

SPECIAL ISSUE

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REPUBLIC OF KENYA

***TURKANA COUNTY GAZETTE
SUPPLEMENT***

ACTS, 2016

NAIROBI, 17th August, 2016

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No. 12 of 2016**

Date of Assent: 10th August, 2016

Date of Commencement: 31st August, 2016

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2016 *Turkana County Private Hospitals and Clinics Licensing*

THE TURKANA COUNTY PRIVATE HOSPITALS AND CLINICS LICENSING ACT, 2016

**AN ACT of Turkana County Assembly establishing
Turkana County Hospital Licensing Board,
providing for regulation within the private health
sector and connected purposes**

ENACTED by the County Assembly of Turkana as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Private Hospitals and Clinics Licensing Act, 2016 and shall come into operation not later than fourteen days from the date of its enactment. Short title and
Commencement

2. This Act applies only to Private Hospitals and Clinics operating within Turkana County. Application

3. In this Act, unless the context otherwise requires— Interpretation

“Board” means the Turkana County Health Licensing Board established under Section 5 of this Act;

“Certificate of Registration” means the evidence of license issued under Section 20 of this Act.

“County” is the Turkana County Government;

“County Director of Medical Services Officer” is the officer in charge of Medical Services of Turkana County;

“County Executive Committee Member” is the Executive Committee member in charge of Health and include a person acting in that capacity;

“Health Facility” means a Private Hospital or Clinic which is not subsidized by the exchequer;

“Health Professional” include a medical doctor, dentist, clinical officers, nurses, pharmacists and medical laboratory practitioners, eye care personnel, orthopaedics and public health officer;

“Health Services” include medical consultation, treatment, surgery and prescription, preventive and counselling care;

“Licensee” means any Private Health Facility required to be registered under this Act and have a valid license;

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“Medical Infrastructure” means the physical facilities essential for the conduct of medical practice and include hospital premises, equipped laboratory and surgical room;

“Private Health Facility” is a hospital or clinic not funded or subsidized by the exchequer;

“Professional Bodies” means a registered association in which health professionals ascribe membership and include the Medical Practitioners and Dentist Board, Nursing Council of Kenya, Clinical Association of Kenya and Public Health and Technicians Council;

“Registered Medical Practitioners” mean medical doctors registered under the Medical Practitioners and Dentists Act.

**PARTII—ESTABLISHMENT AND
ADMINISTRATION OF COUNTY HEALTH
LICENSING BOARD**

4. (1) There is established the Turkana County Health Licensing Board. Establishment of the Board.

(2) The Board is a body corporate with perpetual succession and a common seal and can in its own corporate name—

- (a) sue and be sued; and
- (b) perform or discharge all its functions in accordance with this Act.

5. Functions of the Board include—

Functions of the Board.

- (a) consider application for issuance of licenses to private Hospitals and Clinics;
- (b) revocation of licenses;
- (c) make regulations under this Act;
- (d) ensure compliance with the regulations are enforced; and
- (e) regular assessment and monitoring of private hospitals and clinics operations.

6. (1) The Board consists of a seven members appointed in accordance with provisions of this Act and include— Membership of the Board.

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- (a) Chairperson to be appointed by the County Executive Committee Member in accordance with Section 12 of this Act with approval of the County Assembly;
- (b) the County Director of Health Services or the person for the time being acting in that position;
- (c) one registered senior nursing officer nominated by the County Executive Member with the approval of the County Assembly;
- (d) one registered Public Health officer nominated by the County Executive Committee Member with approval of the County Assembly;
- (e) one registered Clinical Officer nominated by the County Executive Committee Member; and
- (f) two representatives of Health Learning Institution nominated by the County Executive Committee Officer

(2) The Board shall elect the Deputy Chairperson and the Secretary from among its members.

7. (1) Each member of the Board shall have a deliberative vote. Decision making.

(2) The Chairperson for the time being at any meeting of the Board shall, in addition to his/her deliberative vote as a member of the Board, have a casting vote.

8. (1) A person is qualified for appointment as Chairperson if that person— Qualification for appointment of chairperson and members.

- (a) is a Kenyan Citizen;
- (b) possesses a health related degree from a recognized University;
- (c) has knowledge and experience of at least five (5) years in the field of medical services; and
- (d) meets the leadership and integrity requirements under chapter six of the Constitution of Kenya 2010.

(2) A person is qualified as a member if—

- (a) is a Kenyan Citizen;

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- (b) possesses at least a health related diploma from a recognized institution; and
- (c) has knowledge and experience of at least two (2) years in the field of medical services; and
- (d) meets the leadership and integrity requirements under chapter six of the Constitution of Kenya 2010.

9. (1) Chairperson of the Board shall hold office for a period of three years and shall be eligible for re-appointment for one further term only. Terms of office.

(2) A member of the Board shall not hold office for more than two terms.

10. The terms of service and benefits accruing to the members shall be set out by the County Executive Committee Member in consultation with Salaries and Remuneration Commission. Benefits and terms of service

11. A Board member shall cease to hold office if the member is— Termination

- (a) unable to perform functions of office arising from mental or physical incapacity;
- (b) convicted of an offence under any law of Kenya and sentenced to serve a term of three months' imprisonment or more;
- (c) non-compliance with Chapter Six of the Constitution of Kenya;
- (d) incompetence; or
- (e) gross misconduct or misbehaviour

12. (1) A vacancy in the Board shall be filled in accordance with Sections 7, 9, 12 and 14 (2) of this Act. Vacancy

(2) Where a vacancy occurs in the Board membership, the County Executive Committee Member in consultation with the Board shall appoint a medical or a dental practitioner or clinical officer to act as a member of the Board until such time that a permanent member is appointed.

(3) The powers of the Board shall not be affected by any vacancy thereof.

13. (1) The Chairperson shall convene Board meetings ^{Meetings} once in every three months.

(2) The Board Secretary shall formulate and send out the Agenda of the meeting in consultation with the Chairperson.

(3) The Board shall maintain all records of its deliberations.

(4) Notwithstanding Section 15 (1), the Board shall meet at any other time there is an urgent matter of general public importance.

(5) The quorum for the meeting of the Board shall be four of all the members including the secretary.

(6) The Board shall formulate rules and procedures for conducting its own functions subject to the approval of the County Executive Officer.

PART III—LICENSING AND REGISTRATION

14. (1) For the purposes of this Act, there shall be a Registrar and Register. Registrar of the Turkana County Health Licensing Board.

(2) The County Director of Medical Services shall be the Registrar, and shall perform such duties as prescribed by this Act.

(3) For the purpose of this Act, County Director of Medical Services shall cause to be kept and maintain a register of all licensed private hospitals and medical clinics.

(4) The Registrar shall publish in the County Gazette notice as soon as may be practicable after registration the name of every medical facility registered under this Act.

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15. (1) No Private Health facility maybe accredited to provide private health services without being registered and complying to standard set under this Act by the County Government department responsible for health. Registration.

(2) The owners or sponsors of a Private Health Facility shall make an application in the prescribed form to the Board for the grant of a license and pay the prerequisite fees.

(3) A license issued under this Act shall permit the licensee to—

- (a) render medical or surgical services as a Hospital or Clinic;
- (b) render professional medical consultancy services;
- (c) employ or retain qualified Medical Practitioners;
- (d) accept students for internship in the Health Facility
- (e) perform any other act permitted by this Act.

16. (1) Subject to Section 19 and upon deliberations of the Board, the Registrar shall, within a period not exceeding twenty one days from the date of receipt of the application, issue the applicant with the license with or without conditions or reject the application altogether. License

(2) Where an application has been rejected under Section 18 (1), the registrar shall write to the applicants setting out reasons for refusal.

(3) Where the grant of a license is subject to conditions, the registrar shall write to the applicant setting out the conditions.

17. (1) In considering the application made under Section 17 (2), the Board shall examine and satisfy itself as to— Qualifications for license

- (a) adequacy of the requisite medical infrastructure;
- (b) the professional and academic competence of the staff;
- (c) compliance with other laws and regulations governing the health sector in Kenya; and
- (d) any other qualification the Board may deem appropriate and reasonable in the circumstances.

(2) The management of a Private Health Facility licensed to engage in private practice under this Act shall —

- (a) allow the Board inspect premises and ascertain their suitability for use;
- (b) keep the Health Facility with adequate stock of essential drugs and maintain an accurate record of all drugs to which the Pharmacy and Poisons Act and the Dangerous Drugs Act applies;
- (c) immediately notify the Medical Officer of Health of any notifiable disease which has been treated in the facility; and
- (d) where death occurs in his clinic, inform the Medical Officer of Health in his area of practice and the Officer Commanding Station in that area, without delay.

18. The County director of medical services shall receive applications for registration of health facilities registered under county legislation, and facilitate issuance of a certificate of registration in the prescribed form under the county law

Certificate of registration.

19. The Board may reject an application for license where the applicant is not qualified under Section 19.

Refusal of grant of license

20. The Board may revoke a license where —

Revocation

- (a) any condition for issue of the license has not been complied with;
- (b) the license was made through fraudulent misrepresentations;
- (c) the Health Facility has engaged in medical malpractices.

21. (1) A license under Section 18 shall be granted for a period of one year only and may be renewed on application in a prescribed form and after payment of the requisite fees.

Renewal

(2) The Board may refuse to issue or renew a license to engage in private practice to any person and may withdraw a license it has issued

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22. (1) There is established an eight member County Health Licensing Review Panel which consists of— Appeals

- (a) County Executive Committee Member for the time being in charge of Health Services and Sanitation being an ex-officio member;
- (b) Chief Executive Officer of Lodwar County Referral Hospital; and
- (c) Six other members of the medical Practitioners and Dentists Board appointed through competitive process with the approval of the County Assembly

(2) the function of County Health Licensing Review Panel shall include—

- (a) receive and consider any grievances or complaints raised by the application
- (b) advice the Board in execution of its functions
- (3) any person aggrieved by—
 - (a) the refusal of the Board to issue or review a license under clause 22; or
 - (b) the decision of the Board to suspend or revoke a license under clause 21, may within 14 days of date of receipt of the notice informing him or her of such refusal, suspension or revocation, as the case may be, appeal in writing to the County Health Licensing Review Panel whose decision shall be subject to the approval of the County Assembly; and
 - (c) an applicant under this section who is not satisfied with the decision of the appeals review panel may within 21 days appeal to the high court.

23. Registration and issuance of license under this Act, shall only entitle the Health Facility so registered and licensed to render medical services within the terms of the license as the Board may set out from time to time. Effects of Registration.

24. Unregistered and unlicensed Health Facilities are not entitled to fees for any health service so rendered. Fees

PART IV—GENERAL CONDUCT OF HEALTH PROFESSIONALS IN PRIVATE HEALTH FACILITIES

25. The management of a Private Health Facility shall submit to the Board— Submission of credentials

- (a) the academic and professional qualifications of all Health Professionals working for it;
- (b) reports of professional malpractice of health professionals working for it;
- (c) reports of Health Professionals suspended or banned from practice by the Medical Practitioners and Dentist Board as established under the Medical Officer of Health Act.

26. No Health Professional employed in the County Health Sector may take up part time or full time employment in a Private Health Facility. Professionals from public sector

27. (1) Health Professionals while on duty shall at all times be dressed and groomed in such a manner that brings honour to the image of the profession to the patients and the general public. Dress Code

The Professional shall observe and wear such insignia or uniform normally worn by the professionals as may be prescribed from time to time by the Professional bodies they belong to.

PART V—MISCELLANEOUS PROVISIONS

28. Where there is conflict between the English version of this Act and any other translation, the English version shall prevail. Conflict of laws

29. The County Executive Committee Member in consultation with the Board may make regulations in respect to the following— Regulations

- (a) set out and revise from time to time the benefits and allowances of the Board members as advised by the Salaries and Remuneration Commission procedures for recruitment, conduct of Committees' meetings and other incidental matters.
- (b) prescribe forms to be used in connection with this Act and fees to be charged under this Act.

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30. All the licenses issued by the Board shall be property of the Board and may be produced anytime for inspection. Licenses are property of the Board.

31. Any person operating a Health facility without a licence issued under this Act or wilfully contravenes any section of this Act, commits an offence and is liable upon conviction to a fine not exceeding Kenya Shillings One Million or to five years imprisonment term or both. Offences.

PART VI—FIRST SCHEDULE:

FEES FOR APPLICATION AND RENEWAL OF LICENSES

	<i>Hospital (KSh.)</i>	<i>Clinic (KSh.)</i>
Application for license	40,000	25,000
Application for license renewal	10,000	5,000

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