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THE TANA RIVER COUNTY HEALTH SERVICES ACT, 2022

AN ACT of the County Assembly of Tana River to provide for health care services in the county in accordance with Part 2 Section 2 of the Fourth Schedule of the Constitution and for connected purposes

ENACTED by the County Assembly of Tana River, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Tana River County Health Services Act, 2022 and shall come into force fourteen days after its publication.

Interpretation

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

"Chief Officer" means the Chief Officer responsible for county health services;

"County Executive Committee Member" means the County Executive Committee Member responsible for county health services;

"County Government" means the County Government of Tana River as established under article 176 and the First Schedule of the Constitution of Kenya;

"health facility" means the whole or part of a county owned health institution, building or place, whether for profit or not, that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services excluding private health facilities;

"County health management team" means the team established by section 18 of this Act;

"county health services management board" means the board established by section 5 of this Act;

"Department" means the department responsible for county health services in the County;

"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;

"fund" means the Fund established by section 43 of this Act;

"Healthcare" means the prevention, management or alleviation of disease, illness, injury or other physical or mental impairment in an

individual, delivered by a health care provider through the healthcare systems;

"health technology" refers to the application of organized knowledge and skills in the form of devices, medicine, vaccines, procedures and systems developed to solve a health problem and improve the quality of life;

"hospital management committee" means the hospital management committee established by section 8 of this Act;

"hospital management team" means the hospital management teams established by section 22 of this Act;

"Private health facility" means the whole or part of a private owned health institution which provides health services and includes health care services provided by individuals, faith-based organizations and other private health institutions;

"Primary health facility" means a health facility which provides level two and level three health services;

"primary health facility committee" means the primary health facility committee established by section 10 of this Act;

"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;

"sub-county health management team" means the team established by section 20 of this Act.

Objects and purposes of this Act

3. The object of this Act is to ensure the realization of good health by every person in the county through —

(a) establishment of health facilities in the County and promotion and provision of health services by private and public institutions and providers;

(b) promotion, fulfilment and protection of the highest attainable standards of health services by the County Government, for all persons living in the county including the provisions of reproductive healthcare, general medical services and emergency medical care;

(c) protection, respect, promotion and fulfilling the highest rights of all county residents to the progressive realization of their right to

the highest attainable standards of health including reproductive health care and the right to emergency medical treatment;

(d) promotion and overseeing of the attainment of basic nutrition and health care services for all children in the county;

(e) ensuring the provision of health services to vulnerable persons and the disadvantaged within the county;

(f) protecting, respecting, promoting and fulfilling the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health;

(g) supervision of public and private health facilities within the County; and

(h) provision of a framework for effective coordination between the national and county government, development partners and other relevant health bodies and institutions operating within the County.

PART II—ADMINISTRATION AND MANAGEMENT OF HEALTH SERVICES

Functions of the department

4. The County department responsible for health services shall —

(a) oversee the implementation of the county and national health policy and standards;

(b) enhance the prevention and guard against the introduction of infectious diseases into the County;

(c) promote public health, limit, prevent and suppress infectious, communicable, or preventable diseases in the county;

(d) enhance the prevention of non-communicable diseases, violence and injuries related deaths;

(e) develop, in consultation with the board or committees, interventions that may be necessary to guarantee public health services to vulnerable or disadvantaged persons in the county;

(f) develop, in consultation with the board or committees, interventions that may be necessary to guarantee public health services to vulnerable or disadvantaged persons in the county;

(g) provide emergency referral and treatment services including ambulance services;

(h) promote and carry out research or investigations in connection with the prevention or treatment of human diseases;

(i) oversee the procurement and management of health technology and products and infrastructural development;

(j) prepare and publish reports and statistical or other information relating to health matters in the county;

(k) generally carry out any health functions, in accordance with the provisions of this Act and other related laws;

(l) be responsible for the coordination in intergovernmental matters in the health sector;

(m) coordinate the formulation and implementation of health policies in the County;

(n) ensure equitable access to health services in the county and improve responsiveness to the health needs of the residents of the county;

(o) coordinate activities and programmes by health stakeholders in the county; and

(p) collect and periodically publish —

(i) any information regarding infectious and other diseases in the county;

(ii) Information on epidemic diseases in neighbouring counties; and

(iii) any other health related matter in the county.

Establishment and composition of the County health services management board

5. (1) There is established the County Health Services Management Board.

(2) The Board shall comprise of—

(a) a chairperson who shall be appointed by the Governor

(b) the accounting officer for health services who shall be the secretary;

(c) the Chief officer for finance;

(d) four persons appointed by the county executive committee member from a list nominated as follows—

(i) one representative of people living with disabilities;

(ii) one representative of local civil society organizations;

(iii) one representative of local groups representing the youth; and

(iv) one representative of local professional organizations.

(3) The members of the board shall elect a vice chairperson during the first meeting of the Board.

(4) The members appointed in sub-section (2) (a) and (d) shall be approved by the County Assembly.

(5) In appointing the members of the Board, the County Executive Committee member and the County Assembly shall ensure that not more than two-thirds of the members are of the same gender and shall observe regional and ethnic balance.

(6) The county executive committee member shall cause the names of the people appointed under Sub-section 2 (a) and (d) to be published in the *Gazette*.

(7) The members shall be appointed in accordance with the procedures stipulated in the First Schedule.

(8) The board shall appoint such committees as necessary to enable it to carry its functions.

Functions of the County health services management Board

6. The functions of the county health services management board shall be to—

(a) exercise oversight over all hospital management committees, health facility management committees and health management teams in the County;

(b) oversee the implementation of the health annual work plans and health program-based budgets in every financial year;

(c) oversee the expenditure of the consolidated budgets of hospitals and health facilities to ensure conformity with the annual work plans;

(d) oversee and coordinate health development projects and programs;

(e) advocate and source for funds for the provision of health services in the County and identify priority programmes in need of financing;

(2) The board may enter into partnerships with any other organization aimed at promoting the proper performance of its duties.

Qualifications of the chairperson and members of the Board

7. (1) A person is qualified for appointment as chairperson of the Board under section 5 (2) (a) if that person—

(a) is a citizen of Kenya;

(b) is a resident of the county;

(c) has a degree from a university recognized in Kenya;

(d) has knowledge and relevant experience in community service; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member of the Board under Section 5 (2) (d) if that person—

(a) is a citizen of Kenya;

(b) a resident of the County;

(c) has a diploma from an institution recognized in Kenya;

(d) has knowledge and relevant experience in community service; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Establishment and composition of hospital management committees

8. (1) There is established for each County referral hospital and a Sub-County hospital, a hospital management committee.

(2) The Committee shall comprise of—

(a) a chairperson;

(b) the facility medical superintendent who shall be the secretary;

(c) the sub-county medical officer of health or his or her representative; and

(d) four other members representing persons living with disabilities, civil society organizations, youth and women who are resident stakeholders of the Sub-County where the hospital is located.

(3) The County Executive Committee Member shall appoint the members by notice in the *Gazette*.

(4) The procedure for appointment of members of the hospital management committees shall, with the necessary modifications be as provided in the First Schedule.

Functions of the hospital management committees

9. The functions of the hospital management Committees shall be to—

(a) oversee the administration of the hospital including to supervise hospital service delivery, maintenance, financing and the development of health services in the hospital;

(b) ensure the maintenance of high standards of environmental health and sanitation;

(c) develop mechanisms for reporting complaints by users;

(d) undertake resource mobilization for developing supplementary sources of income for the provision of health services in consultation with the department;

(e) approve annual work plans and programmes for implementing health policies and strategies;

(f) conduct regular audits and forward recommendations for improvement of health services delivery to the county executive committee member;

(g) develop and promote public participation in the delivery of health services;

(h) supervise and control the utilization of funds allocated to the facility; and

(i) carry out any other function assigned by the county executive committee member.

Establishment and composition of primary health facility management committee

10. (1) There is established for each primary health facility a primary health facility management committee whose membership shall consist of not more than nine members appointed by the county executive committee member.

(2) The primary health facility management committee shall comprise of—

(a) the Ward Administrator;

(b) one representative of civil society and community-based organizations;

(c) one representative of youth organizations;

(d) one representative of people living with disabilities;

(e) the link health facility community health personnel;

(f) one representative of the community health committees linked to the facility; and

(g) the facility in charge who shall be the secretary.

(3) The Committee shall elect a chairperson from amongst the members in the first meeting.

Functions of primary health facility management committee

11. (1) The functions of the primary health facility management committee shall be to —

(a) supervise service delivery, including the maintenance, financing and development of health services;

(b) advocate for resource allocation for the provision of primary healthcare;

(c) approve financial and service delivery performance reports;

(d) provide feedback and reports on services offered at the facility;

(e) provide advice on ways to create, demand and improve the quality of health services at the facility;

(f) implement community decisions on improvement of health services at the health facility;

(g) mobilize community resources towards the development of health services;

(h) ensure the provision of safe and good working environment for facility staff;

(i) provide quarterly and annual reports to the county health services management board at the end of each financial quarter or year;

(j) ensure proper planning, budgeting, approval and utilization of available resources;

(k) develop and promote public participation in the planning and management of the health facility;

(l) supervise and control the administration of the funds allocated to the health facility;

(m) open and operate a bank account at a bank to be approved by the county executive committee member for finance;

(n) prepare annual work plans based on health programmes and estimated expenditure;

(o) cause to be kept basic books of accounts and records of accounts of the income, expenditure, assets and liabilities of the facility;

(p) prepare and submit certified periodic financial and performance reports as prescribed; and

(q) cause to be kept proper records of all its deliberations and decisions.

(2) For purposes of this section area means the geographical location where a facility is situated.

Tenure of office for members

12. A member of the board or committees appointed under sections 5, 8 and 10 shall hold office for a period of 3 years and shall be eligible for appointment for one further term.

Terms and conditions of services

13. The members shall hold office on a part time basis and may be entitled to allowances as determined by the County Public Service Board in consultation with the Salaries Remuneration Commission.

Conduct of Business

14. The conduct of business of the board and committees shall be in accordance with the procedure provided for in the Second Schedule.

Removal of members

15. A member of the board or committee may be removed from office on any one or more of the following grounds—

(a) serious violation of the Constitution or any other law;

(b) gross misconduct, whether in the performance of their functions or otherwise;

(c) physical or mental;

(d) absence from three consecutive meetings of the without a reasonable explanation;

(e) incompetence or negligence of duty; or

(f) bankruptcy.

Vacation of office

16. A person shall cease to be a member of the board or a committee if that person—

(a) resigns in writing;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is incapacitated by prolonged physical or mental illness from performing his or her duties;

(d) is removed from office in accordance to the provisions of Section 15; or

(e) dies.

Appointment of casual staff

17. The Board and committees may, in consultation with the County Public Service Board, recruit casual staff for purposes of providing essential services.

Establishment and composition of the County health management team

18. (1) There is established a county health management team comprising of 13 members.

(2) The county health management team shall comprise of —

(a) the director of health who shall be the chairperson

(b) the health administrative officer of the department who shall be the secretary.

(c) such number of Section heads in the health department as shall be determined by the County Executive Committee member; and

(d) medical superintendents of the county referral hospital.

Functions of the county health management team

19. The functions of the county health management team shall be to—

(a) report to the county health services management board on the collections made by the health facilities and their budgets;

(b) account to the board and the department on the execution of their mandate;

(c) coordinate and oversee the interpretation and implementation of County health laws as well as the National Government health policiesn health facilities in the County;

(d) advise the department on appropriate measures to be adopted for effective implementation of relevant National and County health legislation.

(e) coordinate, support, and supervise the planning, implementation, monitoring, and evaluation of technical and managerial activities for health services in the County;

(f) ensure good governance standards are applied within facilities and in the relations between facilities;

(g) advise and assist the Sub-County health teams and health facility management committees in preparing the annual and quarterly operational work plans including their respective budgets and procurement plans;

(h) review and approve the consolidated facility work plans submitted by the sub-counties;

(i) provide support supervision and mentorship to the management of the County health facilities;

(j) check the accuracy and timeliness of all financial reports submitted by the health facility management committees to facilitate prompt approval of spending by the facilities;

(k) assist in the management of health personnel;

(l) assist in the management of health information systems and research;

(m) assist in exercising disciplinary measures over the health personnel working in the County;

(n) review and approve annual financial statements and reports before submission to the chief officer for health.

(o) coordinate the health stakeholders' Forums; and

(p) monitor the performance of staff.

Establishment and composition of the sub-county health management team

20. (1) There is established for each sub-county a sub-county health management team whose membership shall not exceed 9 members.

(2) The team shall comprise of the following—

(a) health officer-in-charge of the Sub- County who shall be the chairperson;

(b) Sub-county health administrative officer who shall be the secretary;

(c) such number of heads of sections in the department at the sub-county as shall be determined by the County Executive Committee member;

(d) The medical superintendent at the sub-county hospital; and

(e) any other officer as the County Executive Committee member may, in consultation with the county health management team designate.

Functions of the sub-county health management team

21. The functions of the sub-county health management team shall be to—

(a) coordinate the implementation of this act and other health policies in the sub county;

(b) provide supervision and support to the management of health facilities in the Sub-County;

(c) advise and assist the health facility management committees in preparing the annual and quarterly operational work plans including their respective budgets and procurement plans;

(d) review and consolidate annual work plans submitted by health facility management committees;

(e) forward approved consolidated health facilities' annual and quarterly budgets to county health management team for approval by the department;

(f) assist in exercising disciplinary measures over health personnel working in the sub county as may be prescribed under legislation;

(g) carry out needs and capacity assessment for health facilities at the sub-County; and

(h) facilitate capacity building of health personnel at the sub county level in consultation with the county health management team.

Establishment of hospital management teams

22. (1) There is established for each level 4 and 5 hospital a hospital management team which shall comprise not more than 11 members.

(2) The membership of the hospital management teams shall be as follows—

(a) the medical superintendent or the hospital chief executive officer who shall be the chairperson;

(b) hospital health administrative officer who shall be the secretary;

(c) the hospital pharmacist;

(d) the nursing officer in charge of the hospital; and

(e) other heads of sections in the hospital as advised by the Medical Superintendent or Chief Executive Officer.

Functions of hospital management teams

23. The functions of the hospital management teams shall be—

(a) prepare the requisite planning, budgeting, and financing policies for the hospital;

(b) make recommendations on human resources management to the county human resource manager for health through the director of health;

(c) mobilise resources through social health insurance fund, county allocation and other lawful sources;

(d) account to the hospital management committee on the exercise of their mandate;

(e) supervise hospital service delivery, including the maintenance, financing, and the development of health services using the quality-of-care model;

(f) coordinate hospital clinical activities and ensure complimentary inputs while avoiding duplication;

(g) recommend, where necessary, cross-referrals to and from institutions within and outside the County;

(h) set hospital standards in accordance with the relevant regulatory bodies;

(i) ensure the maintenance of standards of environmental health and sanitation as laid down in the applicable laws;

(j) establish community complaints reporting and resolution mechanisms;

(k) ensure the provision of emergency medical treatment at all aspect of the hospital systems;

(l) manage and supervise students on internships and attachments

(m) establish a clear hospital layout and patient movement within the hospitals;

(n) advise on the use of modern technologies on health care for maximum patient gain; and

(o) supervise and monitor performance of hospital personnel.

PART III — COUNTY HEALTH FACILITIES

County health facilities

24. (1) The County government shall facilitate the establishment and ensure equitable distribution of health facilities and institutions in the county.

(2) Pursuant to subsection (1) and in the promotion of health and prevention of epidemics in the county, the county government shall facilitate the construction of—

(a) at least one County referral hospital;

(b) in each Sub-County, at least one Sub-County hospital;

(c) in each ward, at least one health centre; and

(d) such number of dispensaries and community health units as may be necessary at the village unit level.

(3) The county government shall ensure that the facilities established and constructed under this section are equipped, managed and have sufficient medical supplies.

Classification of health facilities

25. (1) The director shall, in consultation with the county executive committee member, prescribe the classification of health facilities and prescribe the category applicable to each county health facility from time to time in the *Gazette.*

(2) Each health facility will organize and manage the delivery of expected services based on its level of care according to prescribed standards and guidelines.

Private health facilities

26. Subject to the relevant laws, the department shall ensure compliance by private health facilities of the rules and regulation and conditions stipulated in their license.

Public Private Partnership in health facilities

27. Subject to the law regulating public- private partnerships and any other relevant law, the county government may enter into public – private partnerships for the purposes of establishing and enhancing quality health services provisions in the County.

Health Service in case of epidemic or other emergencies

28. (1) The department may, in case of epidemic or other emergencies—

(a) provide any temporary area, building, hospital or other shelter for the reception and treatment of the sick;

(b) enter into an agreement with any health service provider having a health care facility to provide emergency treatment to the sick;

(c) enter into an agreement with any person owning any property for the reception and treatment of the sick.

(2) The department may, in case of any epidemic or other emergency, provide, contract any person or enter into any agreement to provide temporary supply of medical and medical assistance for the sick and vulnerable.

Isolation of persons exposed to infection

29. (1) The department may, in order to adequately guard against the spread of a disease until it is ascertained that a person is free from infection or may be discharged without causing danger to the public health, by order issued by a magistrate, remove a person to a place of isolation, if a qualified medical officer for health, by a certificate signed by that officer, is in the opinion that the person has recently been exposed to any notable infectious disease and may be in the incubating stage of the disease.

(2) A person moved to a place of isolation under subsection (1) shall be kept in isolation in accordance to the prescribed ministry of health protocols.

Sanitary Services

30. The department in consultation with other relevant authorities shall—

(a) establish and maintain sanitary services for the removal of destruction or otherwise dispose of all kinds of refuse and effluent and, where established, to compel the use of the service by persons to whom the service is available;

(b) ensure that public lavatories, closets and urinals are in accessible areas to the public, maintain them in good condition and must be user friendly to cater for persons living with disabilities;

(c) establish and maintain public crematoriums and cemeteries;

(d) establish and maintain mortuaries in the public county hospitals; and

(e) provide proper disposal of waste in the public and health institutions.

PART IV — PROMOTION AND ADVANCEMENT OF HEALTH SERVICES

Promotion of public health

31. The department, in collaboration with health stakeholders and other county government agencies, shall develop and implement measures to promote public health including—

(a) reduction of communicable and non-communicable diseases in the county;

(b) dissemination of information on nutrition to all levels of the community and promotion of the supply of sufficient quality foodstuffs;

(c) provisions of general health education to the public;

(d) reduction of disease burden arising from poor environmental hygiene, sanitation, occupational exposure and environmental pollution;

(e) reduction of morbidity and mortality of waterborne and vector transmitted diseases;

(f) mitigation of health effects resulting from climate change;

(g) control of prolonged hospitalization, disabilities resulting from neglected health care infection;

(h) strengthening of capacity to address or forestall transmission of disease of international concern; and

(i) generally improving the capacity of communities in providing solutions to public health challenges.

Reproductive health

32. The Department shall, in the promotion and advancement of reproductive health care, promote dissemination of information on reproductive health and ensure —

(a) the right of every person to have access to reproductive health services including safe, effective and affordable family planning services; and

(b) the right of access to appropriate health care services that will enable women to go safely through pregnancy, childbirth, and the postpartum period and provide women with the best chance of having a healthy infant.

Emergency Treatment

33. (1) The department shall ensure that emergency medical treatment is provided to all persons in need and that no person is denied emergency treatment by any heath service provider of first contact.

(2) Emergency medical treatment referred to under subsection (1) 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.

(3) Any health care provider who fails to provide emergency medical treatment or response while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding Kenya Shillings five hundred thousand or imprisonment for twelve months or both.

(4) 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

34. (1) Every health care provider must inform a user or, if the user is a minor or incapacitated then, the guardian or caretaker of—

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

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

(d) 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 must, where possible, inform the user as contemplated in subsection (1) in a language that the user, parents, guardian or caretaker understands and in a manner, that 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 or her discretion require the user to confirm such refusal in writing or recorded form.

(4) In this section, the word "user" includes any person who is seeking or intends to seek medical service from a health care provider.

Patient's informed Consent

35. (1) No health service may be provided to a patient without the patient's informed consent and every healthcare provider must take all reasonable steps to obtain the user's informed consent where—

(a) the consent is given by a person given mandate in writing by the patient to grant the consent on his or her behalf ;

(b) the consent is given by a person authorized to give the consent under any written law or court order;

(c) the consent is given by next of kin of the patient, where the patient is in critical condition and is unable to give the informed consent;

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

(e) failure to treat the patient, or a group of people which includes the patient, 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 the patient and the patient has not expressly, or by implication or by conduct refused that service.

(2) For the purposes of this section "informed consent" means consent given by a patient to a health care provider to provide a specified health service to that patient after he or she has been informed of the service.

Information on health functions

36. (1) The department shall ensure that appropriate and comprehensive information is disseminated on health services offered by any health facility within the County.

(2) The information under subsection (1) shall include—

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

(b) the organization of health services;

(c) operating schedules and timetables of visits;

(d) procedures for access to the health services;

(e) procedures for laying complaints if any;

(f) the rights and duties of users and health care providers; and

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

Confidentiality of information concerning user

37. (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) A service provider may disclose any information referred to under subsection (1) where —

(a) the user consents in prescribed form; or

(b) a court order or relevant law requires such disclosure; or

(c) non-disclosure of the information represents a serious threat to public health.

Duties of users

38. A user of any health service has a duty, insofar as it is within his or her capacity to —

(a) adhere to the rules of a health provider when receiving treatment or using the health service provider;

(b) subject to sub section (a) above adhere to the medical advice and treatment provided by the health provider;

(c) supply the health care provider with accurate information pertaining to his or her health status;

(d) generally cooperate with the health care provider;

(e) treat health care providers and health workers with dignity and respect; and

(f) if so requested, to sign a discharge certificate or release of liability if he or she refuses to accept the recommended treatment.

Rights and Duties of Health care worker

39. (1) A healthcare provider has the right to—

(a) not be unfairly discriminated because of the worker's health status;

(b) to a safe working environment that minimizes the risk of being infected by disease or getting injury or damage, individually or his or her family;

(c) refuse giving treatment to a user who is physically or verbally abusive unless the abuse is caused by a medical condition or mental incapacity ; and

(d) challenge a decision of his or her immediate superior by a way of appeal to the next higher level of authority.

(2) A healthcare provider, whether in the public or private sector has the duty to—

(a) provide health care to every person entrusted to the worker's care or seeking support, to the best of the worker's knowledge and ability within the scope of practice;

(b) provide emergency medical treatment;

(c) inform a user of a health facility, in a manner commensurate with the user's understanding of—

(i) available diagnostics procedure and treatment options;

(ii) benefits, risks, cost and consequences associated with each option;

(iii) the user's right to refuse any treatment or procedure but where it is contrary to the best interest of the user, the information should be communicated to the next of kin or guardian as the case may be.

(3) Notwithstanding the provisions of subsection (1) (a) the management of a health facility or institution may impose conditions on the service that may be provided by a health care worker taking into account the worker's health status.

Complaints

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

(2) The county executive committee member shall prescribe the procedure for instituting complaints against health care facilities.

(3) The procedure for laying complaints must be displayed at all health facilities and communicated to users in a manner that is accessible to the users.

Recovery of Facility cost

41. (1) Any expense incurred by a health facility or institution on a user who is a pauper shall be borne by the Department.

(2) Any expense incurred by a health facility or institution on a user who is not a pauper shall be deemed to be a debt from that user to the facility and may be recovered from that user or his or her estate in the event of death, unless the expense was incurred when giving first aid.

(3) For purposes of this section "a pauper" means a person who is not possessed of sufficient means to enable him or her to pay the fee prescribed in law.

PART V —FINANCIAL PROVISIONS

Funds

42. (1) The funds for financing of health services in the County shall consist of —

(a) such monies as shall be appropriated by the County Assembly;

(b) such grants or transfers as may be received from any lawful source;

(c) grants and donations received from development partners; and

(d) such other monies received from national government as conditional or non-conditional grants.

Establishment of the Tana River County Health Facility Improvement Fund

43. There is established the Tana River County health facility improvement fund.

Sources of the Fund

44. The Fund shall consist of—

(a) such grants or transfers received from the National Government;

(b) such monies as may be appropriated by the County Assembly;

(c) grants and donations received from any lawful source;

(d) such other monies received from National Government as conditional or non-conditional grants.

(e) such monies received as user charges, fees payable or insurance payments collectable under this Act including public health fees; and

(f) any income generated by health facilities from any project initiated by health facilities.

(2) The funds received by a health facility under subsection (1) (c), (d), (e) and (f) —

(a) shall be paid from the fund into a bank account operated by the health facility for that purpose; and

(b) shall be utilized solely for provision of health services and development in the health facility where the Funds are received or generated in accordance with the annual workplans as approved by the County Executive Committee member.

(3) Subject to subsection (5), a County or sub-county Hospital may charge such user charges or fees for the services rendered.

(4) The county executive committee member shall, in consultation with the county health services management board, prescribe the user charges and fees payable under each County health facility as approved by the County Executive Committee member for Finance.

(5) The county health management team shall operate a bank account into which monies received for primary health care shall be paid solely for the purposes of managing and administering the funds received.

(6) The County Executive Committee member for Finance may, subject to request by the accounting officer in charge of health services, open a bank account for the purposes of managing any monies received as grants and donations.

Purpose of the Fund

45. (1) The Fund shall be utilised to —

(a) cater for a portion of the administrative expenses of the department;

(b) support the operation of the county and subcounty health management teams and committees;

(c) support of provision of Level 1 health services;

(d) improve health services in hospitals, health facilities and promote public health functions;

(e) provide financial resources for the procurement of health technology and products;

(f) support capacity building in the management of health facilities;

(g) provide funds for the provision of health related emergencies and disasters;

(h) support health education activities and programmes; and

(i) perform any other purpose related to the provision of health services as provided for in the Constitution and any other written law.

(2) The County ExecutiveCcommittee member, in consultation with the department, may impose conditions on the utilization of the fund including any reasonable prohibition, restriction or other requirement concerning such use or expenditure

Administration of the Fund

46. (1) The Fund shall be administered by an administrator appointed by the county executive committee member for finance in accordance to the provisions of all laws and regulations relating to public finance management.

(2) The administrator shall—

(a) ensure that health facility accounts are not overdrawn;

(b) institute prudent measures for the proper utilization for monies deposited in the fund using suitable internal controls and appropriate mechanism for accountability including audit of accounts by internal auditors of the County treasury;

(c) cause to be kept proper books of accounts and records relating to all receipts, payments, assets and liabilities of the Fund and to any other activities and undertakings financed by the Fund;

(d) provide quarterly financial reports in relation to expenditure against approved budgets to County Treasury.

(3) The Chief Officer for Health Services shall, in consultation with the Chief Officer for Finance, consider for approval the developed criteria

for the allocation of funds by the county health management team and approve annual distribution of resources to health facilities;

(4) The County Executive Committee member shall, in consultation with the County Health Services Management Board, issue an Authority to Incur Expenditure to county health management team, sub-county health management teams and hospital management teams as per their approved annual workplans.

Statement of accounts

47. (1) The administrator shall, within three months after the end of a financial year, prepare a statement of accounts of the funds for that financial year and submit it to the county executive committee member and County Assembly and shall include—

(a) the date and amount of each payment made from the Fund;

(b) the person to whom the payment was made;

(c) the purpose for which the payment was made;

(d) whether the person to whom the payment was made has spent the money for that purpose and a statement made to that effect; and

(e) a statement indicating how the payment conforms to the provisions of the Public Finance Management Act.

(2) Every statement of account prepared under this Act shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the fund as at the end of the financial year concerned.

(3) Accounts for the fund and the annual financial statements relating to those accounts shall comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Within a period of three months after the end of each financial year the Executive Committee Member shall submit to the Auditor General the accounts under sub regulation (1) together with—

(a) a statement of income and expenditure of the Fund for that year; and

(b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(5) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act.

Appropriation of user fee

48. (1) The county executive committee member shall, in consultation with the county executive committee member for Finance, cause a percentage of not less than 80% of collected user fees and charges to be allocated to the Fund.

(2) The percentage retained under sub-section (1) shall be appropriated to the county health management team, sub-county health management teams and hospital management teams at a rate approved by the County Executive Committee member in consultation with the County Health Services Management Board

PART VI— GENERAL PROVISIONS

Regulations

49. (1) The county executive committee member shall make regulations for the better carrying out of this Act.

(2) Without prejudice to the generality of the foregoing, the county executive committee member may make regulations prescribing —

(a) the classification of the health facilities under the provided levels of service delivery;

(b) the user fees to be paid to access services in a county health facility by residents and non-residents of the county;

(c) the acquisition, use and maintenance of ambulances and other medical equipment's;

(d) maternal, new-born and child care health services

(e) the establishment and management of County health sector stakeholder's forum;

(f) the operational policies and guidelines of health facility and norms and standards for health service delivery within the County;

(g) specified types of protective clothing and the use, cleaning and disposal of such clothing; and

(h) the documentation of traditional medicines and a database of herbalists.

Protection from personal liability

50. No action or omission by a member of the board or committees shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the board or committees under this Act, render the

member or any person acting on their directions personally liable to any action, claim or demand whatsoever.

General penalty

51. A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

Financing of health services

52. The County Government shall ensure that there is sufficient allocation of funds for health services in the County.

Inter-county relations

53. (1) The county executive committee member shall facilitate inter-county relations agreements in the use of county health facilities and services.

(2)The County Executive Committee member may make regulations to govern such inter-county relations.

PART VII—TRANSITIONAL PROVISIONS

Subsisting rights and obligations

54. (1) Except to the extent that this Act expressly provides to the contrary, all legal rights and obligations of the County government however arising and subsisting immediately before the commencement of this Act shall continue as rights and obligations of the County governments.

(2) All law in force immediately before the commencement of this Act shall continue in force and shall be construed with the necessary modifications bringing it in conformity with this Act.

(3) Any public officer appointed by the Public Service Commission before the commencement of this Act who is serving in the county shall be deemed to have been seconded in the service of the county government on terms and conditions of service at that date.

(4) Notwithstanding the provisions of this Act, the board or committees existing at the commencement of the Act shall be deemed to have been constituted under this Act and shall continue to serve until a new board or committee is appointed.

Creation of administrative structures

55. The county executive committee member shall facilitate the creation of the administrative structures created under the provisions of this Act within one year of its coming into effect.

FIRST SCHEDULE (s. 5(7) & S.8(4))

PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE COUNTY HEALTH SERVICES MANAGEMENT BOARD AND HOSPITAL MANAGEMENT COMMITTEES

1. (1) Whenever there is a vacancy in the county health services management board or hospital management committee, the county executive committee member shall, within fourteen days of the occurrence of the vacancy, cause the appointment of a new member.

(2) The county executive committee member shall, subject to this schedule, determine the own procedure of nominating members to fill the vacant position.

(3) The Governor shall nominate one person for appointment as chairperson and the county executive committee member shall nominate persons for appointment as members of the county health services management board or hospital management committee, whichever is applicable, and shall forward the names of the persons nominated to the County Assembly for approval.

(4) The County Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under paragraph (3), consider all the nominations received and may approve or reject any nomination.

(5) Where the County Assembly approves the nominees, the Speaker shall forward the names of the approved persons to the county executive committee member for appointment.

(6) The county executive committee member shall, within seven days of the receipt of the approved nominees from the County Assembly, by notice in the Gazette, appoint the chairperson and members approved by the County Assembly.

(7) Where the County Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the County Assembly to the county executive committee member to submit fresh nominations.

(8) Where a nominee is rejected by the County Assembly under paragraph (7), the county executive committee member shall, within seven days, submit to the County Assembly a fresh nominee.

(10) In nominating or appointing of persons as chairperson and members of the Board or committees, the County Assembly and the county executive committee member shall ensure that not more than two-thirds of the members are of the same gender, shall observe the principle

of gender equity, regional and ethnic balance and shall have due regard to the principle of equal opportunities for persons with disabilities.

(11) Where the County Assembly does not consider the nominations within the stipulated twenty-one days, or such other period as the House may, by resolution approve, the nominees shall be deemed to have been approved.

(12) Despite the foregoing provisions of this Schedule, the County Assembly, may extend the period specified in respect of any matter under this Schedule by a period not exceeding twenty-one days.

SECOND SCHEDULE (s.14)

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD OR COMMITTEES

1. (1) The board or committee shall have at least one meeting in each quarter and a maximum of six meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the secretary of the board or committee in consultation with the chairperson and shall be held at such times and such places as the chairperson shall determine.

(3) The chairperson shall preside over all meetings and in the absence of the Chairperson, the vice chairperson or a member elected by the board or committee member shall preside over the meeting for that purpose.

(4) The chairperson may at any time convene a special meeting of the board or committee and shall do so within seven days of the receipt by the chairperson of a written request signed by at least four other members.

(5) Unless half of the members otherwise agree, at least seven days' notice of a meeting shall be given to every member.

2. (1) The quorum of a meeting of the Board or Committee is not less than half of all the members present and voting.

(2) For special meetings, the quorum is not less than half of the members present and voting.

3. A decision of the board or committee 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.

4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

5. (1) If a person is present at a meeting of the board or committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest.

(2) The person making the disclosure of interest under paragraph (1) above must not, unless the board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.

(3) A disclosure of interest made under paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes paragraph (1) commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(5) A member or employee of the department shall not transact any business or trade with a county health facility.