

# THE HEALTH BILL

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## THE HEALTH BILL

**AN ACT of Parliament to consolidate the law relating to health, to provide for regulation of health care service and health care service providers, to provide for establishment of national regulatory institutions, to coordinate the inter relationship between the national and county health institutions, to establish a coordinating agency of professionals within the health industry and to provide for attainment of the basic right to health and for connected and incidental purposes.**

**ENACTED** by the Parliament of Kenya as follows—

### PART I— PRELIMINARY

Short title and commencement	(1) This Act may be cited as The Health Act, 2012 and will come into operation on such date as the Minister may by notice in the Gazette appoint.
Interpretation	<p>In this Act unless the context otherwise requires—</p> <p>“abortion” means termination of a pregnancy before the offspring is viable as an independent life outside the womb.</p> <p>“adult” means an individual who has attained the age of eighteen years.</p> <p>“Authority” refers to the Kenya Health Services Authority established under this Act.</p> <p>“blood product” means any product derived or produced from blood, including plasma, sera, circulating progenitor cells, bone marrow progenitor cells and umbilical cord progenitor cells.</p> <p>“board” refers to the Advisory Board of the Authority</p> <p>“Cabinet Secretary” means the Cabinet Secretary responsible for health.</p> <p>“child” means an individual who has not attained the age of eighteen years.</p> <p>“disease” refers to any physical or mental condition that causes pain, dysfunction, distress, social problems and/or death to the person afflicted and/or similar problems for those in contact with the person.</p>

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

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

“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 received professional training and has attained necessary qualifications to provide services in the health care sector and as per his or her designated profession.

“health Care Services” means the prevention, 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 Care workers” means employees of a health facility, including both health care professionals and those who do not themselves contribute directly to the provision of health care but offer support or semi-skilled services within a health facility.

“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 inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service.

“health research” 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.

“health system” means the mechanism to deliver quality health care services to all people, whenever and wherever they are needed.

“Inspectorate agencies” means recognized regulatory bodies empowered to undertake inspections under this Act.

“Inspectorate agent” means a recognized regulatory body within the health sector having powers to undertake inspections conferred by its enabling statute.

“KEMSA” means the Kenya Medical Supplies Agency.

“license” means permits or regulatory authorizations issued to an individual, health facility or laboratory pursuant to any written law to exercise a profession or to render services contemplated in the licence or permit.

“licensing” means the issue of a license by the body concerned.

“private health services” means provision of health care by a health facility that is not owned or funded by the national or county government and includes health care services provided by individuals not working for or under direction of the national or county government.

“public health services” means health services that are not private health services.

“referral” means the process by which a given health facility that has inadequate capacity to manage a given health condition or event affecting an individual, seeks the assistance of another health facility to assume responsibility for the case.

“traditional medicines” means products derived from plant, animals or mineral sources, prepared and recommended according to traditional teaching rather than scientific medicine and offered for use in humans as drugs and includes the drugs known as herbal medicines.

“telemedicine” refers to the delivery of health care services and sharing of medical knowledge over distance using telecommunications and It includes consultative, diagnostic, and treatment services.

Objects of the Act

(3) The objects of this Act are to enable the realization of the rights to health as provided for in the Constitution of Kenya and to provide uniformity in



respect of health services across the nation and to achieve the following objectives—

(a) Establishing a national health system which encompasses public and private providers of health services at the National and County Levels and facilitates in a progressive and equitable manner the highest attainable standard of health services;

(b) to set out the rights and duties of the various organs within the National Health System;

(c) to protect, respect, promote and fulfill the rights of all persons living in Kenya 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;

(d) to guarantee the people of Kenya an environment that is not harmful to their health;

(e) to protect, respect, promote and fulfill the rights of children to basic nutrition and health care services contemplated in Articles 43(1) (c) and 53(1)(c) of the Constitution; and

(f) to protect, respect, promote and fulfill the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health.

Responsibility

(4) It is a fundamental duty of the State to observe, respect, protect, promote for health and fulfill the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by *inter alia*:

a) developing policies, laws and other measures necessary to protect, promote, improve and maintain the health and well-being of every person;

b) promoting the prioritization of health issues and investment in the health sector plans of the Republic;

c) ensuring the realization of the health related rights and interests of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or

cultural communities;

d) ensuring the provision of a health service package at all levels of the health care system, which shall include services addressing promotion, prevention, treatment and rehabilitation of health, as well as physical and financial access to health care as defined in consultation with the Health Council; and

e) ensuring equitable investment in health service delivery.

## **PART 2 - Rights and Duties**

Standard of health (5) (1) Every person has the right to the highest attainable standard of health health which shall include progressive physical and financial access to promotive, preventive, curative and rehabilitative services.

(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.

Reproductive health (6) (1) Every person has a right to reproductive health care which includes—

a) the right of men and women 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) the right of access to appropriate health-care services that will enable parents to go safely through pregnancy, childbirth, and the post-partum period, and provide parents with the best chance of having a healthy infant;

c) 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 6 (1) (c), the term “a trained health professional” shall refer to a health professional with formal medical training at the proficiency level of a Medical Officer (doctor), a nurse midwife, or a clinical officer who has been educated and trained to proficiency in the skills needed to manage uncomplicated abortion and post-abortion care and in the identification, management and referral of

abortion-related complications in women, and who has a valid license from the recognized regulatory authorities to carry out that procedure.

(3) Any procedure carried out under subsection 6 (1) (a) or, 6 (1) (c) 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

(7) (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; or

b) stabilizing the health status of the individual; or

c) arranging for transfer in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim(s)

(4) Any medical officer 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 Kenya Shillings One Million or imprisonment for 12 months or both.

(5) Any medical institution that 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 Kenya Shillings Three Million without prejudice to any other punishment prescribed by law.

Health  
information

(8) (1) Every health care provider must inform a user or, where the user is a minor or incapacitated then, the guardian;

a) of the 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) of the range of promotive, preventative and diagnostic procedures and treatment options generally available to the user;

c) of the benefits, risks, costs and consequences generally associated with each option; and

d) of the 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 his 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 attention from a health care provider and the expression health care provider includes any health facility.

Consent

(9)(1) No 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) authorised 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 authorised 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 authorised by an applicable law or court order; or

(d) the patient is being treated in an emergency situation, or

(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 section 8 of this Act.

Information

(10) (1) The National government, County Governments and every organ dissemination having a role or responsibility within the National Health System, shall ensure that appropriate, adequate and comprehensive information is disseminated on the health functions for which they are responsible being cognizant of the provisions of Article 35 (1)(b) of the Constitution, which must include-

(a) the types, availability and cost if any of health services;

(b) the organization of health services;

(c) operating schedules and timetables of visits;

(d) procedures for access to the health services;

(f) procedures for laying complaints; and

(g) the rights and duties of users and health care providers under this Act and as provided for in the applicable service charters.

(h) management of environmental risk factors to safeguard public health.

(2) Disclosure of information contemplated under this section shall be released subject to Section 8 with the appropriate modifications.

Confidentiality (11) (1) All information concerning a user, including information relating to his or her health status, treatment or stay in a health facility is confidential.

(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 in the prescribed form; or
- (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) Proposed disclosure of any information under subsection 2 (c) shall be subject to consent of the Kenya Health Services Authority which must be obtained in writing before disclosure.

Health care personnel (12) (1) The Rights and duties of Health care personnel 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.
- e) the right to challenge a decision of his or her immediate superior by way of appeal to the next higher level of authority.

(2) As participants in the National Health System all health workers, 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
- c) To inform a user of the Health System, in a manner commensurate with his or her understanding, of his or her health status -
  - i. the range of available diagnostic procedures and treatment options and the availability and costs thereof, and
  - ii. the benefits, risks, costs and consequences which may be associated with each option, and
  - iii. the user's right to refuse any treatment or procedure.

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.

(3). Notwithstanding the provisions of Subsection 12 (1) (a), the head of any health establishment may impose conditions on the service that may be provided by a health care personnel taking into account his or her health status.

Duties of

(13) A user of the Health System of Kenya has the duty, insofar as it is within users his or her capabilities:

- a) to adhere to the rules of a health establishment 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 health care provider with accurate information pertaining to his or her health status
- d) to cooperate with the health care provider
- e) to treat health care 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

(14) (1) Any person has a right to file a complaint about the manner in which he or she was treated at a health establishment and have the complaint investigated by the appropriate regulatory body.

(2) The relevant National and County Governments must establish and publish the procedure for the laying of complaints within public and private health care providers in those areas of the national health system for which they are responsible.

(3) The procedures for laying complaints must-

(a) be displayed by all health establishments in a manner that is visible for any person entering the establishment and the procedure must be communicated to users on a regular basis; and

(b) All complaints shall be handled by the head of the relevant establishment or any person designated by the establishment as responsible for handling user complaints;

(4) Every Health establishment shall make monthly returns to the Kenya Health Services Authority of complaints filed by users against it or any of its employees or agents and the actions taken in that regard within a period of three weeks from the time the complaint was lodged with the health establishment and thereafter in every succeeding month until the complaint has been resolved. Provided that where a complaint has been resolved the return should indicate so and the manner in which the complaint was resolved together with a written declaration by the complainant that the complaint has been resolved.

(5) Notwithstanding provisions of subsection 14(4) above, every complainant under section 14(1) has a right to be informed, in writing and within a period of three weeks from the date the complaint was lodged of the action taken or decision made regarding the complaint.

(6) Where a health establishment fails to resolve a complaint to the satisfaction of the complainant the Authority may recommend to the relevant regulatory authority disciplinary action and may represent the compliant before such regulatory authority.

### **PART 3 - THE NATIONAL HEALTH SYSTEM**

National Health

(15) (1) The National Health System shall include, *inter alia*, the

National



System

Government's Ministry responsible for Health, the County Executive Department responsible for Health, all health workers both in the public and private sectors, traditional, Complementary and alternative health care providers, and all institutions whether public or private, that are involved in ensuring the promotion, prevention and treatment of illness or rehabilitation of health.

(2) The National Health System shall seek to realize progressively for all persons living in Kenya the objectives set out in Section 2(c) of this Act.

(3) Notwithstanding the description in section 16 (1), The National Health System shall be divided into a National Government Health system and County Health system.

Duties of

(16) (1) The National Government Ministry responsible for Health shall –

national  
government

a) ensure the development and regular updating of a national health policy and legal framework following the letter and spirit of the Constitution, issue guidelines for its application and promote its implementation at all levels.

b) develop and maintain a firm managerial structure at the national level based on directorates headed by a Director-General of Health.

c) ensure the implementation of rights to health specified in the Bill of Rights, and more particularly the right of all to the highest attainable standard of health including reproductive health care and the right to emergency treatment.

d) ensure, in consultation and collaboration with other arms of government and other stakeholders, that there is stewardship in setting policy guidelines and standards for human food consumption, dietetic services that include basic child nutrition, nutrition security and safety in terms of adequacy levels, acceptable quality and control of micronutrient deficiency diseases and or conditions and mitigation of the effects of hunger on the health of the population.

e) offer technical support at all levels of the National Health System, with emphasis on planning, investment, development and monitoring and evaluation of health services standards and delivery.

f) develop and implement measures to promote equitable access to health services to the entire population, with special emphasis on eliminating the disparity in realization of the objects of this Act for marginalized areas and disadvantaged populations.

- g) 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 marginalized areas.
- h) 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.
- i) develop, in co-operation with other sectors, standards of training and institutions providing education to meet the needs of service delivery.
- j) set guidelines for the designation of National and County referral health facilities
- k) monitor the functioning of the National Health System at all levels, having regard to both efficiency and standards of performance.
- l) To give policy direction and standards on registration, licensing and accreditation of individuals and health institutions by respective regulatory authorities in the health sector.
- m) Coordinate health and medical services during disasters and emergencies.
- n) Ensure adequate mobilization of resources to meet the health needs of the population and ensure their efficient application throughout the health sector
- o) 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.
- p). continue the development and expansion countrywide of a National Health Management Information System.
- q). promote all forms of research that can advance the interests of public health
- r.) work to integrate considerations of health, well-being and equity during the development, implementation and evaluation of Government policies and services in all fields.
- s). collaborate in the common interest with the health authorities of other countries and with regional and international bodies in the field of health.

t) establish an emergency medical treatment fund for emergencies to provide for unforeseen situations calling for supplementary finance.

u). spearhead collaborations with the private sector in public-private partnerships to enhance private sector investment in health

(2) The Cabinet Secretary responsible for Health shall in addition and after due consultation with the Kenya Health Services Authority established under Section 21(1) of this Act make regulations on any matter where it is necessary or expedient in order -

a) to implement any provision of this Act;

b) to implement within Kenya measures agreed upon within the framework of any treaty, international convention or regional intergovernmental agreement to which Kenya is a party.

Directorates (17) For the purposes of subsection 16 (1) (b) the Directorates shall be formed by the Cabinet Secretary on the recommendation of the Kenya Health Services Authority established under this Act.

County health System (18) There shall be established with respect to every County, a County Executive Department responsible for Health, which shall be established in consultation with the Kenya Health Services Authority and the County Public Service Board, and shall in all matters be answerable to the Governor and the County Assembly subject to the provisions of the Constitution and of any applicable written law.

Duties of County (19) (1) The County Executive Department responsible for Health shall, in furtherance of the functions assigned to it under Schedule 4 of the Constitution be responsible for—

a) implementing the national health policy and standards as laid down by national Government health ministry;

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) facilitating accreditation of health facilities and providers according to standards set nationally by the Ministry responsible for health and relevant regulatory bodies;
- e) designation of county referral hospitals according to criteria established by the Ministry responsible for Health;
- f) developing and implementing in consultation with the Kenya Health Services authority and the Salaries and Remuneration Commission, such incentives as may prove necessary to guarantee the staffing of the public health service in marginal areas;
- g) procuring and managing health supplies;
- h) maintaining standards of environmental health and sanitation as laid down in applicable law;
- i) providing access and practical support for inspections and monitoring undertaken within the county by the Council for Health Professions or other authorized bodies;
- j) developing supplementary sources of income for the provision of services, insofar as these are compatible with the applicable law;
- k) making due provision to compensate health care facilities for debts arising through failure to secure payment for bills;
- l) reporting, according to standards established by law, on activities, development and the state of finance within the County Health Services;
- m) making known to the public at all times the health facilities through which generalized or specialized services are available to them;
- n) developing and promoting public participation in the planning and management of local health facilities so as to promote broad ownership;
- o) 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 (20) The National 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 central government.

#### **PART 4 - THE KENYA HEALTH SERVICES AUTHORITY**

Establishment (21) (1) There is hereby established the Kenya Health Services Authority, which shall be a body corporate with perpetual succession and a common seal with power to sue and be sued in its own name and to acquire and alienate property.

(2) The Authority shall have all the powers necessary or expedient for the performance of its functions.

(3) The powers of the Authority shall be vested in the Advisory Board.

(4) The business and affairs of the Board shall be conducted in accordance with the First Schedule.

(5) Except as provided in the First Schedule, the board may regulate its own procedure.

(6) Eight members of the board shall constitute a quorum for the transaction of any business of the Board.

Composition (22) (1) The Advisory Board of the Authority shall consist of-

(a) A Chairperson who shall be a person experienced in health service practice will be competitively selected, approved by Parliament and appointed by the President.

(b) A Director-General competitively selected and appointed so to be Director General responsible for health shall automatically become a member of the board.

(c) Not more than thirteen members shall be competitively selected and appointed by the Cabinet Secretary responsible for health as follows —

- i. Five recognized health professionals
- ii. An expert in environmental health

- iii. One representative of the consumer or patient interest
- iv. One representative from the private health sector
- v. An expert in health law and regulation
- vi. An expert of the field of traditional and complementary medicine.
- vii. An expert on research for health

(2) The Authority may invite any expert to attend any of its meetings to assist in the examination of specialized issues but such an invitee shall not have a vote in any decision of the board.

(3) All members of the Board shall hold office for a term of three years.

(4) A person who has held office as member of the board may be reappointed for a further last term of three years.

Functions of  
the Authority

(23) The Authority shall perform the following functions—

- a) Advising the National and County Governments through the Cabinet Secretary, and the County Executive Member responsible for Health on the formulation and implementation of necessary policies and measures and on the content of both Parliamentary Bills and draft international agreements of relevance to the field of health;
- b) Consulting with the Cabinet Secretary in the development of health regulations mandated under any written law;
- c) Making recommendations to the Cabinet Secretary responsible for Health on any issue regarding health research as provided for under subsection 17(q) of this Act.
- d) Advise the County Health Government on matters of principle relating to the provision of health care.
- e) Advise the Cabinet Secretary responsible for Health on any general or particular issue of Health Policy on which such advice is requested, having regard to the public interest.
- f) Without prejudice to the above functions, the Authority may on its own motion identify any matter of public interest on which it considers necessary to provide advice or information to the Cabinet Secretary or County Executive Member responsible for Health.

- g) Where necessary the Authority shall advise on arbitration in disputes involving institutions within the Health Sector in line with Article 189 (3) and (4) of the Constitution.
- h) In performance of its functions under this part, the Authority may perform or commission any form of study or investigation, the Authority shall seek the agreement of the Cabinet Secretary responsible for Health to the performance of such an activity and request the Cabinet Secretary to advance the necessary funding for this purpose.

Secretariat

(24) (1) The Authority shall have a Director General who shall be responsible for the day to day running of the Secretariat and implementing decisions of the Board.

(2) In addition to the functions under subsection (1) above, the Director General shall be responsible for—

- (a) Coordinating relationships between the Authority and the Cabinet Secretary
- (b) Coordinating relationships between the Authority and County Governments.
- (c) Coordinating relationships between the Authority and Council of Health Professions.
- (d) Coordinating relationship between the Authority and the recognized regulatory bodies.
- (e) Performing such other functions as may be assigned by the Cabinet Secretary for better achieving purposes of this Act.

Staff

(25) The Authority may, upon such terms and conditions of service as the Authority may determine employ such staff or hire the services of such consultants, experts or independent investigators as may be necessary for the proper execution of its functions under this Act.

Financial

(26) (1) The financial year of the Authority shall be the period of twelve months ending on 30<sup>th</sup> June in each year.

arrangements

(2) At least three months before the commencement of each financial year, the CEO shall cause estimates of the revenue and expenditures of the Authority for that year to be prepared and submitted to the board for approval.

(3) The estimates shall make provision for all the estimated expenditures of the Authority for the financial year and, in particular, shall provide for expenditures for—

(a) the payment of salaries, allowances and other charges in respect of staff of the Authority;

(b) the payment of pensions, gratuities and other charges in respect of former staff of the Authority;

(c) the proper maintenance of buildings and grounds of the Authority;

(d) the maintenance, repair and replacement of the equipment and other property of the Authority; and

(e) the payment of allowances and expenses of the board.

(4) The Authority shall make provision for the renewal of depreciating assets and the payment of pensions and retirement benefits by the establishment of sinking funds and for contributions to such reserve and stabilization funds as may be required.

(5) The funds of the Authority shall consist of—

(a) money appropriated by Parliament for the purpose of running the Authority;

(b) loans or grants received by the Authority for its activities;

(c) revenue or fees collected for services rendered by the Authority; and

(d) Any other fees or levy as may be prescribed by the Cabinet Secretary.

Audit  
No. 12 of 2003

(27) The Authority shall be audited in accordance with the Public Audit Act, 2003.

Quarterly and  
Annual reports

(28) (1) For each financial year, the Director General shall cause four quarterly reports and one annual report to be prepared.

(2) The Director General shall submit each report to the board and to the Cabinet Secretary—

(a) in the case of a quarterly report, within one month after the end of the quarter to which the report relates; or



(b) in the case of an annual report, within four months after the end of the year to which the report relates.

(3) Each report shall contain, in respect of the period to which it relates—

(a) a description of the activities of the Authority;

(b) a report of the overall functioning of the National Health System;

(c) the financial statements of the Authority for the year to which the report relates in case of an annual report.

(d) Such other information as may be prescribed by the Cabinet Secretary.

(4) The Cabinet Secretary shall, within thirty days after receiving a report from the Director General transmit it to the National Assembly.

Terms and

(29) (1) The terms and conditions of service of the Director General shall be determined by the board in accordance with the State Corporations Act.

Conditions of  
service of

(2) During the period of his or her employment, the Director General shall not—

Director  
General

(a) be employed in any other work or business; or

(b) hold any other public office.

(3) The Director General may resign by a written resignation addressed to the Cabinet Secretary

(4) A resignation is effective upon being received by the Cabinet Secretary.

Removal of  
Director  
General

(30) The appointment of the Director General may be terminated on the following grounds by the Cabinet Secretary—

(a) for incompetence if recommended by the board;

(b) is unable to perform the functions of his office by reason of mental or physical infirmity.

(c) is convicted of an offence under the Penal Code or any law involving dishonesty;

(d) is involved in a corrupt practice or abuse of office

(e) contravenes the requirements of leadership and integrity under Chapter six of the Constitution of Kenya; or

(f) is adjudged bankrupt.

## **PART 5—HUMAN RESOURCE PLANNING**

Human  
resource  
planning

(31) Working in consultation with the National Government Ministry, the County Executive Department responsible for Health, and the Public Service Commission, the Authority shall be responsible for—

(a) Conducting continuous Human resource analysis, mapping, rationalization, and projected training needs relating to Human Resources for Health;

(b) Advising and making recommendations to the Public Service Commission and the County Public Service Boards on the recruitment and retention of competent staff in the health sector;

(c) Advising and making recommendations to the Salaries and Remuneration Commission in the exercise of its functions under Article 230 (4) and (5) as they relate to the Health Sector professionals and other health employees at all levels;

(d) Advising National and County Governments and health institutions both generally and individually in the development and implementation of:

(i) human resource manuals;

(ii). Staffing norms and standards;

(iii) Codes of regulations for health workers;

(iv) Recruitment, deployment and re-deployment policies and guidelines;

(v) Schemes of service for health workers;

(vi) Performance management;

(vii) Disciplinary measures and appeals;

(viii) Remuneration packages;

- (ix) human resource development;
- (x) professional standards and ethics in consultation with professional bodies;
- (xi) compliance with the provisions of Chapter 6 of the Constitution of Kenya;  
and
- (xii) Standard operating manuals in consultation with professional bodies.

Memorandum

(32) (1) The Public Service Commission, the County Public Service Board and the Salaries and Remuneration Commission shall each consider the advice and recommendations of the Authority forwarded to them pursuant to section 31(b) and (c) and shall produce a memorandum setting out—

- (a) an evaluation of the advice and recommendations made by the Authority; and
- (b) a summary of any significant deviation from the advice and recommendations, with an explanation for each such deviation.

(2) The memorandum shall be forwarded to the Cabinet Secretary with a copy to the Authority within thirty days of the date of deliberations on the advice for purposes of monitoring and evaluation.

## **PART 6 - INSPECTORATE AGENCIES**

Inspection

(33) (1) The obligation to inspect, monitor and evaluate the standard of performance in all the services and professions engaged in the health sector, both public and private shall be undertaken by the respective statutory bodies in accordance with mandates laid down in their respective enabling legislation.

(2) For the avoidance of doubt the statutory bodies referred to in subsection (1) include—

- (a) Clinical officers Council established under the Clinical Officers Act, Act No 260
- (b) Nursing Council of Kenya established under the Nursing Council Act 257??,
- (c) established under Kenya Medical Laboratory Technicians and Technologists Board Act No. 10 of 1999.

(d) Medical Practitioners and Dentists Board established under the Medical Practitioners and Dentists Act, Cap253

(e) Radiation Protection Board established under the Radiation Act Cap???

(f) Pharmacy and Poisons Board established under the Pharmacy and Poisons Act Cap.244

(g) The Nutrition Council of Kenya established under the Nutrition and Dieticians Act of 2007

(i) any other body prescribed by the Cabinet Secretary under this Act.

(3) The statutory bodies referred to in subsection (2) shall collectively or individually be referred to as the inspectorate or inspectorate agencies while discharging inspection functions pursuant to this Act or respective enabling legislation.

Functions (34) (1) The Inspectorate shall be responsible for:

a) Inspection of professional service delivery by health professionals, workers and institutions both private and public, including homes for the elderly and institutions for persons with special needs;

b) Enhancing compliance of standards and technical requirements for institutions and health professionals;

c) Advising on formulation of standards and guidelines on delivery of quality health care including environmental health and sanitation;

d) Supporting the developing of benchmarks for service delivery in collaboration with national, regional and international similar bodies;

e) Collaboration with other regulatory bodies to enhance compliance of standards and enhance technical requirements;

f) Establishing a standards and quality assurance mechanism within public and private health institutions;

g) Issuing Inspections, licensing, certification, quality assurance certification; and

h) Monitoring and evaluation of health management system to safeguard quality of health care.

(2) The functions under this Act are supplemental and not in any way derogatory from the functions of the inspectorate agencies under their respective enabling legislations.

Referral  
Opinion (35) In addition to the above functions and subject to the provisions of this Act, the Inspectorate agencies shall be responsible for making recommendations to the Authority for designation of Public Health Institutions as National Referral Institutions.

Personnel (36) The Cabinet Secretary in consultation with the Public Service Commission and where necessary the County Public Service Board shall ensure:

(a) The adequate provision of budgetary support to improve capacity of inspection personnel within the respective inspectorate agencies.

(b) The secondment of personnel from national government ministry to respective inspectorate agencies; and

(c) Establishment of County health Inspectorate Services by the inspectorate agencies.

Procedures (37) The inspectorate agencies shall regulate their own procedure while undertaking inspections whether joint or several.

Powers (38) (1) In addition to the powers under the respective Acts, the Inspectorate shall have all powers generally necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing the Inspectorate shall have the power—

(a) to investigate complaints against health professionals by members of the public or on its own motion, and for that purpose, to gather, by such lawful means as it may deem appropriate, any information it considers relevant, including requisition of reports, records, documents or any information from any source, irrespective of whether that source is located within or outside Kenya and irrespective of whether any other person or body, other than a court of law, has already instituted or completed a similar investigation or similar proceedings;

(b) to enter upon any establishment or premises, for any purpose which is material to the fulfillment of its mandate or any other written law subject ;

- (c) to seize and remove any object or thing from any premises which may be related to the matter under investigation, in respect of which an acknowledgement shall be given to the owner or person apparently in control of the object or thing;
- (d) to interview and take statements under oath or affirmation from any person, group or members of organizations or institutions and, at its discretion, to conduct such interviews in private;
- (e) summon any person to meet with its staff, or to attend any of its sessions or hearings, and to compel the attendance of any person who fails to respond to its summons;
- (f) to administer oaths or affirmations;
- (g) to summon any serving or retired health professional to appear before it to produce any document, thing or information that may be considered relevant to the function of the Authority
- (h) to take over on-going internal investigations into professional misconduct or failure to comply with any law if such investigations are inordinately delayed or manifestly unreasonable;
- (i) where appropriate, to provide relevant information to enable a victim of professional misconduct, to institute and conduct disciplinary or civil proceedings for compensation in respect of injuries, damages or loss of income;
- (j) request the Attorney-General and or the Director of Public Prosecutions to provide advice on any recommendation made by the Inspectorate to prosecute any person or body;
- (k) request any person or institution to provide it with information on issues relating to, measures taken in response to any recommendation made to it by the Inspectorate within a specified reasonable time;
- (l) Issue a reprimand;
- (m) recommend to the relevant authority having oversight over the person or institution suspension of their licenses or activities;
- (n) recommend appropriate disciplinary action to the relevant regulatory body;

(o) recommend prosecution against the person or institution in question.  
Consider a tribunal to handle judicial functions – conduct of enquiries in the Acts

(p) exercise any other power provided for in this Act or any other applicable legislation for the effective performance of its functions.

(2) In the exercise of its powers under this Act, the Inspectorate shall be guided by –

(a) the standards of quality and performance as published in regulations made under this Act or any other written law;

(b) conditions stipulated under any applicable licence and or the governing statute;

(c) conditions of practice published by the regulatory body; and

(d) good industry practices in the provision of health care and the observance of professional ethics.

(3) Notwithstanding the actions set out in subsection 2, where faults or deficiencies in performance are identified or opportunities are detected for the improvement or correction of performance, the Inspectorate shall in a written report explain the relevant findings to the person or institution concerned, including making appropriate proposals to the person in question on the means by which such gaps of standards and quality as have been identified may be remedied or performance enhanced to the satisfaction of the Inspectorate and where necessary shall set specific requirements regarding measures to be undertaken.

(4) Where gaps of standards and quality of performance or breaches of standards are identified as constituting a more than incidental problem, involving a range of institutions the Inspectorate shall bring this fact to the attention of the Authority and Cabinet Secretary and propose such legislative, regulatory or other measures as may be considered necessary to provide correction.

Rules for  
complaints

(39) (1) The Inspectorate shall apply rules relating to the initiation, hearing and disposal of complaints applicable to respective statutory bodies.

(2) Where the inspectorate is uncertain or there is a dispute as to what statutory body is competent to handle a complaint then the dispute shall be referred to the Council for Health Professions for determination.

Police assistance (40) The Inspectorate may in the exercise of its powers under this Act, request and receive such assistance from the Police or any other governmental, international body or person as may solely in its own opinion be necessary in the enforcement of its powers.

Report to Ministry (41) The Inspectorate may in exceptional circumstances regarding matters of national importance submit a report simultaneously to the National Ministry responsible for Health if such a matter requires urgent consideration in the public interest.

Confidentiality (42) The medical records of a person shall be treated in confidence and information obtained in the course of perusing such documents by the Inspectorate or any employee or agent of the Inspectorate shall not be disclosed except where –

- a) The disclosure is for purpose of law enforcement; or
- b) The disclosure is pursuant to court order; or
- c) The disclosure is otherwise allowed under any other written law.

International Co-operation (43) In appropriate cases the Inspectorate will through the Cabinet Secretary collaborate with relevant institutions in other countries, notably for purposes of training or for mutual investigation of cross-border activities that may further the objects of this Act.

Appeal (44) (1) An Appeal shall lie against any decision or actions taken or penalties imposed by the Inspectorate on a Health Professional or an institution to the High Court by way of judicial review.

(2) The right to pursue judicial review is not exclusive and the Health professional or institution may pursue such other remedies as are lawfully available under any other written law.

## **PART 7 - PUBLIC HEALTH FACILITIES**

Public health facilities (45) The National and County Governments shall ensure the establishment and equitable distribution throughout the country of such publicly owned health institutions, including hospitals, Health Centers, Pharmacies, clinics and laboratories, as are deemed necessary for the promotion, prevention, treatment and rehabilitation of health.



Public private Partnership	<p>(46) Notwithstanding the provisions of section 46 and subject to any other law regulating public-private partnerships, nothing under this Act shall prevent the National and County governments from entering into public-private partnerships for the purpose of establishing and deepening health service provision.</p>
Devolution	<p>(47) Subject to Part 4 Section 15 of the Sixth Schedule of the Constitution of Kenya, the management, operation and further development of public health facilities institutions shall be devolved progressively to the County Government, and in assessing suitability of devolution to a given County the following considerations shall apply:</p> <ul style="list-style-type: none"> <li>(a) the eligibility and capacity of a given County to assume the responsibility involved;</li> <li>(b) maintenance of access to any such devolved institution by authorized bodies; and</li> <li>(c) the retention of authority for certain services at the National level as set out in the Constitution.</li> </ul>
Retention of Authority	<p>(48) Without prejudice to the distribution of health functions and services between the national and county level of government as set out in schedule 4 of the Constitution, the national Government shall manage and be responsible for—</p> <ul style="list-style-type: none"> <li>a) Any public health institution classified as a national referral facility under this Act;</li> <li>b) Any institution or health facility engaged in such specialized health activities as can only be provided effectively and efficiently at the national level;</li> <li>c) Any institution or service dependent for its function on expertise that is a shared resource as classified from time to time in regulations under this Act;</li> <li>d) Laboratories and other institutions designated as serving a national rather than a regional purpose;</li> <li>e) Assessment, licensing and control of commercial and industrial activities with respect to medicines, vaccines and other health technologies;</li> </ul>

f) Procurement of pharmaceutical and non-pharmaceutical goods for public health facilities except as otherwise delegated to procuring entity within the County government.

g) Supply to both national and county institutions of items procured under clause (f) above.

h) Any health care function or service that is not otherwise assigned to the county government.

## **PART 8 - COORDINATION OF THE HEALTH PROFESSIONS**

Health  
Professions  
Council

(49) (1) There is hereby established the Council of Health Professions charged with the responsibility of ensuring the adequate co-ordination of activities of various professional associations within the Health sector.

(2) Notwithstanding subsection 1, the mandates or operations of statutory regulatory bodies of professions recognised as at the date of commencement of this Act shall be preserved.

(3) The Council of Health Professions shall be a body corporate with perpetual succession and a common seal and capacity to sue and be sued in its own name and to acquire and alienate property.

Composition

(50) (1) The Council of Health Professions shall comprise -

a) A Chairperson who shall be elected by representatives from professional associations;

b) one elected representative from each of the mainstream professional associations recognised under this Act;

c) an expert in health law

d) a Chief Executive Officer appointed by the Council through a competitive process.

(2) The Council of Health Professions shall be supported by a Secretariat which shall be headed by the Chief Executive Officer.

Meetings,  
budget etc

(51) (1) The Council of Health Professions shall hold meetings as specified in the second schedule.

(2) The Council shall prepare an annual estimate of revenue and expenditures and submit the same to the Authority for inclusion in the estimates of revenue and expenditure submitted by the Authority.

(3) The funds of the Council shall comprise of money appropriated by Parliament, loans or grants received for its activities and other revenues or fees collected from its activities.

Functions (52) The Council of Health Professions shall be responsible for -

- a) promoting and regulating inter-professional liaison between professional bodies recognised under this Act;
- b) proposing, for the approval of the regulatory bodies recognised under this Act, standards and procedures applicable in the training, examination, licensing and post-graduation training of members of the health profession concerned
- c) ensuring the execution of respective mandates and functions of regulatory bodies recognized under this Act,
- d) overseeing the conduct of examinations of knowledge and competence by the relevant health professions and regulatory bodies;
- e) Facilitating the registration of health professionals seeking to practice in Kenya who are licensed in foreign countries;
- f) determining disputes between regulatory bodies;
- g) facilitating joint inspections by regulatory bodies,
- h) facilitating conferences, seminars and research;
- i) undertaking any other function that may be assigned by the Cabinet Secretary to deepen cooperation amongst health care professions and professionals.

## **PART 9 - REGULATION OF MEDICINES AND MEDICAL PRODUCTS**

Regulation of medicines	<p>(53) (1) The manufacture, sale, importation, export, distribution or promotion of medicines, vaccines, devices or other products intended for promotion, prevention, treatment, rehabilitation, and alleviation of human disorders or for the modification of physiological function shall be subject to standards and procedures to be established by the National Government under appropriate legislation. and before such legislation is enacted existing legislation regulating medicines and medicinal products shall continue to apply.</p> <p>(2) The classes of products governed by legislation shall extend to therapeutic feeds and nutritional formulations.</p>
Conditions	<p>(54) Legislation under Section 54 shall provide for the granting of marketing approval only by a technically competent body after appropriate assessment has established that such a product meets generally recognized standards and approval may be made subject to conditions, notably with respect to the conduct and content of promotion and advertising.</p>
Licence	<p>(55) (1) No person, firm or institution may engage in one or more of the activities specified in section 53(1) whether by way of trade or otherwise, unless one has a valid licence granted by the technically competent body specified in that sub-section.</p> <p>(2) Any person, firm or institution in the possession of such a licence shall display the same at a conspicuous place and shall produce the same for inspection when required to do so by any officer from the inspectorate agencies.</p>
Standards	<p>(56) A medicine, vaccine or other pharmaceutical or non-pharmaceutical product intended for sale to members of the public shall be eligible for licensing only if, after due assessment, it is found to achieve the therapeutic effect it claims to possess or which may reasonably be attributed to it; and is sufficiently safe under the normal conditions of use, and is made and packaged according to satisfactory standards.</p>

## **PART 10 - PROCUREMENT AND SUPPLY OF MEDICINES AND VACCINES AND OF MEDICAL DEVICES, APPLIANCES AND MATERIALS**

Medicines	<p>(57) (1) The procurement for the public health services of medicines, vaccines</p>
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and vaccines

and other medical goods shall be undertaken primarily by Kenya Medical Supplies Agency.

(2) The classes of products procured by Kenya Medical Supplies Agency shall extend to therapeutic feeds and nutritional formulations in addition to pharmaceutical and non-pharmaceutical goods.

(3) The Kenya Medical Supplies Agency may be the point of first call for procurement at the county level and it shall endeavour to establish branches within each county at such locations as it may determine.

(4) Notwithstanding sub section (3), counties shall have the right to procure these items incidentally from other sources where the Kenya Medical Supplies Agency is unable to supply them in good time or at a competitive price.

(5) National referral hospitals shall have a right to purchase medicines and vaccines from other accredited sources.

(6) National Government shall provide guidelines for the procurement, distribution and management of essential medicines at all levels of the national health system.

Devices etc

(58) The procurement for the public health services of devices, appliances and materials shall similarly be undertaken primarily by Kenya Medical Supplies Agency subject to right of public health facilities to procure from any source items of low monetary value; the latter shall be subject to guidelines to be issued by the Cabinet Secretary.

## **PART II - PROMOTION AND ADVANCEMENT OF PUBLIC AND ENVIRONMENTAL HEALTH**

Public and environmental

(59) (1) The National and County Governments, acting primarily through the agency of the Ministry and the County Executive department responsible for health respectively, and in collaboration and consultation with the Institutions and agencies created under this Act and other arms of government, shall devise and implement measures to promote health and to counter influences having an adverse influence upon it. Such measures shall include—

- a) Measures to reduce the burden imposed by communicable diseases, especially among marginalized and indigent populations;

- b) The institution of measures to promote physical activity;
- c) The promotion of supply of foodstuffs of sufficient quality in adequate quantities and the promotion of nutritional knowledge at all population levels;
- d) The promotion of regular physical activity and the provision of facilities to this end;
- e) Steps to counter the excessive use of alcoholic products and the adulteration of such products;
- f) Measures to reduce the use of tobacco and other addictive substances and to counter exposure of children and others to tobacco smoke;
- g) General health education of the public;
- h) A comprehensive programme to advance reproductive health including—
  - i. effective family planning services
  - ii. implementation of means to reduce unsafe sexual practices
  - iii. sexual health in adolescence and youth
  - iv. pre-natal, post-natal and maternal care
  - v. elimination of female genital mutilation
  - vi. maternal nutrition and micro nutrient supplementation

(2) National and County Governments 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, 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 national and 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

(60) (1) Pursuant to meeting the objects set out in section (59), the Cabinet Secretary, the Authority, and the Council for Health Professions shall formulate national policies that shall provide for measures that include—

- a) Ensuring and promoting the provision of Quarantine and Port, 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 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) Involving of all stakeholders especially in delineating their responsibilities and gaining their action and commitment;
- g) Mobilizing resources including human resources for action;
- h) Public education and participation;
- i) Promoting the public health and the prevention, limitation or suppression of infectious, communicable or preventable diseases within Kenya;
- j) Ensuring provision of environmental health and sanitation mechanisms to prevent and guard against the introduction of infectious disease into Kenya from outside;

k) Issuing guidelines to counties in regard to matters affecting the public health from the environment and sanitation;

l) Promoting or carrying out researches and investigations in connection with the prevention of environmental, water and sanitation related diseases;

m) Addressing all issues pertaining to environmental hygiene and sanitation,

Public Health  
Act

(61) For the better carrying out of environmental and public health functions under this Act the officers of the Inspectorate agencies shall have powers and exercise functions of an inspector appointed under the Public Health Act.

## **PART 12 - MENTAL HEALTH**

Mental health

(62) (1) Appropriate policies shall be developed by the Authority in consultation with the Council of Health Professions and propose to the Cabinet Secretary for gazettment—

a. to protect the rights of any individual suffering from any mental disorder or condition

b. to ensure the custody of such persons and the management of their estates as necessary

c. to establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country.

d. to advance the implementation of other measures introduced by specific legislation in the field of Mental Health

(2) The Mental Health Act shall continue to apply with appropriate modification and adaptations.

## **PART 13 - TRADITIONAL AND COMPLEMENTARY MEDICINES**

Documentation

(63) (1) The national Ministry responsible for Health shall establish and put in place measures to identify and document –

a) the extent to which traditional medicine is practiced in Kenya ,



- b) the areas of Kenya in which contacts with traditional practitioners comprise a particularly significant proportion of all health consultations;
- c) the conditions for which populations are most prone to seek traditional medical support;
- d) the medical conditions in which such support is conceived to be particularly beneficial;
- e) the practical considerations, financial or otherwise, which are most likely to lead to such consultation;
- f) the characteristics of those members of the population most prone to seek the assistance of traditional practitioners;
- g) the extent to which cross referral between orthodox and traditional practitioners is experienced ; and
- h) evidence as to the beneficial and adverse consequences of traditional or complementary methods of treatment

(2) The Cabinet Secretary shall, in consultation with the Authority and the Council of Health Professions and on the basis of information generated under measures set out in sub section (1), prescribe regulations for the better management of traditional medicine.

## **PART 14 - HUMAN BLOOD, BLOOD PRODUCTS, TISSUES AND GAMETES**

Kenya National Blood service (64) (1) The existing Kenya National Blood Transfusion Centre is continued under this Act as the Kenya National Blood Transfusion Service.

(2) The Kenya National Blood Transfusion Service shall establish County blood transfusion services governed by regulations made under this Act.

Delegation of profit organisation (65) (1) The Kenya Blood Transfusion Service may grant a competent, non-service profit organisation the licence to provide blood transfusion services anywhere in the territory of the Republic of Kenya.

(2) The holder of the licence granted in terms of subsection (1)-

(a) must comply with prescribed norms and standards and must provide the

prescribed blood transfusion and related services

(b) may establish regional units, for the delivery of blood transfusion services,

(c) has the sole right to provide a blood transfusion service in the Republic.

(d) prescribed blood transfusion and related services; which must function under the control of the licence holder; and

(3) Any person other than the holder of the licence granted in terms of subsection (1) that provides a blood transfusion service in the Republic is guilty of an offence and liable on conviction to a fine not exceeding Kenya Shillings One million or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) No person shall remove blood, a blood product or tissue from the body of a living person without consent of the person.

Genetic  
manipulation

(66) (1) No person shall -

(a) manipulate any genetic material, including genetic material of human gametes, zygotes or embryos; or

(b) engage in any activity, including nuclear transfer or embryo splitting, for the purpose of the reproductive cloning of a human being

without the prior written consent of the Cabinet Secretary acting on recommendations of the Authority and Council of Health Professions.

(2) No person shall import or export human zygotes or embryos without the prior written approval of the Cabinet Secretary acting on the recommendation of the Authority and Council of Health Professions.

(3) The Cabinet Secretary may, under such conditions as may be prescribed, permit therapeutic cloning utilizing adult or umbilical cord stem cells.

(4) The Cabinet Secretary may permit research on stem cells and zygotes which are not more than 14 days old if-

(a) the applicant undertakes to document the research for record purposes: and

(b) prior consent is obtained from the donor of such stem cells or zygotes.

(5) Any person who contravenes a provision of this section or who fails to comply therewith is guilty of an offence and is liable on conviction to a fine not exceeding Kenya Shillings One million or to imprisonment for a term not exceeding five years or to both a fine and imprisonment.

(6) For the Purposes of this section—

(a) “reproductive cloning of a human being” means the manipulation of genetic material in order to achieve the reproduction of a human being and includes nuclear transfer or embryo splitting for such purpose; and

(b) “therapeutic cloning” means the manipulation of genetic material from adult, zygotic or embryonic cells in order to alter, for therapeutic purposes, the function of cells or tissues.

Tissue use

(67) (1) A person may use tissue removed from a living person or a blood product withdrawn from a living person only for such medical or dental purposes as may be prescribed.

(2) subject to subsection (3) the following tissue, blood or blood products may not be removed or withdrawn from a living person for any purpose stated in subsection (1):

(i) tissue, blood or a blood product from a person who cannot give consent; or

(ii) tissue which is not replaceable by natural processes from a person under the age of 18 years.

(iii) tissue, blood, a blood product or a gamete from a person who is mentally ill in accordance with the Mental Health Act

(iv) a gamete from a person under the age of 18 years; or

(v) placenta, embryonic or foetal tissue, stem cells and umbilical cord, excluding umbilical chord progenitor cells

(3) The Cabinet Secretary acting on recommendations of the National Health Council may authorize the removal or withdrawal of tissue, blood, a blood product or gametes

contemplated in subsection 2 and may impose any conditions which may be necessary in respect of such removal or withdrawal.

(4) Any person who contravenes a provision of this section or who fails to comply with any condition imposed by the Cabinet Secretary is guilty of an offence and is liable on conviction to imprisonment for a minimum of five years with no option of a fine.

Transplantation (68) (1) No person shall remove tissue from a living person for transplantation in another living person or carry out the transplantation of such tissue except:-

(a) in a hospital authorised for that purpose; and

(b) on the written authority of:-

(i) the medical practitioner in charge of clinical services in that hospital or any other medical practitioner authorised by him or her; or

(ii) in the case where there is no medical practitioner in charge of the clinical services at that hospital a medical practitioner authorised thereto by the person in charge of the hospital.

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

Donations  
of blood  
and tissue

(69) (1) It is an offence for a person:-

(a) who has donated tissue, blood or a blood product to receive any form of financial or other reward for such donation, except for the reimbursement of reasonable costs incurred by him or her to provide such donation; and

(b) to sell or trade in tissue, blood or blood products, except as provided for in this Act.

(2) Any person found guilty of an offence under subsection (1) is liable on conviction to a fine of Kenya Shillings One Hundred Thousand or to imprisonment for a term not exceeding one year or to both fine and imprisonment.

(3) Nothing in this section prevents a registered health care provider from receiving remuneration for any professional service rendered by him or her.

Use of human organs

(70) (1) Human organs obtained from deceased persons for the purpose of transplantation or treatment, or medical or dental training or research, shall only be used in the prescribed manner.

(2) Human organs obtained under subsection (1) shall be allocated in accordance with the prescribed procedures.

(3) An organ may not be transplanted into a person who is not a Kenyan citizen or a permanent resident of the Republic of Kenya without the Cabinet Secretary's authorization in writing.

(4) The Cabinet Secretary shall prescribe through regulations-

(a) criteria for the approval of organ transplant facilities; and

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

(5) (a) Any person who contravenes a provision of this section or fails to comply therewith or who charges a fee for a human organ is guilty of an offence.

(b) Any person convicted of an offence in under subsection (a) is liable on conviction to a fine not exceeding Kenya Shillings One Million or to imprisonment for a period not exceeding five years or to both a fine and imprisonment.

Will

(71) (1) (a) A person who is competent to make a will may-

(i) in the will; or

(ii) in a document signed by him or her in the presence of at least two competent witnesses who are present when he or she signs and signed by them in his or her presence; or

(iii) in an oral statement made in the presence of at least two competent witnesses;

donate his or her body or any specified tissue thereof to be used after his or her death, or give consent to the post mortem examination of his or her body, for any purpose provided for in this Act.

(b) A person who makes a donation as contemplated in paragraph (a) must nominate an institution or a person contemplated under this Act.

(c) If no donee is nominated in terms of paragraph (b), the donation shall be null and void.

(d) Paragraph (b) does not apply in respect of an organ donated for the purposes contemplated in section 70(1) and the donee of such organ must be determined as provided in section 70(2).

(2) In the absence of a donation under subsection (1) (a) or of a contrary direction given by a person whilst alive, the spouse, partner, elder child, parent, guardian, elder brother or sister of that person, in the specific order mentioned, may, after that person's death, donate the body or any specific tissue of that person to an institution or a person contemplated in section 71(2).

(3) (a) The Cabinet Secretary may, after the death of a person and if none of the persons contemplated in subsection (2) can be located, donate any specific tissue of that person to an institution or a person contemplated in section 71(2).

(b) The Cabinet Secretary may only donate the specific tissue if all the prescribed steps have been taken to locate the persons contemplated in subsection (2).

Purposes (72) (1) A donation under section 71 may only be made for-

(a) the purposes of the training of students in health sciences;

(b) the purposes of health research;

(c) the purposes of the advancement of health sciences;

(d) Therapeutic purposes, including the use of tissue in any living person; or

(e) the production of a therapeutic, diagnostic or prophylactic substance.

(2) This part does not apply to the preparation of the body of a deceased person for the purposes of embalming it, whether or not such preparation involves the-

(a) making of incisions in the body for the withdrawal of blood and the replacement thereof by a preservative; or

(b) restoration of any disfigurement or mutilation of the body before its burial.

Revocation (73) A donor may, prior to the transplantation of the relevant organ into the donee, revoke a donation in the same way in which it was made or, in the case of a donation by way of a will or other document, also by the intentional destruction of that will or document.

Postmortem (74) (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 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 authorised by such practitioner, or

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

(3) The Cabinet Secretary may, on the written application of an institution or person requiring tissue for a purpose contemplated under this Act authorize that institution or person, in writing, to obtain such tissue from a medical practitioner or a person or an institution contemplated under this Act.

Regulations (75) (1) The Cabinet Secretary may make regulations regarding -

a) the post mortem examination of bodies of deceased persons;

b) the preservation, use and disposal of bodies, including unclaimed bodies;

c) the removal of donated tissue or cells from persons, tissue or cells obtained from post mortem examinations and the procurement, processing, storage, supply and allocation of tissue or human cells by institutions and persons;

- d) tissue transplants;
- e) the production, packaging, sealing, labeling, storage and supplying of therapeutic, diagnostic and prophylactic substances from tissue;
- f) the supply of tissue, organs, oocytes, human stem cells and other human cells,
- g) blood, blood products or gametes;
- h) the importation and exportation of tissue, human cells, blood, blood products
- i) or gametes;
- j) the withdrawal of blood from living persons and the preservation, testing, processing, supply or disposal of withdrawn or imported blood;
- k) the administering of blood and any-blood product to living persons;
- l) the production, packaging, sealing, labeling and supplying of blood and blood products;
- m) the bringing together outside the human body of male and female gametes, and research with regard to the product of the union of those gametes;
- n) the artificial fertilization of persons;
- o) the appointment and functions of inspectors of anatomy and investigating officers;
- p) the records and registers to be kept by persons and institutions;
- q) the returns and reports, including extracts from registers, to be submitted to specified persons and institutions;
- r) the acquisition, storage, harvesting, utilization or manipulation of tissue, blood, blood products, organs, gametes, oocytes or human stem cells for any purpose;
- s) the appointment and functions of inspectors of the national blood transfusion service and progenitor cell transplant institutions; and
- t) any other matter relating to regulating the control and the use of human bodies, tissue, organs, gametes, blood and blood products in humans.



(2) The Cabinet Secretary, with the concurrence of the Cabinet Secretary responsible for finance, may make regulations concerning the payment of persons or institutions in connection with procurement, storage, supply, import or export of human bodies, tissue, blood, blood or gametes.

(3) The Cabinet Secretary may, if it is consistent with the objects of this Act and upon such conditions as the he may deem fit, by notice in the *Gazette* exempt any person or category of persons from any or all of the regulations made under this section

Repeal

(76) The Human Tissue Act is hereby repealed.

## **PART 15 - REGULATION OF CONTROLLED SUBSTANCES**

Controlled  
Substances

(77) Measures to regulate the trade in and use of controlled substances, shall be governed by the Food and Controlled Substances Act or any legislation replacing the same and in accordance with the relevant international conventions ratified by Kenya.

## **PART 16 - HEALTH FINANCING**

Health finance

(78) The National Government shall ensure progressive financial access to health by taking measures that include—

- a) Performing studies of financing models for health care;
- b) defining, in collaboration with the Ministry responsible for Finance, public financing of health care, including annual allocations towards reimbursing private health care providers responding to emergencies as contemplated under this Act;
- c) establishing in collaboration with the Ministries responsible for Finance, Planning and any other Ministry for the time being responsible for Special Programmes to secure health care by vulnerable groups and indigents;
- d) determining, during each financial period and in consultation with individual County authorities, the extent to which and the manner in which fees can be levied for services provided by the public health system without significantly impeding the access of particular population groups to the system in the areas concerned;

- e) examining means of optimizing usage of private health services as a result of relieving the burden carried by the publicly financed system; and
- f) defining the role that traditional and alternative healers may responsibly play in the economical provision of various forms of health care.

## **PART 17 - ROLE OF THE PRIVATE SECTOR**

- |                |  |
|----------------|--|
| Private sector | (79) Having regard to the manner in which public and private health services and facilities can and should complement each other in the provision of comprehensive and accessible health care to the population, the Cabinet Secretary shall pursue approaches conducive to the development of private health services and their attunement to the needs of the population.  |
| Licence        | <p>(80) (1) Private undertakings shall be permitted to operate hospitals, clinics, laboratories and other institutions in the health sector, subject to licensing by the appropriate regulatory bodies.</p> <p>(2) The standards to be met in order to qualify for the issue of an operational licence under this section and the conditions that may be attached to such a licence shall be as defined in regulations issued under this Act by the Cabinet Secretary.</p>   |
| Private worker | (81) Private workers appropriately qualified to practice any health profession shall similarly be entitled to practice this profession in Kenya, subject to licensing by the appropriate regulatory bodies.  |
| Duty of        | <p>(82) Institutions licensed under subsection 801) and private health workers licencees licensed under section 81 shall irrespective of any specific conditions attached to such a licence be bound:</p> <ul style="list-style-type: none"> <li>a). to permit and facilitate inspection at any time by the Inspectorate agencies.</li> <li>b) to provide emergency services in their field of expertise required or and requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.</li> </ul> |

Partnership (83) (1) Where appropriate, and subject to the advice of the Authority and the ministry responsible for Health shall be entitled to enter into partnership agreements with companies operating in the private sector in order to develop specific new services or facilities that will serve the needs of public health. In such instances the venture in question may be supported by State funds in the form of an initial grant or a recurrent subsidy.

(2) Counties or individual facilities may similarly enter into agreements of this type with the private sector, but in such instances the agreement of the Ministry responsible for health will be required, following consultation with the Health Council.

## **PART 18 - PROMOTION AND CONDUCT OF HEALTH RESEARCH**

Research (84) Having regard to the necessity of both scientific and policy research in the budget field of health in Kenya, an appropriate portion of the national budgets voted for health care shall be devoted to the initiation and support of relevant research projects.

Donor support (85) Notwithstanding the responsibility of national government under section 84 of this Act, non-governmental and international organization may cooperate with the Ministry in providing support for promotion and conduct of health research.

Health Research Committee (86) (1) There shall be established by the Cabinet Secretary, a National Health Research Committee as a department under the Authority.

(2) The membership of the Research Committee shall be constituted through a competitive process and shall consist of not more than 15 members appointed by the Cabinet Secretary.

(3) the membership of this research committee established in terms of this section shall as much as possible reflect ethnic and regional balance and be composed primarily of members from the health professions who are distinguished academicians.

(4) (1) The term of office of the Chairman shall be five years.

(2) The Chairman may be reappointed for a further term of five years and shall not be eligible for reappointment thereafter.

(3) The Chairperson shall be a distinguished health researcher and be accomplished and renowned in a health discipline.

(4) The Chairman may resign through a letter addressed to the Cabinet Secretary.

Term of  
office

(87) (1) A member of the Research Committee shall hold office for a term of three years.

(2) The term of office of a member of Research Committee may be renewed for a final term of three years.

(3) A member of the Research Committee may resign through a letter addressed to the Cabinet Secretary.

Functions

(88) (1) The Research committee shall advise on the various priorities to be accorded in the area of health research in the light of current knowledge and needs, recognized priorities and economic resources.

(2) In identifying health research priorities, the Research Committee shall give due regard to—

(a) the burden of disease;

(b) the cost-effectiveness of interventions aimed at reducing the burden of disease;

(c) the availability of human and institutional resources for the implementation of an intervention at the level closest to the affected communities;

(d) the health needs of vulnerable groups such as woman, older persons, and children and people with disabilities;

(e) The health needs of communities; and

(f) national security.

(3) The Research Committee shall have the responsibility to –

a) determine the extent of health research to be carried out by public and private health authorities whether national or international;

(b) ensure that health research agenda and research resources focus on priority health problems;

(c) develop and advise the Cabinet Secretary on the application and implementation of an integrated national policy and strategy for health research; and

(d) ensure that the intellectual property benefits arising from any health research conducted in the country are commensurately enjoyed by all involved parties.

KEMRI (89) (1) The Authority shall advise the Cabinet Secretary on the structure and function of the Kenya Medical Research Institute (KEMRI) to ensure that its programme is optimally attuned to the health interests of the population and is adequately incorporated in the overall programme of health research.

(2) The Authority through the Research Committee will cooperate and undertake joint research projects with KEMRI and will jointly formulate research policies for incorporation in the national health policy.

Procedure (90) The Research Committee may prescribe the manner in which it shall conduct its affairs and the procedure to be followed at its meeting, including the manner in which decisions are to be made and implemented except as otherwise provided in the Third Schedule.

Remuneration (91) A member of the Research Committee who is not employed on full time basis in the public service shall in respect of their service as member be paid such remuneration as may be determined by the Authority.

Publications (92) (1) Where medical and scientific research is to be conducted on human subjects, detailed protocols shall in all cases be submitted in advance to the Authority which in collaboration with relevant Institutional Review Bodies will assess their scientific and ethical acceptability and where appropriate impose conditions or safeguards.

Minors (93) (1) Where research or experimentation is to be conducted on a minor for a therapeutic purpose, the research or experimentation may only be conducted-

(a) if it is in the best interest of the minor;

(b) in such manner and on such conditions as may be prescribed; and

(c) with the informed written consent of the parent or guardian of the minor.

(2) Where research or experimentation is to be conducted on a minor for a non-therapeutic purpose, the research or experimentation may only be conducted –

(a) in such manner and on such conditions as may be prescribed by the research committee; and

(b) with the informed written consent of the parent or guardian of the minor.

(3) Should the extent of such research call for more formalized procedures, the Council may institute these and impose appropriate charges for the conduct of the assessment. The conduct of such research without the explicit approval of the Council will constitute an offence.

(4) Parliament shall enact legislation to give full effect to the provisions of this part.

### **PART 19 – E - HEALTH**

E-health (94) E- Health shall be a recognized mode of health service delivery.

E-legislation (95) The Cabinet Secretary, in consultation with the Authority shall ensure the enactment of legislation that provides for among other things:

- a) Administration of Health Information Banks;
- b) Collection and use of personal health information;
- c) Management of disclosure of personal health information;
- d) Protection of privacy;
- e) Health service delivery through Tele- Medicine; and
- f) Medical Tourism

Health information (96) (1) The National Ministry responsible for Health shall facilitate and co-ordinate the establishment, implementation and maintenance by the National system Health System of a comprehensive National Health Information System.

(2) The Cabinet Secretary may, for the purpose of creating, maintaining or adapting databases within the national health information system desired in subsection (1), of this section prescribe categories or kinds of data for submission and collection and the manner and format in which and by whom the data is to be compiled or collated and shall be submitted to the National Ministry responsible for Health.

(3) All health care providers shall:-

(a) establish and maintain a health information system as part of the national health information system as specified under section 33(1) of this Act; and

(b) ensure compliance with the provision of sub-section (3) (a) as a condition necessary for the grant or renewal of annual operating licenses.

(4) Any health care provider that neglects or fails to comply with the provision of subsection(3) (a) of this section shall be guilty of an offence and on conviction shall be liable to imprisonment for a term of six months or a fine of Kenya Shillings 500,000 or both.

(5) Nothing in the foregoing precludes a County Government from making laws with regards to health information system for that County and the City, Urban and Municipal Areas within that County.

## **PART 20 - INTERDEPARTMENTAL COLLABORATION**

Collaboration (97) While the Cabinet Secretary responsible for Health shall bear primarily responsibility for the implementation of the provisions of this Act, it is recognised that in certain matters there is a need for collaboration, consultation and agreement between two or more arms of Government in the interpretation of the law, the introduction of regulations and the further development and adaptation of legislation.

Training (98) The establishment, management and maintenance of institutions for the training of all categories of health professionals shall be the subject of national policy providing for collaboration, consultation and cooperation between the Ministry responsible for Education, the Ministry responsible for Health and the Commission for Higher Education.

Fields of (99) Fields in which the need for such collaboration, consultation and cooperation agreement can arise shall be considered to include, though not exclusively, 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; and
- f) Financing of health services

**PART 21 - TRANSITIONAL AND MISCELLANEOUS PROVISIONS**

Existing laws (100) (1) Except to the extent that this Act expressly provides to the contrary, all rights and obligations, however arising, of the Government and subsisting immediately before the effective date shall continue as rights and obligations of the national and county governments as assigned under this Act.

(2) All 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 State organ or public officer; and

(b) a provision of this Act that is in effect assigns responsibility for that matter to a different State organ or public officer, the provisions of this Act shall prevail to the extent of the conflict.

Public service (101) (1) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is serving under the National Government and in a county before the constitution of that county government shall be deemed to be in the service of the county on secondment from national government with their terms of service as at that date; and

(2) the officer’s terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer’s disadvantage; and

(3) the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal; and



(4) the officer's terms and conditions of service may be altered to their advantage.

(5) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is providing health services assigned to county government under Schedule 4 of the Constitution and is serving in a county on the date of the constitution of that county government shall be deemed to be in the service of the county government with their terms of service as at that date and—

a) the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage; and

b) the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal; and

c) the officer's terms and conditions of service may be altered to their advantage.

(6) Every public officer holding or acting in a public office to which the commission had appointed the officer as at the date of the establishment of the county government shall discharge those duties in relation to the relevant functions of the county government or national government as the case may be.

(7) The Authority acting in consultation with the Public Service Commission, the County Public Service Board, the Council of Health Professions and the National Ministry and County Executive department responsible for health shall facilitate the redeployment, transfers and secondment of staff to the national and county governments.

(8) The provision under (2) shall not preclude the county public service board or other lawful authority from promoting or appointing the officer to another position.

(9) The period of secondment under subsection (1) will cease upon the transfer of a public officer from the national government to a county government or upon the release of an officer by the county government to the national government.

(10) Appointment of a public officer by the Public Service Commission includes appointment of a public officer on powers delegated by the Public Service Commission.

Regulations

(102) The Cabinet Secretary shall make regulations generally for the better carrying out of the provisions of this Act and without limiting the generality of the foregoing may make regulations for—

- a) the fees to be paid to access services in a public health facility;
- b) the norms and standards for specified types of protective clothing and the use, cleaning and disposal of such clothing;
- c) 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;
- d) returns, registers, reports, records, documents and forms to be completed and kept by national referral institutions and county health institutions, public health facilities and private health facilities;
- e) communicable and non-communicable diseases;
- f) notifiable medical conditions;
- g) rehabilitation;
- h) emergency medical services and emergency medical treatment;
- i) health nuisances and medical waste;
- j) the import and export of pathogenic micro-organisms;
- k) health research;
- l) health technology;
- m) the national health information system;
- n) the documentation of traditional medicines and a database of herbalists;
- o) the rendering of forensic pathology, forensic medicine and related laboratory services, including the provision of medico-legal mortuaries and medico-legal services;
- p) The procurement of pharmaceutical and non-pharmaceutical drugs;
- q) Anything which may or must be prescribed under the terms of this Act.

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## **First Schedule**

### **Provisions relating to the conduct of business of the Board**

1. The board shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.
2. Meetings shall be convened by the Chairman or in his absence by the Vice-chairman.
3. Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.
4. A meeting shall be presided over by the Chairperson, or in his absence by the Vice-chairperson or in both their absences, by a person elected by the board at the meeting for that purpose.
5. A decision of the board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.
6. The first order of business of the board shall be to elect a vice-chairperson who shall preside over meetings when the chairperson is absent.
7. The CEO shall be the secretary of the board.
8. Minutes of all meetings shall be kept and entered in books for that purpose.
9. A member of the board who has a direct or indirect personal interest in a matter being considered or to be considered by the board shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the board.
10. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the board and the member shall not be present while that matter is being dealt with by the board and shall not take part in any deliberations or vote relating to the matter.
11. The Authority shall pay the members of the board such allowances and expenses as are determined by the Cabinet Secretary.

## **Second Schedule**

### **Provisions relating to the conduct of business of the Council of Health Professions**

- 1) The Council shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.
- 2) Meetings shall be convened by the Chairman or in his absence by the Vice-chairman.
- 3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.
- 4) A meeting shall be presided over by the Chairperson, or in his absence by the Vice-chairperson or in both their absences, by a person elected by the board at the meeting for that purpose.
- 5) A decision of the board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.
- 6) The first order of business of the board shall be to elect a vice-chairperson who shall preside over meetings when the chairperson is absent.
- 7) The Chief Executive Officer shall be the secretary of the Council.
- 8) The quorum for meeting shall be eight members.
- 9) Minutes of all meetings shall be kept and entered in books for that purpose.
- 10) A member of the Council who has a direct or indirect personal interest in a matter being considered or to be considered by the board shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the board.
- 11) A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the board and the member shall not be present while that matter is being dealt with by the board and shall not take part in any deliberations or vote relating to the matter.
- 12) The Council shall pay the members of the Council such allowances and expenses as are determined by the Cabinet Secretary.

### **Third Schedule**

#### **Provisions relating to the conduct of business of the Research Committee**

- 1) The Committee shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.
- 2) Meetings shall be convened by the Chairman or in his absence by the Vice-chairman.
- 3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.
- 4) A meeting shall be presided over by the Chairperson, or in his absence by the Vice-chairperson or in both their absences, by a person elected by the board at the meeting for that purpose.
- 5) A decision of the board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.
- 6) The first order of business of the board shall be to elect a vice-chairperson who shall preside over meetings when the chairperson is absent.
- 7) The Director-General shall nominate a person who shall be secretary to the Committee.
- 8) The quorum for meeting shall be eight members.
- 9) Minutes of all meetings shall be kept and entered in books for that purpose.
- 10) A member of the Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the board shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the board.
- 11) A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the board and the member shall not be present while that matter is being dealt with by the board and shall not take part in any deliberations or vote relating to the matter.
- 12) The Committee shall pay the members of the Committee such allowances and expenses as are determined by the Cabinet Secretary.

### **Fourth Schedule**

### **Recognised Professionals**

- a) physicians and surgeons, including specialists and physicians dealing with radiation sources
- b) dentists, including specialists
- c) pharmacists, Pharmaceutical technologists, including recognized specialties'
- d) nurses, including specialists and midwives
- e) clinical officers
- f) community oral health officers
- g) community health workers
- h) physiotherapists
- i) nutritionists
- j) dieticians
- k) medical records officers
- l) medical social workers
- m) dental technologists
- n) occupational therapists
- o) orthopaedic technologists
- p) radiographers
- q) public health officers and technicians
- r) Clinical Psychologists
- s) Any other profession proposed by the Council of Health Professions and gazetted by the Cabinet Secretary as a health profession.

### **MEMORANDUM OF OBJECTS**

Whereas the change in the structure of government of the Republic of Kenya has brought forward challenges in terms of allocating functions between the national and county governments.

The Constitution of Kenya, 2010 provides for the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care

The Constitution also provides that no person shall be denied emergency medical treatment

There is need to define the how national health policy shall be formulated , implemented and coordinated between the two levels of government

There is also need to capture the developments in technology that can positive contribute to health care services while curbing negative developments

There is need for coordination amongst the various health professions so as to harness capacity and enhance relevance of the service to the health industry

The Health Bill seeks to achieve the following:

- 1) Establishment of a national health authority to undertake functions of formulating and coordinating national health policy.
- 2) To establish a Council for Health Professions as a facilitative forum for professions
- 3) To establish a Research Committee to spearhead research in health research
- 4) To provide for the use of science and human tissue to advance health objectives
- 5) To provide for inspection of health facilities by regulatory bodies
- 6) To define the functions of national government and devolved functions of the county government.
- 7) To provide for devolution of health human resource to the County and for human resource planning