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MAKUENI COUNTY BILLS, 2017

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**THE MAKUENI COUNTY MATERNAL, NEWBORN AND CHILD
HEALTH BILL, 2017**

A Bill for

AN ACT of the County Assembly of Makueni to provide a legal framework to address maternal, reproductive, newborn and child health within Makueni County; to ensure provision of quality healthcare to women during pregnancy, at birth and care of the new born after delivery; and to provide for matters connected therewith and incidental there to.

ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Makueni County Maternal, New born and Child Health Act, 2017 and shall come into operation upon publication in the Gazette.

Interpretation

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

“Antenatal Care” includes the correct diagnosis of pregnancy, followed by periodic examinations, screening and management of complications during pregnancy;

“child” has the meaning assigned to it in article 260 of the Constitution of Kenya, 2010;

“child’s health care rights” means the right of every child to access quality health and medical care;

“Clinical Officer” means a person duly registered as a Clinical Officer under the Clinical Officers (Training, Registration and Licensing) Act;

“Conscientious objection” means to object in principle to a legally required or permitted practice;

“Contraception” Means the deliberate prevention of pregnancy by measures that prevent the normal process of ovulation, fertilization and implantation;

“Emergency contraception” means contraceptive methods used by women immediately following unprotected sexual intercourse to prevent pregnancy;

“Health Care Provider” means any person or institution that has been duly authorized to deliver health care services;

“Informed Consent” means consent obtained freely, without threats or improper inducement, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient/ client;

“Informed choice” means voluntary decision by a client to use, or not to use, a contraceptive method or to accept a sexual and reproductive health service, after receiving adequate information regarding options, risks, advantages and disadvantages of all the available methods.

“Intra partum care” includes the correct diagnosis of labour, appropriate examination and screening for and management of complications during child birth;

“Maternal care” includes health care of a woman during pregnancy, childbirth and 42 days after childbirth;

“Maternal death” is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy or delivery, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes;

“Maternal morbidity” refers to severe diseases, (physical or emotional or psychological) or disabilities caused by pregnancy related complications;

“Medical practitioner” means a person duly registered as a medical practitioner under the Medical Practitioners and Dentists’ Act Cap 253;

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

“Nurse” means a person duly registered as a nurse under the Nurses Act Cap. 257;

“Post-abortion care” includes:

- (a) treatment of incomplete and unsafe abortion and complications that are potentially life-threatening;
- (b) post-abortion counselling to assess the woman’s emotional and health needs;
- (c) post-abortion family planning, counselling and contraception services;
- (d) referral to reproductive and other health services; and
- (e) community linkages for appropriate support.

“Postpartum care” includes screening for and management of complications during the first 42 days after delivery;

“Pregnancy” means the presence of a foetus in the womb;

“Provider-Initiated Health Care or testing” means the initiation of provision of care or testing by the medical provider to ensure public health or advancement of medicine;

“Reproductive health” means a state of complete physical, mental and social well-being in all matters relating to the reproductive system and its functions and processes, and is not merely the absence of disease or infirmity;

“Right to safe motherhood” means the right to access to information and quality service by women throughout pregnancy and childbirth with the desired outcome of a live and healthy mother and baby;

“Termination of pregnancy” for the purpose of this Act means the separation and expulsion, by medical or surgical means, of the contents of the uterus of a pregnant woman before the foetus has become capable of sustaining an independent life outside the uterus.

“Unsafe abortion” means an induced abortion or termination of pregnancy conducted either by persons lacking the necessary skills or in an environment lacking the minimal medical standards.

Objects and Purposes of the Act

3. The objects and purposes of this Act are among others to—
- (a) to provide a framework for the protection and advancement of maternal, new-born and child health;
 - (b) to promote women’s health and safe motherhood;
 - (c) to achieve a rapid and substantial reduction in maternal morbidity and mortality; and
 - (d) to ensure access to quality and comprehensive provision of health services to women and children;
 - (e) to ensure funds set aside for maternal health are used for the intended purpose.

PART II—MATERNAL CARE

Persons authorized to offer maternal care

4. The following persons are authorized to offer maternal care:
- (a) medical practitioners;
 - (b) clinical Officers;

- (c) nurses; and
- (d) community health workers

Adequate medical care

5. (1) Any person offering maternal care shall operate in an environment that ensures adequate medical care to women and the new born.

(2) The adequate medical care for pregnant women shall include but not be limited to the following—

- (a) at least three free antenatal examinations;
- (b) provision of supplements at no cost;
- (c) being given the right information on her health in a form she can understand;
- (d) being assisted to deliver in the healthiest way, with caesarean section as a last resort;
- (e) to be allowed enough time to stay in hospital after delivery for her to heal; and
- (f) provision of the mandatory vaccines and immunizations to the new born at the right time,

Termination of pregnancy

6. (1) A pregnancy may be terminated if a trained and certified Health Care Provider, after consultation with the pregnant woman, is of the opinion that:—

- (i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health or likely to result in death of the pregnant woman; or
- (ii) there exists a substantial risk that the foetus would suffer from a severe physical or mental abnormality; or
- (iii) where the pregnancy resulted from sexual assault, defilement, rape, or incest; or
- (iv) the pregnant woman, on account of being a mentally disordered person, is not capable of appreciating pregnancy; or

(2) A statement by a pregnant woman to the medical practitioner concerned or proof of report of the incidence is adequate to prove that her pregnancy is as a result of sexual assault, rape, defilement or incest.

(3) The termination of the pregnancy shall only be carried out by a health care service provider in a facility authorized by the Medical Practitioners and Dentists Board.

(4) Health providers shall offer non-mandatory and non-directive counselling, before and after the termination of a pregnancy.

(5) Any person who violates the provisions of section 7 (3) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty thousand shillings or imprisonment to a term not exceeding three years or both.

Consent of pregnant woman

7. (1) Subject to section 7(1), termination of pregnancy may only take place with the consent of the pregnant woman.

(2) In the case of a pregnant minor, a health care service provider shall advise the minor to consult with her parents, guardian or such other persons with parental responsibility over the said minor before the pregnancy is terminated, provided that the best interest of the minor shall prevail.

(3) In the case of a mentally disordered person, the health care service provider shall consult with the guardian over the said person before the pregnancy is terminated.

Provided that a health care service provider who has a conscientious objection to the termination of pregnancy has a legal duty to refer the pregnant woman to a service provider who is willing to provide this service. Refusal or deliberate failure to do so shall constitute an offence whereupon conviction shall be liable to a fine not exceeding two hundred and fifty thousand or imprisonment to a term not exceeding three years or both.

Duty to forward information

8. (1) A health care provider shall, as soon as is practicable, but not later than three months after the termination of a pregnancy in the prescribed form, collate the information and forward to the relevant authority under cover of confidentiality.

(2) Any person who violates any conditions set out in subsection (1) commits a criminal offence and shall be liable upon conviction to a fine

not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or both.

Information on HIV/AIDS to mothers

9. (1) A medical practitioner attending to a pregnant woman shall provide her with information about HIV/AIDS, and specifically inform her about mother to child transmission of AIDS.

(2) No pregnant woman shall be tested for HIV/AIDS without her informed consent except in the circumstances of Provider Initiated Testing.

(3) The confidentiality of test results shall be carefully protected.

Information to public, access to treatment and counselling

10. The County Executive Committee shall in conjunction with the relevant health care providers within Makueni County —

- (a) regularly disseminate accurate and comprehensive information to members of the public about HIV and AIDS, including prevention of mother to child infection and the options available to infected pregnant women;
- (b) ensure access to continuous and regular medical treatment of children born with HIV;
- (c) ensure counselling of pregnant women and their partners infected with HIV or suffering from AIDS on how to promote and sustain their reproductive health.

PART III—NEW-BORN HEALTH

Child birth

11. For purposes of this Act, childbirth is one part of a continuum of experience that includes pre-pregnancy, pregnancy and prenatal care, labour and delivery, the immediate postpartum period, and a longer period of adjustment for the new-born, the mother, and the family.

Length of post delivery hospital stay

12. (1) The length of post-delivery hospital stay shall be based on the unique characteristics of each mother and her new-born child, taking into consideration the health of the mother, the health and stability of the new-born, the ability and confidence of the mother and the father to care for their new-born, the adequacy of support systems at home, and the access of the mother and her new-born to appropriate follow-up health care; and

(2) The timing of the discharge of a mother and her new born child from the hospital shall be made by the attending provider in consultation with the mother.

Restrictions on post-delivery length of stay in hospital

13. (1) No health care provider may—

- (a) restrict benefits for any hospital length of stay in connection with childbirth for the mother or new born child, following a normal vaginal delivery, to less than 48 hours; or
- (b) restrict benefits for any hospital length of stay in connection with childbirth for the mother or new born child, following a caesarean section, to less than 96 hours; or

(2) Notwithstanding the provisions of sub-section (1) a healthcare provider may obtain authorization from the County Executive Committee member prescribing any length of stay required under sub-section (1).

When discharge from hospital may be on shorter duration

14. (1) The provisions of section 13(1) notwithstanding, a health care provider may discharge a mother or her new born prior to the expiration of the minimum length of stay where the decision is made in consultation with the mother.

(2) Notwithstanding the provisions of section 15 (1), a healthcare provider may not:—

- (a) deny to the mother or her new born child eligibility, or continued eligibility, to extend stay at the hospital beyond the agreed time;
- (b) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under Section 13(1); or
- (c) penalize the mother or otherwise reduce or limit the reimbursement of a mother because such mother changed her mind over reducing stay.

Protection of mothers

15. Nothing in this Part shall be construed to require a mother—

- (a) to give birth in a hospital; or
- (b) to stay in the hospital for a fixed period of time following the birth of her child.

PART IV – CHILD HEALTHCARE

Child healthcare

16. Every child has a right to quality health care, of which the parents, and the county government shall have the responsibility of providing.

Immunization, vaccination and deworming

17. (1) Every child has a right to free immunization, vaccination and de-worming at any public hospital operated by the county;

(2) The vaccinations/immunizations provided free of charge by the county government shall be the mandatory and basic vaccinations and any parent who wishes for a special type of vaccine shall bear the costs.

Annual checkups

18. Any child below the age of five years is entitled to a free annual medical check-up at any hospital owned by the county government.

Medical training

19. The County Executive Committee Member responsible for health in the County shall facilitate training to the formal and informal community based midwives and health care providers in basic maternal and child health services to improve ante-natal and post-natal care for women and children.

Consent of child

20. (1) A child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either subsection (2), (3), (4), (5), (6) or (7).

(2) A child may consent to his or her own medical treatment or to the medical treatment of his or her child if-

- (a) there is no known parent or guardian of the child or none can be reached at that material time; or
- (b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.

(3) A child may consent to the performance of a surgical operation on him or his child if—

- (a) there is no known parent or guardian of the child or none can be reached at that material time; or

- (b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and
 - (c) the child is duly assisted by his or her parent or guardian.
- (4) The superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent may consent to the medical treatment of or a surgical operation on a child if—
- (a) the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and
 - (b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.
- (5) The County Executive Committee or Chief Officer of Health may consent to the medical treatment of or surgical operation on a child if the parent or guardian of the child—
- (a) unreasonably refuses to give consent or to assist the child in giving consent;
 - (b) is incapable of giving consent or of assisting the child in giving consent;
 - (c) cannot readily be traced; or
 - (d) is deceased.
- (6) A High Court or children's court may consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent.
- (7) No parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (3) or withhold consent in terms of subsections (4) and (5) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

HIV Testing of a child

21. (1) Subject to Section 20, no child may be tested for HIV except when—

- (a) it is in the best interests of the child and consent has been given in terms of subsection (2); or

- (b) the test is necessary in order to establish whether-
 - (i) a health worker may have contracted HIV due to contact in the course of a medical procedure involving contact with any substance from the child's body that may transmit HIV; or
 - (ii) any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court.
- (2) Consent for a HIV test on a child may be given by—
 - (a) the child, if the child is—
 - (i) 15 years of age or older, has no parents or guardians and understands the implications of the test; or
 - (ii) is under the age of 15 years, has no parents or guardians and is of sufficient maturity to understand the benefits, risks and social implications of such test.
 - (b) the parent or care-giver, if the child is under the age of 15 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (c) a Welfare Officer, if the child is under the age of 15 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test, and the parent or guardian is unavailable or is not in right state of mind;
 - (d) a designated child protection organisation arranging the placement of the child, if the child is under the age of 15 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (e) the superintendent or person in charge of a hospital, if—
 - (i) the child is under the age of 15 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and
 - (ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or
 - (f) a children's court, if—
 - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or
 - (ii) the child or the parent or care-giver of the child is incapable of giving consent.

HIV testing for foster care or adoption purposes

22. If HIV-testing of a child is done for foster care or adoption purposes, such test shall not be undertaken except with written authority of the County Government and the costs of such tests shall be borne by the proposed foster family or facility.

Counselling before and after HIV testing

23. (1) A child may be tested for HIV only after proper counselling of:—

- (a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; or
- (b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test;
- (c) the counselling shall be provided by an appropriately trained person.

(2) Post-test counselling must be provided by an appropriately trained person to—

- (a) the child, if the child is of sufficient maturity to understand the implications of the result; and
- (b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

Confidentiality of information on HIV status of children

24. (1) No person may disclose the fact that a child is HIV-positive without consent given in terms of subsection (2), except—

- (a) within the scope of that person's powers and duties in terms of this Act or any other law;
- (b) when necessary for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings; or
- (d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by—

- (a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

- (b) the parent or care-giver, if the child is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
- (c) a designated child protection organisation arranging the placement of the child, if the child has no parents, and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
- (d) the superintendent or person in charge of a hospital, if the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or
- (e) a children's court, if—
 - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interests of the child; or
 - (ii) the child, the parent or care-giver of the child is incapable of giving consent.

Access to contraceptives

25. (1) No person may provide a child with condoms without authority or consent of his parent or guardian on request where such condoms are provided or distributed free of charge.

(2) Contraceptives other than condoms may be provided to a child who has high chances of being exposed to sexual intercourse, on request by the child and without the consent of the parent or care-giver of the child if—

- (a) proper medical advice is given to the child; and
- (b) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.

(3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect.

Medical facilities

26. (1) A person offering maternal and child health care services shall operate in an environment with adequate medical facilities.

(2) The county government shall endeavour to provide adequate medical equipment in its health facilities and to distribute equitably in all the wards such medical equipment acquired or provided by the national government or donated to the county government by well-wishers.

Makueni county referral hospital

27. There shall be a level five hospital in Makueni County responsible for offering county referral services.

Emergency services

28. (1) The hospital mentioned in section 28 shall have at least five ambulances.

(2) No woman or child shall be denied emergency medical treatment in whatever circumstance, including inability to pay.

(3) The duty to provide emergency medical treatment to any woman or child extends to all medical facilities within the county government and licensed to operate by the county government.

Hospital equipment

29. A level five hospital shall be fully equipped to handle—

- (a) pregnancy related complications;
- (b) child-birth emergencies; and
- (c) intensive care patients.

Medical practitioners

30. The hospital shall have such number of medical practitioners, clinical officers and nurses as the county executive member for health in consultation with health care providers within the county, may from time to time determine.

PART VI—MISCELLANEOUS PROVISIONS

Power to make regulations

31. (1) The County Executive Committee member for the time being responsible for health may make such regulations as may be necessary for the implementation of this Act.

(2) Subject to the provisions of this Act, the County Executive Committee member may make regulations regarding:

- (a) any matter which is required or permitted by this Act to be prescribed by regulations;
- (b) the inter-sectional implementation of this Act;
- (c) any other matter which is necessary or expedient in order to achieve or promote the objects of this Act;
- (d) to promote best practices on safe motherhood;

- (e) for the registration and licensing of facilities and service providers; and
- (f) to facilitate the provision of affordable maternal care in all health institutions.

(3) Any person who is aggrieved by any decision made under this Act or regulations made hereunder may make a reference to the High Court of Kenya.

Offence where penalty not prescribed

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

Savings

33. Where the provisions of this Act or any regulations made hereunder are inconsistent with the provisions of any other written law, the provisions of this Act or such regulations shall prevail.

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to make provision for the regulation of maternal, newborn and child health care rights, and partly, the actualization of reproductive rights. It also seeks to protect mothers, new-borns and children from adverse medical practices.

The Bill also seeks to deal with the issue of inadequate facilities at county government hospitals, especially in terms of emergency services including but not limited to ambulance services and equipment for intensive care services and gynaecological services as well. It seeks to impose a duty on all medical facilities within the county including private ones to offer emergency medical services to pregnant women and newborns.

The Bill describes the professionals to offer maternal health care requiring that only the mentioned officers who have requisite qualifications offer the said services. It also gives conditions and terms for conducting HIV/AIDS tests on pregnant women and on children and imposes a duty of confidentiality on the medical professionals not to disclose the test results of the women and children.

The Bill also requires that mothers who have given birth at health facilities are given enough time to recover before being discharged from the health facilities.

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

Dated the 16th, February, 2017

LIZER MBINYA ZACHARIAH,
Member of County Assembly.

