

THE MOMBASA COUNTY REPRODUCTIVE HEALTH CARE BILL, 2017
ARRANGEMENT OF SECTIONS

Sections

PART I-PRELIMINARY

- 1-Short title.
- 2-Interpretation.
- 3-Objects of the Act.

PART II-ACCESS TO CONTRACEPTIVES AND FAMILY PLANNING SERVICES

- 4-Access to Contraception.
- 5-Right to Information.

PART III-REPRODUCTIVE AND CHILD HEALTH CARE COMMITTEE

- 6- Establishment of the committee
- 7- Members of the committee

PART IV- REPRODUCTIVE HEALTH FACILITIES

- 8- Medical facilities
- 9- County Referral Hospitals
- 10-Ambulance services
- 11-Hospital equipment
- 12- Medical practitioners

PART V- CHILD HEALTH CARE

- 13- Child health care
- 14- Immunization, vaccination and deworming
- 15- Annual check up
- 16- Training of midwives and health care providers

PART VI – REPRODUCTIVE HEALTH OF ADOLESCENTS

- 17- Adolescent reproductive health services
- 18- Provision of information and policies

PART VII-SAFE MOTHERHOOD

19-Authorized Persons.

20-Antenatal care Services.

21-Information and treatment on HIV/AIDS.

PART VIII-TERMINATION OF PREGNANCY

22-Termination of pregnancy.

23-Consent.

24-Offences and penalty.

PART IX-CONFIDENTIALITY

25-Confidentiality.

26-Offences and penalty.

PART XII – MISCELLANEOUS PROVISIONS

27-Offences and Penalties

28-Regulations

THE MOMBASA COUNTY REPRODUCTIVE HEALTH CARE BILL, 2017

A Bill for

AN ACT of the County Assembly of Mombasa to provide for the recognition of reproductive rights; to set the standards of reproductive health; provide for the right to make decisions regarding reproduction free from discrimination, coercion and violence; and for connected purposes.

ENACTED by the County Assembly of Mombasa, as follows-

PART I-PRELIMINARY

1. Short title and commencement

This Act may be cited as the Mombasa County Reproductive Health Care Act, 2017 and shall come into operation upon publication in the Gazette.

2. Interpretation

In this Act-

"Adolescent" means any person aged between ten and nineteen years;

"Antenatal care" includes the correct diagnosis of pregnancy, followed by periodic examinations, screening and management of complications during pregnancy;

"Authorized facility" means a facility authorized by the Medical Practitioners and Dentists Committee, Nursing Council Committee or other applicable body for the purposes of this Act.

"Committee" means the Committee of Directors established under section 35;

"Department" means the County Government Department responsible for health;

"Executive Member" means the Executive member for the time being responsible for health;

"Child" has the meaning assigned to it in the Children Act;

"Child's health care rights" means the right of every child to access quality health and medical care;

"Clinical officer" means a person registered as a clinical officer under the Clinical Officers (Training,Registration and Licensing) Act;

"Contraception" means the deliberate prevention of pregnancy by measures that prevent the normal process of ovulation, fertilization and implantation;

"Family planning" means the conscious effort by a person to plan for and attain the person's desired number of children and to regulate the spacing and timing of the birth of the children with or without the use of contraceptive commodities;

"Female genital mutilation" means female genital mutilation as defined in the Prohibition of Female Genital Mutilation Act;

"Health care provider" means any person or institution that has been authorized to deliver health care services;

"Health regulatory bodies" refer to anybody or authority authorized by law to regulate the practice of medicine or health care provision;

"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;

"informed choice" means a voluntary decision by a patient to use or not to use a contraceptive method or to accept a sexual and reproductive health service, after receiving adequate information regarding the options, risks, advantages and disadvantages of all the available methods;

"Juristic person" means an entity other than a natural person created by law and recognized as a legal entity having distinct identity, legal personality, duties and rights;

"Maternal care" includes health care of a woman during pregnancy, child birth and forty two days after child birth;

"Medical practitioner" means a person duly registered as a medical practitioner under the Medical Practitioners and Dentists Act;

"Nurse" means a person duly registered as a nurse under the Nurses Act;

"Pregnancy" means the presence of a foetus in the womb;

"Provider-initiated health care or testing" means the provision of care or testing to ensure public health or advancement of medicine;

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

"Reproductive rights" include the right of all individuals to attain the highest standard of sexual and reproductive health and to make informed decisions regarding their reproductive lives from discrimination, coercion or violence;

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

"Termination of pregnancy" 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; and

"Tribunal" is the Tribunal established under section 41.

3. Objects of the Act

The objects of this Act are to-

- (a) Provide a framework for the protection and advancement of reproductive and health rights for the women;
- (b) Promote women's health and safe motherhood;
- (c) Achieve a rapid and substantial reduction in maternal and child mortality rate; and
- (d) Ensure access to quality and comprehensive provision of health care services to women and children.

PART II – ACCESS TO CONTRACEPTIVES AND FAMILY PLANNING SERVICES

4. Access to contraceptives

The County Government shall make available contraception and family planning services, including contraceptive options, counselling, information and education.

5. Right to Information

Every health care service provider prescribing a contraceptive method shall provide information to the person to whom the prescription is being given as to its advantages and disadvantages and ensure informed consent.

PART III – REPRODUCTIVE AND CHILD HEALTHCARE COMMITTEE

6. Establishment of a Committee

(1) There is established a Committee to be known as the Reproductive and Child Health Care Committee.

(2) The functions of the Committee are to-

- (a) Ensure the co-ordination and implementation of policies, regulations and obligations under county, national and international laws relating to reproductive and child health care rights;
- (b) In conjunction with other relevant bodies, carry out regular surveys in all aspects of reproductive and child health in order to establish the status of the cultural and other practices applied and to make recommendations to the Executive member;
- (c) Provide administrative guidance to the department;
- (d) Create awareness and educate members of the public about all issues relating to reproductive and child health care;
- (e) Propose and formulate policies for the implementation of reproductive and child healthcare rights; and
- (f) Carry out such duties or functions as may be necessary to achieve the objects and purposes of this Act.

7. Members of the Committee

The Committee shall consist of-

- (a) the County Director Health who shall be the Chairperson of the committee;
- (b) the County Reproductive Health Coordinator;
- (c) a representative of the County Department of Youth and Gender;
- (d) a representative of the Ministry of Education;
- (e) the County Director of Nursing
- (f) the County gynaecologist
- (g) the County School Health Coordinator

PART IV – REPRODUCTIVE HEALTH FACILITIES

8. Medical facilities

A person offering maternal and child health care shall operate in an environment with adequate medical facilities.

9. County referral hospital

There shall be a level four hospital in every sub-county responsible for offering county referral services.

10. Ambulance services

(1) Each level four hospital shall have at least one reproductive health emergency service ambulance.

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

11. Hospital equipment

A level four hospital shall be fully equipped to handle-

- (a) maternal and child-health emergencies; and
- (b) Intensive care patients.

12. Medical practitioners

The level four hospitals shall have such number of medical practitioners, clinical officers and nurses as the Executive Member in consultation with the Committee, shall from time to time determine.

PART V – CHILD HEALTH CARE

13. Child health care

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

14. Immunization, Vaccination and De-worming

Every child has a right to free immunization, vaccination and de-worming at any public hospital.

15. Annual check-up

Any child below the age of five years is entitled to a free annual medical check-up at any public hospital.

16. Training for midwives and healthcare providers

The Executive Member responsible for health 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.

PART VI – REPRODUCTIVE HEALTH OF ADOLESCENTS

17. Adolescent reproductive health services

- (1) The Executive Member for health shall in consultation with the Committee facilitate the provision adolescent friendly reproductive health services.
- (2) In the provision of reproductive health services to adolescents, parental consent is not mandatory.
- (3) Despite sub-section (2) above, nothing prevents a health care provider from whom reproductive health services are sought by an adolescent, from referring the adolescent to a qualified person for provision of the necessary services.

18. Provision of information and policies

- (1) The Committee in consultation with government institutions and other bodies shall-
 - (a) Facilitate the provision of adolescent- friendly reproductive health and sexual health information and education;
 - (b) Facilitate the provision to adolescents of confidential, comprehensive, non-judgmental and affordable reproductive health services;
 - (c) Develop policies to protect adolescents from physical and sexual violence and discrimination including cultural practices that violate the reproductive health rights of the adolescents; and

(d) Facilitate adolescents' access to information, comprehensive sexuality education and confidential services.

(2) The Committee shall make such recommendations to the Executive member on a continuous basis as to changes or inclusions to make such regulations as may be necessary to ensure that the object of this Act is achieved.

PART VII – SAFE MOTHERHOOD

19. Authorized persons

Maternal care shall be offered by-

- (a) Medical practitioners;
- (b) Clinical Officers;
- (c) Nurses; and
- (d) Community health workers.

20. Antenatal care services

Every public hospital whether under the management of a County Government or National Government shall provide free ante-natal care and delivery services.

21. Information and treatment on HIV/AIDS

Access to information and treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome to a pregnant woman shall be as stipulated in the HIV and AIDS Prevention and Control Act, 2006.

PART VIII – TERMINATION OF PREGNANCY

22. Termination of pregnancy

(1) A pregnancy may be terminated if a trained health professional, after consultation with the pregnant woman, is of the opinion that-

- (a) The continued pregnancy would endanger the health of the mother; or
- (b) As a result of the pregnancy the life or health of the mother is in danger.

(2) Trained health professionals shall offer non-mandatory and-non-directive counselling, before and after the termination of a pregnancy.

23. Consent

Subject to section 22(1); termination of pregnancy may take place-

- (a) only with the consent of the pregnant woman;
- (b) in the case of a pregnant minor, after consultation with the minor's parents, guardian or such other persons with parental responsibility over the said minor, provided that the best interest of the minor shall prevail; or
- (c) in the case of a mentally unstable person, after consultation with the parents, guardian or such other persons with parental responsibility over the said person.

24. Offences and penalty

A person who violates section 23 commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years.

PART IX – CONFIDENTIALITY

25. Confidentiality

A person who possesses information by virtue of this Act shall not divulge such information to any person unless as provided under this Act.

26. Offences and penalty

A person who contravenes section 25 commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years or both.

PART X-MISCELLANEOUS PROVISIONS

27. Offences and penalty

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 two years or to a fine not exceeding one hundred thousand shillings, or to both.

28. Regulations

- (1). The Executive Member may make regulations for the better carrying out of the provisions of this Act.
- (2) Regulations made under this Act shall be subjected to public consultations, and be approved by the County Assembly.

MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya 2010, for the first time guarantees the right to health care including reproductive health.

This Bill therefore seeks to make provision for the actualization of reproductive rights.

PART I of the Bill is preliminary. It contains provisions on the name of the Bill, commencement, interpretation and definition of words used in the Bill.

PART II is on the right to access contraceptives and family planning services

PART III establishes a reproductive and child health care committee

PART IV contains provisions on reproductive health facilities such as Medical facilities, County Referral Hospitals, Ambulance services, Hospital equipment and Medical practitioners

PART V is on child health care. It provides for Child health care, Immunization, vaccination and deworming, annual check up, training of midwives and health care providers

PART VI is on reproductive health of adolescents.

PART VII is on safe motherhood and contains provisions on antenatal care Services. and Information and treatment on HIV/AIDS.

PART VIII is on termination of pregnancy

The Bill is not a money Bill.

Hon Kibwana Baya
Chairperson, Committee on Health