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MACHAKOS COUNTY BILLS, 2019

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MACHAKOS COUNTY HEALTH SERVICES BILL, 2019

A Bill for

AN ACT of the County Assembly of Machakos to establish a county services system, to provide for the coordination of the provision of the highest attainable standards of health care, and for connected purposes

ENACTED by the County Assembly of Machakos, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Machakos County Health Services Act, 2019.

Interpretation

2. In this Act—

“Board” means the Machakos County Public Service Board established by Section 57 of the County Governments Act;

“Chief Officer” means the Chief Officer responsible for matters relating to health;

“Commission” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“Committee” means the Machakos County Health Services Committee established under section 4 of this Act;

“County Referral Hospital” means a health institution designated as such under section 20 (e) of the Health Act No. 21 of 2017;

“department” means the county department responsible for matters relating to health and emergency treatment;

“Director” means the County Director of Health specified under section 19(3) of the Health Act No. 21 of 2017;

“Executive Committee Member” means the County executive committee member responsible for matters relating to health;

“Fund” means the County Health Service Fund established under section 25;

“Health Care Provider” has the meaning assigned to it in section 2 of the Health Act;

“Health Facility” has the meaning assigned to it by section 2 of the Health Act;

“Health Facility Committee” means the Health Facility Committee established under Section 11;

“user” means a person who receives health services in a health facility.

Objects and purpose

3. The object of this Act is to—
- (a) facilitate the progressive realization of the highest attainable standards of health care services including reproductive health care and the right to emergency medical treatment;
 - (b) promote access to health care;
 - (c) promote a participatory approach to health care governance;
 - (d) provide for the implementation of the national health policy;
 - (e) establish a county health service system which encompasses public and private institutions and health services providers at the county level;
 - (f) to provide for the protection, respect, promotion and fulfillment of—
 - (i) health rights of all persons in the county;
 - (ii) the rights of children to basic nutrition and health care services contemplated in Articles 43(1) (c) and 53(1)(c) of the Constitution;
 - (iii) the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health; and
 - (iv) the right of people to live in an environment that is not harmful to their health or wellbeing;
 - (g) provide for the liaison between the county government and the national government on the realization of consumer health rights in accordance with article 46 of the Constitution; and
 - (h) set out the rights and duties of health care providers, health workers, health establishments and users.

PART II—ADMINISTRATION

Establishment of Health services Committee

4. (1) There is established a Committee to be known as the Machakos County Health Services Committee.

(2) The Committee shall consist of—

- (a) the Executive Committee Member who shall be the Chairperson;
- (b) the Director who shall be an *ex officio* member and the secretary to the Committee;
- (c) the Chief Officer responsible matters relating to health;
- (d) the Chief Officer responsible matters relating to Finance or a designate not below the level of a Director;
- (e) the person in charge of the County Referral Hospital;
- (f) four persons who ordinarily reside in the county and who have extensive experience and good professional standing; one each from the following fields—
 - (i) public health;
 - (ii) medicine;
 - (iii) nursing;
 - (iv) pharmacy.
- (g) the Executive Committee Member shall, in appointing the persons referred to in paragraph (f) —
 - (i) take into account regional, ethnic and gender diversity and representation of persons with disability persons; and
 - (ii) ensure public participation by making extensive consultations with the relevant stakeholders, community leaders and members of the public.

(3) The persons referred to in subsection (2) (f) shall serve for a term of three years renewable for one further term.

Functions of the Committee

5. The Committee shall—

- (a) oversee the implementation of this Act;
- (b) develop and approve policies, budgets and work plans for the department;
- (c) conduct research on health related matters;
- (d) ensure equitable distribution of resources among the Health Facilities;
- (e) oversee monitoring, evaluation and reporting on health and emergency matters in the county;

- (f) determine, approve and review the policies for administering the Fund;
- (g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in health facilities;
- (h) improve health service provision in Health Facilities;
- (i) establish networks and partnerships with local, national and international institutions and organizations for purposes of achieving the objectives of this Act including research, fund raising and information sharing; and
- (j) undertake such other activities as are necessary for the implementation of this Act.

Functions of the Director

6. (1) In addition to the functions set out in section 19 (5) of the Health Act No. 21 of 2017, the Director shall—

- (a) be the secretary to the Committee;
- (b) be the custodian of the Committee's records;
- (c) be responsible for—
 - (i) the execution of the decisions of the Committee;
 - (ii) preparation and submission to the Committee for approval, programs necessary for the achievement of the Committee's mandate;
 - (iii) causing to be kept records of the proceedings and minutes of the meetings of the Committee and such other records as the Committee may direct;
 - (iv) the preparation of quarterly report on the implementation of this Act which shall be transmitted to the Committee; and
 - (v) the performance of such other duties as may be assigned by the Committee or any other written law.

(2) The Director shall be responsible to the executive committee member and the Committee for the general working and efficient conduct of business of the Committee.

(3) The Committee may delegate to the Director such of its functions as are necessary to carry out the day to day management of the affairs of the Committee.

Sub-committees

7. (1) The Committee may from time to time establish such sub-committees as it may consider necessary for the better carrying out of its functions and the exercise of its powers under this Act.

(2) The Committee may co-opt into the membership of any committee established under subsection (1) any person whose knowledge and skills are necessary for the proper performance of the functions of the Committee.

(3) A person co-opted under subsection (2) shall have no right to vote at any meeting of the committee.

Personnel

8. (1) The Board shall appoint such personnel as may be necessary for the delivery of health services.

(2) The personnel shall serve on such terms of service as the Board, on recommendations of the Commission may determine.

(3) In performing the obligation referred to in subsection (1), the Board shall facilitate and advance—

- (a) equitable distribution of human resources;
- (b) the provision of appropriately trained staff at all levels of the county health facilities; and
- (c) the effective and efficient utilization, functioning, management and support of system to meet the population's health care needs; and human resources within the county health system.

Health Facility Committees

9. (1) There is established for every Health Facility a Committee to be known as the Health Facility Management Committee.

(2) The Facility Committee shall consist of—

- (a) one person with experience in matters relating to governance, leadership, management or public policy and who shall be the chairperson;
- (b) the person in-charge of the Health Facility who shall be the secretary;
- (c) the County officer responsible for matters relating to health in the ward in which the Health Facility is situated;

- (d) the County officer responsible for matters relating to county administration in the ward in which the Health Facility is situated;
 - (e) five persons who ordinarily reside in the sub-county in which the Health Facility is situated and who have extensive experience and good professional standing; one each from the following fields—
 - (i) public health;
 - (ii) medicine;
 - (iii) nursing;
 - (iv) pharmacy;
 - (v) finance.
- (3) The persons referred to in paragraphs (2) (a) and (e) shall be nominated and appointed by the Executive Committee Member.
- (4) A person is qualified to be appointed as a member of the Health Facility Committee under paragraphs (2) (a) and (e) if that person has a minimum of a diploma in the relevant field.
- (5) In nominating the person referred to in paragraphs (2) (a) and (e) the County Executive Committee member shall—
- (a) take into account regional, ethnic and gender diversity and representation of persons with disability persons; and
 - (b) ensure public participation by making extensive consultations with the relevant stakeholders, community leaders and members of the public.
- (6) The persons referred to in paragraphs (2) (a) and (e) shall serve for a term of three years renewable for one further term.

Functions of Health Facility Committees

- 10.** The Health Facility Committee shall—
- (a) oversee and provide leadership in the administration of the Health Facility funds;
 - (b) cause to be prepared annual work plans and budgets for the Health Facility;
 - (c) cause to be prepared, strategic plans for the Health Facility and oversee their implementation;
 - (d) mobilize resources for the Health Facility;

- (e) oversee the opening and operation of a bank account for the Health Facility;
- (f) receive quarterly and annual reports from the officer in charge of the Health Facility and approve such reports for forwarding to the Chief Officer;
- (g) cause to be kept books of accounts for the Health Facility;
- (h) undertake such other activities as are necessary for the effective management of the Health Facility.

Functions of the Health Department

11. In addition to the functions stated in section 20 of the Health Act No. 21 of 2017, the Department shall—

- (a) promote the progressive realization of the right to health;
- (b) implement the national health policy;
- (c) be responsible for health service delivery;
- (d) facilitate the registration, licensing and accreditation of health service providers and health facilities;
- (e) procure and manage health supplies;
- (f) facilitate and coordinate public participation in the planning, management and governance of health facilities and provision of the provision of health services.
- (g) coordinate the provision of emergency medical treatment;
- (h) ensure compliance with standards for health facilities and health services within the limits of available resources;
- (i) promote the inclusion of health services in the socio-economic development plan of the County;
- (j) determine the policies and measures necessary to protect, promote, improve and maintain the health and well-being of the population;
- (k) in collaboration with the relevant national government agencies, ensure the provision of such essential health services, including primary health care services to the population of the County; and
- (l) perform such other functions as may be necessary for the implementation of this Act or any other written law.

Remuneration

12. The members of the Committee, Health Committees, and Facility Committees, shall be paid such allowances as the Board, after consultation with the Commission, may determine.

Procedure of Meetings

13. The conduct of business and affairs of the Committees established in this Act shall be as set out in the first Schedule.

PART III—HEALTH SERVICES**Emergency treatment**

14. (1) Every Health Facility shall provide emergency medical treatment to any person in need of such treatment.

(2) Emergency medical treatment includes—

- (a) pre-hospital care;
- (b) stabilizing the health status;
- (c) referral.

(3) A Health Facility, a health care provider or health worker which refuses to offer emergency medical treatment to any person who needs such treatment commits an offence.

User to have full knowledge

15. (1) Every health care provider shall inform a user of—

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

Duties of users

16. A user has a duty to—

- (a) adhere to the rules of any health facility when receiving treatment;
- (b) adhere to medical advice given by a healthcare provider;

- (c) give to the healthcare provider accurate information concerning their health status;
- (d) respect the dignity of healthcare providers;
- (e) generally cooperate with healthcare providers.

Rights of a healthcare provider

17. A healthcare provider has the right—
- (a) a safe working environment that minimizes the risk of being infected with diseases or being injured at the workplace;
 - (b) not to be discriminated on account of health status;
 - (c) to refuse to give treatment to a user who is grossly abusive;
 - (d) to the review of the decisions of their supervisors to the next level of authority.

Duties of a Healthcare provider

18. A healthcare provider has the duty to—
- (a) provide healthcare to every user assigned to them to the best of their knowledge and abilities;
 - (b) inform the user in a manner commensurate with the user's understanding of—
 - (i) the available diagnostic procedures and treatment options;
 - (ii) the benefits, risks, costs and consequences associated with each option;
 - (iii) the user's right to refuse any treatment or procedure.
 - (c) provide emergency medical treatment;

Dissemination of information

19. The Committee shall ensure that appropriate, adequate and comprehensive information is disseminated on the health services for all health facilities.

Obligation to keep record

20. The officer in charge of a health facility shall ensure that a health record containing such information as may be prescribed is created and maintained at the health facility for every user.

Consent

21. (1) No health service may be provided to a user without the user's informed consent unless—

- (a) the user 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 user 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 user 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 user might result in his or her death or irreversible damage to his or her health and the user 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.

Confidentially

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

(2) Subject to any written law, no person may disclose any information contemplated in subsection (1) unless—

- (a) the user consents to such disclosure in writing in the prescribed form;
- (b) a court order or any applicable law requires such disclosure;

- (c) the non-disclosure of the information represents a serious threat to public health; or
 - (d) the disclosure is necessary for the management of the condition.
- (3) The disclosure of information under this section shall be done in the prescribed form.

Disease Control

23. (1) The Director shall, within one year of the commencement of this Act, prepare and submit to the Committee statement providing magnitude of—

- (a) the disease burden and health condition; and
- (b) the leading health risk factors in the county and impact on various population groups.

(2) The health statement shall inform the process of preparing the health plans, policies, Strategic Plan, design and their implementation.

(3) The Committee may partner with the national government and other county governments in order to control diseases, health conditions or health risk factors.

(4) The department shall, within twelve months after preparation of health statements described in sub section (1) prepare necessary policies, laws and programs for controlling, reducing, or mitigating the impacts of the health risk factors.

Essential medicines and medical supplies

24. (1) The Executive Committee Members shall—

- (a) in consultation with the Director, establish a system which ensures that essential medicines and medical supplies are available, accessible and affordable in each county health facility;
- (b) ensure that the essential medicines and medical supplies are of good quality and meet the prescribed standards;
- (c) adopt appropriate measures for ensuring cost effectiveness in procurement, supply, storage and distribution systems for essential medicines and medical supplies.

Private health facilities, public cemeteries, mortuaries and waste disposal sites

25. (1) Subject to the national policy and standards and in consultation with national government, the Executive Committee Member shall ensure the proper management of private health facilities or programs operating in the county.

(2) The Executive committee member shall facilitate registration, licensing and certification of all health facilities, public cemeteries, mortuaries and waste disposal sites.

(3) The county executive committee shall consider for approval applications for registration of private health facilities, mortuaries, public cemeteries and waste disposal sites.

(4) The county executive committee member shall ensure that there is an environment which is conducive for the development of private health services and their attainment to the needs of the population.

(5) Notwithstanding subsection (1) an unregistered private health facility shall not be granted a business permit.

Complaints against a health facility

26. (1) Any person may make a complaint to the Director about the manner of treatment in a Health Facility.

(2) The Executive Committee Member shall make Regulations establishing the procedure for instituting a complaint under sub-section (1).

PART IV— FINANCIAL PROVISIONS

Establishment of the Fund

27. There is established a Fund to be known as the Machakos County Health Service Fund.

Purpose of the Fund

28. The object and purpose of the Fund is to—

- (a) ensure health facilities have better access to financial resources;
- (b) ensure health facilities are more responsive to medical and public health emergencies;
- (c) ensure equitable distribution of financial resources based on workload and catchment population; and
- (d) ensure the delivery of quality health care services.

Sources of funds

29. The fund shall consist of—

- (a) monies appropriated by the County Assembly for that purpose;
- (b) sums received as contributions, donations, gifts or grants;

- (c) refunds and capitations from any institution duly paid into the Fund;
- (d) monies paid into the Fund as users charges, fees payable or insurance payable under in this Act
- (e) monies earned or realized from any investment of the fund;
- (f) Such monies received from national government as conditional grants or non-conditional grants for services rendered to the user's in accordance with established system
- (g) Any income generated by a health facility from any project initiated by the health facility; and
- (h) such other monies as may be payable or vested in the fund.

User fee charges

30. (1) The Executive Committee member in consultation with the Committee shall determine the user fees payable by members of the public for different health services provided by Health Facilities.

(2) The Executive Committee Member shall cause the user fees to be published in the *Gazette*.

(3) The Health Facilities shall only provide health services to the members of the public who pay the prescribed user fees.

(4) The Facility Committee may, upon investigation and for documented reasons, wave the user fees payable by a particular person

(5) The Executive Committee member in consultation with the Committee may from time to time review the user fees.

(6) No user fees shall be levied on a person who is given emergency services in a health facility.

Use of funds

31. (1) With the authority of the relevant legal authority, an accounting officer may utilize the Fund to—

- (a) purchase medical supplies;
- (b) maintain the Health Facilities;
- (c) purchase basic Hospital equipment;
- (d) hire temporary professional or other staff for the Health Facility;
- (e) improve the capacity of staff to offer health services including training and continuous professional development;

- (f) pay for basic administrative expenses; or
- (g) undertake such other activity within the health facility, that is authorized by the relevant Committee.

Financial estimates

32. (1) At least three months before the commencement of each financial year the Director shall cause to be prepared, estimates of all the expenditure required for the purposes of this Act for that year, and shall present such estimates to the Committee for approval.

(2) The Director shall forward the approved estimates to the County Treasury for inclusion in the budget for the county government.

Accounts and Audits

33. (1) The Committee shall cause to be kept proper books of accounts of the income, expenditure, assets and liabilities of the Committee.

(2) Within three months after the end of each financial year, the Director shall—

- (a) submit to the Auditor-General the accounts of the Committee for the year with copies to the County Treasury, Controller of Budget and Commission on Revenue Allocation; and
- (b) Publish and publicize the financial statements.

(3) In preparing the financial statements for the Fund, the Director shall ensure that the report contains information on the financial and nonfinancial performance of the Fund.

PART V—MISCELLANEOUS PROVISIONS**Reports**

34. (1) The Director shall, not later than three months after the end of each financial year, prepare a health status report that shall consists of—

- (a) the status of the implementation of the Act during that year;
- (b) the extent of consultation , co-operation and collaboration with other agencies;
- (c) the progress towards implementation of health sector strategic plans
- (d) the measures taken to mitigate the impact of the health risk factors;

- (e) the level of disease burden, disaggregated in term of age, gender, social status, and ward, communicable disease, and non-communicable diseases and injuries prevention among others
 - (f) challenges faced in the implementation of this Act and proposed mitigation measures
 - (g) measures taken and progress made towards health promotion and implementing the respective policies
 - (h) emerging patterns and trends in lifestyle within the county or at national level which may impact negatively on the health in the county
 - (i) the level and status of compliance with quality standards established;
 - (j) progress and status of supervision and oversight over private health facilities;
 - (k) generally any matter related to the implementation of this Act; and
 - (l) any other matter as the Committee may require.
- (2) The executive committee member shall within fourteen days of receiving the report shall submit it to the county executive committee and thereafter within twenty one days transmit it to the clerk of the county assembly for tabling before the county assembly for consideration.
- (3) The Committee shall—
- (a) publish the report prepared under subsection (1);
 - (b) publicize the report to the county residents; and
 - (c) facilitate the collation of views and feedback from the county residents in relation to the report.

General Penalty

35. Any person who contravenes the provisions of this Act for which no other penalty has been provided, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both. A person who contravenes the provisions of this Act shall upon conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of two years or both.

Transitional and Savings

36. Every person who immediately before the commencement of this Act was an employee of the Board attached to the Department shall, upon the commencement of this Act be given an option to serve in the Department and if not appointed by the Board, be redeployed in the County public service.

Regulations

37. (1) The Executive Committee Member may, in consultation with the Committee make Regulations for the better carrying into effect of any provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this Act may provide for—

- (a) the conduct of the business of the Committee ;
- (b) classification of health facilities and health service provides;
- (c) fees and charges payable;
- (d) prescribed forms;
- (e) any other matter necessary for the implementation of this Act.

FIRST SCHEDULE

PROCEDURE OF MEETING

1. Meetings

- (1) The members of a Committee shall elect a vice-chairperson from among themselves.
- (2) A meeting shall be presided over by the chairperson or in his or her absence by the vice-chairperson.
- (3) The chairperson, in consultation with the secretary shall determine the place and time of Committee meetings.
- (4) The Committee shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next.
- (5) In calling for meetings, the chairperson shall give a notice of at least seven days.

2. Conflict of interest

- (1) If any person has a personal or fiduciary interest in any matter before the Committee, and is present at a meeting of the committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
- (2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.
- (3) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.
- (4) No member or staff of the Committee shall transact any business or trade with the Committee

3. Quorum

Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the members.

4. Voting

A matter before the Committee shall be decided by simple majority.

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MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objective of this Bill is to establish a county services system, to provide for the coordination of the provision of the highest attainable standards of health care and for connected purposes.

The structure of the Bill is as follows:

Part I (clauses 1–3) of the Bill contains preliminary provisions. Clause 1 states the title of the Bill and clause 2 deals with interpretation of terms as used in the Bill. Clause 3 sets out the object of the Bill.

Part II (clauses 4–13) of the Bill deals with administration, where the Machakos County Health Service Committee and the Health Facility Committees are created. The functions of the two types of committees are given. The general running of the Health Department is outlined in this part.

Part III (clauses 14–26) of the Bill provides for matters relating to health services. This part makes provision for emergency treatment and rights and duties of healthcare providers and users. It makes provision for consent, confidentiality, disease control, obligation to keep record, private health facilities and procedure for making complaints against health facilities.

Part IV (clauses 27–33) are the financial provisions.

Part V (clauses 34–37) is the miscellaneous provisions.

This Bill is a money Bill within the meaning of section 21 of the County Governments Act No. 17 of 2012 as it establishes a Fund under section 25 of the Act.

Dated the 27th August, 2019.

ANGELA MUNYASYA,
Member of County Assembly.

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