the health sector;
- (g) coordinate development of standards for quality health service delivery;
- (h) coordinate all health aspects of disaster and emergencies;
- (i) ensure through intergovernmental mechanisms that financial resources are mobilized to ensure uninterrupted access to quality health services

country wide;

- (j) promote the development of public and private health institutions to ensure their efficient and harmonious development and in the common interest work towards progressive achievement of the right to health;
- (k) provide for the development and expansion of a county health information management system;
- (l) facilitate all forms of research that can advance the interests of public health;
- (m) promote the use of appropriate health products and technologies for improving the quality of health care;
- (n) collaborate in the common interest with the health authorities of other counties, countries and with national, regional and international bodies in the field of health; and
- (o) provide policy guidelines in public-private partnerships for health to enhance private sector investment.

(2) The County Executive Member responsible for Health shall make regulations on any matter where it is necessary or expedient in order to implement any provision of this Act;

Duties of county
government
department for
health.

23. The county government department responsible for health shall, in furtherance of the functions assigned to it under the Fourth Schedule of the Constitution be responsible for—

- (a) implementing the national and county health policies and standards as laid down by national government and county department responsible for health;
- (b) service delivery, including the maintenance, financing and further development of those health services and institutions that have been devolved to it;
- (c) coordination of health activities in order to ensure complementary inputs, avoid duplication and provide for cross-referral, where necessary to and from institutions in other counties;
- (d) procuring and managing health supplies;
- (e) maintaining standards of environmental health and sanitation as laid down in applicable law;
- (f) providing access and practical support for monitoring standards compliance undertaken within the county by the national government department responsible for health and professional regulatory bodies established under any written law;
- (g) providing access and practical support for technical assistance, monitoring and evaluation, research for health by the national and county government department responsible for health;
- (h) developing supplementary sources of income for the provision of services, in so far as these are compatible with the applicable law;

- (i) reporting, according to standards established by law, on activities, development and the state of finance within the county health services;
- (j) making known to the public at all times the health facilities through which generalized or specialized services are available to them;
- (k) developing and promoting public participation in the planning and management of local health facilities so as to promote broad ownership;
- (l) ensuring and coordinating the participation of communities in the governance of health services at the county level so as to promote a participatory approach in health care governance.

Coordination.

24. The county health system shall work in a manner that respects the distinct levels of government, while respecting the principles of cooperation and coordination as outlined in this Act and in legislation regulating the relationships and functions of the county and national government.

Public health facilities.

25. The county government shall ensure the progressively equitable distribution throughout the county of such publicly owned health institutions, including hospitals, health centers, pharmacies, clinics and laboratories, as are deemed necessary for the promotive, preventive and rehabilitative health services.

PART IV - PROMOTION AND ADVANCEMENT OF PUBLIC AND ENVIRONMENTAL HEALTH

Public and
environmental
health.

26. (1) The County health system shall devise and implement measures to promote health and to counter influences having an adverse effect on the health of the people including—

- (a) interventions to reduce the burden imposed by communicable and non-communicable diseases and neglected diseases, especially among marginalized and indigent population;
- (b) interventions to promote healthy lifestyle including physical activity, counter the excessive use of alcoholic products and the adulteration of such products, reduce the use of tobacco and other addictive substances and to counter exposure of children and others to tobacco smoke;
- (c) the promotion of supply of safe foodstuffs of sufficient quality in adequate quantities and the promotion of nutritional knowledge within the county;
- (d) general health education of the public;
- (e) a comprehensive programme to advance reproductive health including—
 - (i) effective family planning services;
 - (ii) implementation of means to reduce unsafe sexual practices;
 - (iii) adolescence and youth sexual and reproductive health;

- (iv) maternal and neo- natal and child health;
- (v) elimination of female genital mutilation;
and
- (vi) maternal and child nutrition and micro
nutrient supplementation.

(2) The county health system shall ensure that measures for managing environmental risk factors to curtail occurrence and distribution of diseases are put in place and implemented. In particular such measures shall target—

- (a) the reduction of disease burden arising from poor environmental hygiene, sanitation, occupational exposure and environmental pollution;
- (b) the reduction of morbidity and mortality of waterborne, foodborne and vector transmitted diseases, and mitigate the health effects of climate change;
- (c) the reduction of morbidity, mortality, prolonged hospital stays, long-term disabilities, antibiotic resistance that emanate from health care acquired infections;
- (d) the strengthening of county capacity to address or forestall transmission of diseases of international concern; and
- (e) building community capacity in providing solutions to public health challenges.

Policies.

27. (1) Pursuant to meeting the objects of this Act, the county government department of health may formulate

strategic and operation policies that shall provide for measures that may include—

- (a) ensuring and promoting the provision of quarantine especially in ports, borders and frontiers health services;
- (b) ensuring that food and water available for human consumption are hygienic and safe;
- (c) ensuring houses, institutions, hospitals and other public places maintain environment to the highest level of sanitation attainable to prevent, reduce or eliminate environmental health risks;
- (d) developing risk-based, sustainable, integrated food safety systems, occupational health practices, water safety systems, appropriate housing, and vector and vermin control;
- (e) strengthening infection prevention and control systems including health care waste management in all health facilities;
- (f) mobilizing resources including human resources for action;
- (g) promoting the public health and the prevention, limitation or suppression of preventable diseases including communicable and non-communicable diseases;
- (h) ensuring provision of environmental health and sanitation mechanisms to prevent and guard against the introduction of infectious disease into Kenya from outside;

- (i) dissemination of public health guidelines within the county in regard to matters affecting the public health from the environment and sanitation;
- (j) promoting disease surveillance in connection with the prevention of environmental, food, water and sanitation related diseases; and
- (k) addressing all issues pertaining to environmental hygiene and sanitation.

PART V - TRADITIONAL AND ALTERNATIVE MEDICINE

Promotion of
practice.

28. (1) The county government department of health shall formulate policies to guide the practice of traditional and alternative medicine.

(2) The county executive department for health shall ensure implementation of any policies thereto.

Documentation
and mapping.

29. The county department for health shall institute measures for documentation and mapping of traditional and alternative medicine practice.

Standardization.

30. The county government department for health shall, in consultation with key stakeholders develop policies for standardization of traditional and alternative medicine practice.

Referral.

31. The county government department of health may develop policy guidelines for referral mechanisms and a system of referrals from practitioners of traditional and

alternative medicine to conventional health facilities and may prescribe regulations for incidental and connected purposes which shall be implemented within the county.

PART VI - HUMAN ORGANS AND POST-MORTEM

Human organs
transplantation.

32. (1) No person shall remove tissue from a human being for transplantation in another human being or carry out the transplantation of such tissue except -

(a) in a duly authorized health facility for that purpose; and

(b) on the written authority of -

(i) the medical practitioner in charge of clinical services in that health facility or any other medical practitioner authorized by him or her; or

(ii) in the case where there is no medical practitioner in charge of the clinical services at that health facility, a medical practitioner authorized by the person in charge of the hospital.

(2) The medical practitioner mentioned in subsection (1) (b) shall not be the lead participant in a transplant for which he or she has granted authorization under that subsection.

(3) The County Executive Member shall in consultation with the relevant specialist prescribe through regulations-

(a) the criteria for the approval of organ transplant

facilities; and

(b) the procedural measures to be applied for such approval.

(4) Any person who contravenes the provision of this section or who charges a fee for a human organ commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a period not exceeding ten years or to both a fine and imprisonment.

Postmortem.

33. (1) Subject to subsection (2), a post mortem examination of the body of a deceased person may be conducted if -

- (a) the person when alive gave written consent thereto;
- (b) the spouse, partner, major child, parent, guardian, major brother or major sister of the deceased, in the specific order mentioned, gave consent thereto; or
- (c) such an examination is necessary for determining the cause of death.

(2) A post mortem examination may not take place unless-

- (a) the medical practitioner in charge of clinical services in the hospital or authorized institution or of the mortuary in question, or any other medical practitioner authorized by such practitioner; or

(b) in the case where there is no medical practitioner in charge of clinical services, a medical practitioner authorized by the person in charge of such hospital or authorized institution, authorizes the post mortem examination in writing and in the prescribed manner.

PART VII - HEALTH FINANCING

Health finance.

34. (1) The Department of health shall ensure progressive financial access to universal health coverage by taking measures that include—

- (a) developing mechanisms for financial and risk pooling to progressively reduce the out of pocket expenditure;
- (b) developing mechanisms for an integrated health insurance system, including making provisions for social health protection and health technology assessment;
- (c) establishing in collaboration with the department responsible for finance oversight mechanism to regulate all health insurance providers;
- (d) developing policies and strategies that ensure realization of universal health coverage;
- (e) defining, in collaboration with the department responsible for finance, public financing of health care framework, including annual allocations towards reimbursing all health care

providers responding to disasters and emergencies as contemplated under this Act;

- (f) establishing in collaboration with the departments responsible for finance, planning and any other relevant department to secure health care for vulnerable groups and indigents;
- (g) determining, during each financial period and in consultation with individual county authorities, cost sharing mechanisms for services provided by the public health system without significantly impeding the access of particular population groups to the system in the areas concerned;
- (h) examining means of optimizing usage of private health services as a result of relieving the burden carried by the publicly financed system; and
- (i) establishing a harmonized common mechanism for coordinating planning and financing and monitoring and evaluation within the health sector.

Bank account.

35. (1) The County Treasury shall facilitate the opening and maintenance of a bank account for purposes of operationalizing conditional grants, donations and any other monies for every health unit and facility in the county in line with public financial management Laws.

(2) The department of health may open an account for purposes of use as appropriation in aid and shall account for

such monies in the county annual budget.

PART VIII - THE PRIVATE SECTOR PARTICIPATION

Private health
services.

36. (1) The County Executive Committee Member shall pursue strategies conducive to the development of private health services and their attunement to the needs of the population.

(2) The public and private health services and facilities shall complement each other in the provision of comprehensive and accessible health care to the people.

Licensing of
private entities to
operate hospitals,
clinics.

37. (1) Private entities shall be permitted to operate hospitals, clinics, laboratories, pharmacies and other institutions in the health sector, subject to licensing by the appropriate regulatory bodies.

(2) The standards to be met in order to qualify for the issue of an operational licence under this section shall be as defined in regulations issued under this Act by the County Executive Member.

Private health
workers.

38. Private health workers appropriately qualified to practice any health profession shall similarly be entitled to practice their profession in the county, subject to licensing by the appropriate regulatory bodies.

Duty of licensees.

39.(1) Institutions and private health workers licensed shall irrespective of any specific conditions attached to such a licence be bound -

- (a) to permit and facilitate inspection at any time by the county and regulatory bodies;
- (b) to provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.

(2) Any person in charge of a health care institution or private health worker that neglects or fails to comply with the provision of subsection (1) of this section commits an offence and on conviction shall be liable to imprisonment for a term of six months or to a fine not exceeding five hundred thousand shillings or to both.

PART IX – HEALTH INFORMATION SYSTEMS

E-health.

40. (1) E- Health shall be a recognized mode of health service.

(2) The Executive Committee Member for the time being responsible for Health shall adopt such appropriate electronic system for the purposes of implementing this Act.

Health
information
system.

41. (1) The county department of health shall regulate the establishment and maintenance of a comprehensive health information system.

(2) The County Executive Member may, for the purpose of creating, maintaining or adapting databases within the county health information system desired in subsection (1), prescribe categories or kinds of data for

submission, collection and the manner and format in which and by whom the data is to be compiled or collated and submitted to the department of health.

(3) All health care providers shall establish and maintain a health information system as part of the health information system specified under subsection (1);

(4) Any person in charge of a health care institution that neglects or fails to comply with the provision of subsection (3) of this section commits an offence and on conviction shall be liable to imprisonment for a term of six months or a fine of five hundred thousand shillings or to both.

PART X - COLLABORATION

Collaboration.

42. While the County Executive Member responsible for health shall bear primarily responsibility for the implementation of the provisions of this Act, it is recognized that in certain matters there is a need for collaboration, consultation and agreement between different arms of Government in the interpretation of the law, the introduction of regulations and the further development and adaptation of legislation.

Fields of
collaboration.

43. The fields in which the need for collaboration, consultation and cooperation shall include, though not exclusively, those that deal with matters relating to—

- (a) workers' health;
- (b) health aspects of environmental protection;

- (c) issues of animal health;
- (d) professional education and training;
- (e) public education;
- (f) financing of health services; and
- (g) bio-medical sciences and research.

PART XI - TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Existing laws.

44. (1) Except to the extent that this Act expressly provides to the contrary, all rights and obligations, however arising, of the county government and subsisting immediately before the effective date shall continue as rights and obligations of the county government as assigned under this Act.

(2) Any law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Act.

(3) If, with respect to any particular matter—

- (a) a law that was in effect immediately before the effective date assigns responsibility for that matter to a particular county organ or public officer; and
- (b) a provision of this Act that is in effect assigns responsibility for that matter to a different county organ or public officer,

the provisions of this Act shall prevail to the extent of the conflict.

Regulations.

45. The County Executive Member shall make regulations generally for the better carrying out of the provisions of this Act and without limiting the generality of the foregoing, the County Executive Member may make regulations for—

- (a) the fees to be paid to access services in a public health facility in consultation with the County Health Board through the Hospital Management Board;
- (b) the norms and standards for health service delivery;
- (c) specified types of protective clothing and the use, cleaning and disposal of such clothing;
- (d) co-operation and interaction between private health care providers and private health establishments on the one hand and public health care providers and public health establishments on the other;
- (e) returns, registers, reports, records, documents and forms to be completed and kept by county health institutions, public health facilities and private health facilities;
- (f) communicable and non-communicable diseases;

- (g) notifiable medical conditions;
- (h) rehabilitation;
- (i) emergency medical services and emergency medical treatment;
- (j) health nuisances and medical waste;
- (k) the import and export of pathogenic micro-organisms;
- (l) health research;
- (m) health technology;
- (n) the county health information system;
- (o) the documentation of traditional medicines and a database of herbalists;
- (p) the rendering of forensic pathology, forensic medicine and related laboratory services, including the provision of medico-legal services;
- (q) the procurement of health products and health technologies; and
- (r) anything which may be prescribed under this Act.

MEMORANDUM OF OBJECTS

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa County Health Bill, 2017 and its direction that the Bill be introduced in the County Assembly.

2. BACKGROUND

With the advent of devolution, the constitution of Kenya, 2010 distributed functions between the national government and county government and paragraph 2 of the Fourth Schedule includes health services as among the county functions and powers.

This Bill is therefore necessitated by the fact that the Mombasa County Government is desirous of executing one of its mandate as to the extent of county health services.

3. OUTLINE OF THE BILL

PART I

This Part is preliminary. It contains provisions on the name of the proposed Act, interpretation of words used in the Bill and the principles of health service delivery.

PART II

This Part entails the administration and management of health services. It among others, establishes the County Health Management Board, its sub-committees and the Hospital Management Board.

PART III

This part expounds on rights and duties relating to health. The Constitution provides that no person shall be denied emergency medical treatment.

This part therefore inter alia includes emergency treatment, reproductive health care and the right to health information.

PART IV

This part provides for promotion and advancement of public and environmental health which basically involves measures to promote health and counter influences having an adverse effect on the health of people.

PART V

This part recognises the importance of traditional and alternative medicine. Formulation of policies to guide the practice of traditional and alternative medicine is included therein.

PART VI

This part expounds on human organs transplantation practice and how post-mortem should be conducted.

PART VII

This part deals with health financing. The department of health may also open an account for purposes of use as appropriation in aid.

PART VIII

This part contains provisions relating to licensing of private hospitals, clinics and duties of licensees.

PART IX

This part is on e-health. This is necessitated by the need to capture the developments in technology that can positively contribute to health care services while curbing negative developments.

PART X

There is need for coordination amongst the various health professionals so as to harness capacity and enhance relevance of the service to the health industry thus this part touches on interdepartmental collaboration

PART XI

This part is miscellaneous. It contains transitional clauses and gives the county executive committee member to draft regulations.

4. RECOMMENDATIONS

The Assembly is requested to:

- (a) note the contents of this Memorandum;
- (b) That in line with the legislative and constitutional platforms, the relevant house committee commence consultations with the relevant stakeholders and subject the Bill to thorough public participation.

- (c) approve the Mombasa County Health Bill, 2014 annexed to this Memorandum; and

The enactment of this Bill will occasion additional expenditure of public funds which shall be provided in the estimates.

HON KIBWANA BAYA, MCA
CHAIRPERSON, COMMITTEE ON HEALTH SERVICES