

# The Kilifi County Maternal, Newborn and Child Health Act, 2016

## THE KILIFI COUNTY MATERNAL, NEWBORN AND CHILD HEALTH ACT, 2016

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# **The Kilifi County Maternal, Newborn and Child Health Act, 2016**

## **THE KILIFI COUNTY MATERNAL, NEWBORN AND CHILD HEALTH ACT, 2016**

**AN ACT of the Kilifi County Assembly to provide for regulation of maternal, newborn and child health within Kilifi County; to make provision for reproductive health; and to provide for matters connected therewith and incidental thereto.**

**BE IT ENACTED** by the County Assembly of Kilifi County, as follows –

### **PART I :- PRELIMINARY PROVISIONS**

Citation and  
Commencement

- 1.** This Act may be cited as the Kilifi County Maternal, Newborn and Child Health 2016 and shall come into operation upon assent by the Kilifi County Governor.

Interpretation

- 2.** In this Act, unless the context otherwise requires:  
“Antenatal Care” includes the correct diagnosis of pregnancy, followed by periodic examinations ,screening and management of complications during pregnancy;  
“child” has the meaning assigned to it in the Children Act 2001;  
“child’s health care rights” means the right of every child to access quality health and medical care;  
“Clinical Officer” means a person duly registered as a Clinical Officer under the Clinical Officers (Training, Registration and Licensing) Act;  
“Conscientious objection” means to object in principle to a legally required or

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permitted practice;

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

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

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

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

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

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

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

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

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

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

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

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

“Post-abortion care” includes:

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

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

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

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

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

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

“Termination of pregnancy” for the purpose of this Act means the separation and

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expulsion, by medical or surgical means, of the contents of the uterus of a pregnant woman before the foetus has become capable of sustaining an independent life outside the uterus for the purpose of saving the life of the mother.

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

- Objects and Purposes of Act
- 3.** The object and purpose of this Act is:
- (a) to provide a framework for the protection and advancement of maternal, newborn and child health;
  - (b) to promote women’s health and safe motherhood;
  - (c) to achieve a rapid and substantial reduction in maternal morbidity and mortality; and
  - (d) to ensure access to quality and comprehensive provision of health services to women and children.

### **Part II: Maternal Care**

- Persons authorized to offer maternal care
- 4.** The following persons shall be authorized to offer maternal care:
- (i) Medical practitioners;
  - (ii) Clinical Officers;
  - (iii) Nurses; and
  - (iv) Trained Community health workers.
- Adequate medical care
- 5.** Any person offering maternal care shall operate in an environment that ensures adequate medical care to women.
- Regulations
- 6.** The County Executive Committee member, in consultation with health care

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providers within Kilifi County shall make regulations:-

- (a) To promote best practices on safe motherhood;
- (b) For the registration and licensing of facilities and service providers; and
- (c) To facilitate the provision of affordable maternal care in all health institutions.

Termination of pregnancy

- 7.** (1) A pregnancy may be terminated if a trained and certified Health Care Provider, after consultation with the pregnant woman, is of the opinion that there is need of an emergency treatment;
- (2) The termination of the pregnancy shall only be carried out by a health care service provider in a facility authorized by the Ministry of Health and overseen by the Kenya Medical and Dentist Practitioners' Board.
- (3) Health providers shall offer counselling, before and after the termination of a pregnancy.
- (4) Any person who violates the provisions of section 7 (3) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty thousand shillings or an imprisonment term not exceeding three years or both.

Consent of pregnant woman

- 8.** (1) subject to section 7(1), termination of pregnancy may only take place with the consent of the pregnant woman.
- (2) In the case of a pregnant minor, a health care service provider shall advise the minor to consult with her parents, guardian or such other persons with parental responsibility over the said minor before the pregnancy is terminated, provided that the best interest of the minor shall prevail.
- (3) In the case of a mentally disordered person, the health care service provider shall consult with the guardian over the said person before the pregnancy is terminated.

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

Duty to forward information

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

(2) Any person who violates any conditions set out in subsection (1) commits a criminal offence and shall be liable upon conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or both.

Information on HIV/AIDS

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

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

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

(4) A medical practitioner attending to a pregnant woman shall provide her with information on the best nutrition practices, including breastfeeding practices.

Information, access to treatment and counselling

**11.** The County Executive Committee shall in conjunction with the relevant health care providers within Kilifi County: -

(a) regularly disseminate accurate and comprehensive information to members of the public about HIV and AIDS, including prevention of parent to child

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- infection and the options available to infected pregnant women;
- (b) ensure access to continuous and regular medical treatment of children born with HIV;
- (c) ensure counselling of pregnant women and their partners infected with HIV or suffering from AIDS on how to promote and sustain their reproductive health.

### Part III: Newborn Health

- Child birth
- 12.** For purposes of this Act, childbirth is one part of a continuum of experience that includes pre-pregnancy, pregnancy and prenatal care, labour and delivery, the immediate postpartum period, and a longer period of adjustment for the newborn, the mother, and the family.
- Length of post-delivery
- 13.** (1) The length of post-delivery hospital stay should be based on the unique characteristics of each mother and her newborn child, taking into consideration the health of the mother, the health and stability of the newborn, the ability and confidence of the mother and the father to care for their newborn, the adequacy of support systems at home, and the access of the mother and her newborn to appropriate follow-up health care; and
- (2) The timing of the discharge of a mother and her newborn child from the hospital should be made by the attending provider in consultation with the mother.
- Restrictions
- 14.** (1) No health care provider may: -
- (a) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 6 hours, or
  - (b) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a caesarean section, to less than 48 hours; or
- (2) Notwithstanding the provisions of sub-section (1) a healthcare provider may



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obtain authorization from the County Executive Committee member prescribing any length of stay required under sub-section (1).

Exception

- 15.** Notwithstanding the provisions of section 13(1), a health care provider may discharge a mother or her newborn prior to the expiration of the minimum length of stay where the decision is made in consultation with the mother.

Provided that a healthcare provider may not:—

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

Protection of mothers

- 16.** Pregnant mothers are encouraged to give birth in hospitals to reduce cases of maternal deaths.

### Part IV: Child Health

Child health care

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

Immunization,  
vaccination and de-  
worming

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

Annual check up

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

Medical training

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

Consent of a child

- 21.** (1) A child may be subjected to medical treatment or a surgical operation only if

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consent for such treatment or operation has been given by a parent or guardian.

(2) A Welfare Officer may move the court for the purpose of obtaining consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent.

(3) No parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (1) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

HIV Testing

**22.** (1) Subject to Section 20, no child may be tested for HIV except when-

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

(b) the test is necessary in order to establish whether-

- i. a health worker may have contracted HIV due to contact in the course of a medical procedure involving contact with any substance from the child's body that may transmit HIV; or
- ii. any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court.

(2) Consent for a HIV-test on a child may be given by-

(a) a parent

(b) guardian or care giver

(c) a Welfare Officer, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

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- (d) a designated child protection organisation arranging the placement of the child, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
- (e) the superintendent or person in charge of a hospital, if-
  - i. the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and
  - ii. the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or
- (f) a children's court, if-
  - i. consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or
  - ii. the child or the parent or care-giver of the child is incapable of giving consent.

HIV-testing for foster care or adoption purposes

- 23.** If HIV-testing of a child is done for foster care or adoption purposes, the County Government must pay the cost of such tests where circumstances permit.

Counselling before and after HIV-testing

- 24.** (1) A child may be tested for HIV only after proper counselling, by an appropriately trained person, if –
- (a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; and
  - (b) the child’s parent or care-giver, if the parent or care-giver has knowledge of the test.
- (2) Post-test counselling must be provided by an appropriately trained person to –

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

Confidentiality of information on HIV/AIDS status of children

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

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

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

- (a) the parent or care-giver, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
- (b) a designated child protection organisation arranging the placement of the child, if the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
- (c) the superintendent or person in charge of a hospital, if-

- i. the child is under the age of 18 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and
- ii. the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(d) a children's court, if –

- i. consent in terms of paragraph (a), (b), (c) or (d) is unreasonably

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- withheld and disclosure is in the best interests of the child; or
- ii. the child or the parent or care-giver of the child is incapable of giving consent.

**Part V: HEALTH FACILITIES**

- Medical facilities      **26.** A person offering maternal and child health care services shall operate in an environment with adequate medical facilities.
- Kilifi County referral hospital      **27.** There shall be a level five hospital in Kilifi County responsible for offering county referral services.
- Emergency services      **28.** (1) The hospital mentioned in section 28 shall have at least five ambulances.  
  
(2) No woman or child shall be denied emergency medical treatment in whatever circumstance, including inability to pay.
- Hospital equipment      **29.** A level five hospital shall be fully equipped to handle-
  - (a) child-birth emergencies; and
  - (b) intensive care patients.
- Medical practitioners      **30.** The hospital shall have such number of medical practitioners, clinical officers and nurses as the county executive member for health in consultation with health care providers within the county, shall from time to time determine.

**Part VI: Miscellaneous Provisions**

- Power of County Executive Committee member to make Regulations      **31.** (1) The County Executive Committee member at the time being responsible for health shall make such regulations as may be necessary for the implementation of this Act.  
  
(2) Subject to the provisions of this Act, the County Executive Committee member

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may make regulations:

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

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

Offense where penalty not provided

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

Savings

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

Dated the .....2016

*Hon. Albert Hare Kiraga  
Chairperson Health Committee*

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