

**THE NAKURU COUNTY MATERNAL,
NEWBORN AND CHILD HEALTH BILL, 2021
ARRANGEMENT OF CLAUSES**

PART I—PRELIMINARY

- I—Citation and Commencement.
- 2—Interpretation.
- 3—Objects and Purposes of the Act.

PART 11—MATERNAL CARE

- 4—Adequate Medical Care
- 5—Persons authorized to offer Maternal care
- 6— Post Abortion Care
- 7— Testing of a pregnant woman on HIV/AIDS
- 8— Information, access to treatment and counseling

PART 111—NEWBORN HEALTH

- 9— Child birth

PART IV—CHILD HEALTH

- 10— Child Health care
- 11—Immunization, vaccination & deworming
- 12—Annual Check
- 13—Medical Training
- 14—Consent of a child.
- 15—HIV testing
- 16— HIV testing for adoption purposes
- 17— Counseling before and after HIV testing

PART V—MEDICAL FACILITIES

18— Medical Facilities

19— Minimum package of care

20—Emergency services

21—Adequate Medical Providers

PART VI—MISCELLANEOUS

22—Power of county executive committee member to make regulations

23— Savings for other laws

NAKURU COUNTY MATERNAL, NEWBORN AND CHILD HEALTH BILL, 2021

A Bill for

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

ENACTED by the County Assembly of Nakuru, as follows-

- Citation and Commencement **1.** This Act may be cited as the Nakuru County Maternal, Newborn and Child Health Bill 2021 and shall come into operation upon assent by the Nakuru County Governor.
- Interpretation. **2.** In this Act, unless the context otherwise requires:
- “Abortion” ending of pregnancy by removing an embryo or fetus before it can survive outside the uterus.
- "Antenatal care" includes the correct diagnosis of pregnancy, birth preparedness, standard care and referrals, HIV prevention, detection and treatment services, contraception and family planning information, nutritional counseling, and emergency of obstetric care accomplished by focused clinic visits, examinations, prevention and management of complications during pregnancy to reduce poor outcomes, morbidity and mortality
- "child" has the meaning assigned to it in the Children Act as in the revised act 2012 “A human being below the age of 18 years’
- "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 Cap 260 ;
- "Community Health volunteer (CHV)” Is an individual chosen by the community and trained to address health issues of individual and communities in their respective localities working in close relationship with health facilities as defined in the Strategy for Community Health 2014-2019)
- “conscientious objection" means to object in principle to a legally required or permitted practice;

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

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

"health care provider" means any person or institution that has been duly authorized by the respective regulatory bodies 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 sexual and reproductive health service, after receiving adequate information regarding options, risks, advantages and disadvantages of all the available options .

‘intrapartum period’ means the period from onset of labour to delivery of the placenta

"intra partum care" includes the correct diagnosis of labour, appropriate examination and management of normal labour and delivery; prompt identification and management of complications of labour and delivery.

“Maternal care/maternity care" includes health care of a woman during pre-pregnancy, pregnancy, childbirth and up to 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 any health condition, (physical or emotional or psychological) or disabilities attributed to and/or aggravated by pregnancy and childbirth that has a negative impact on the woman’s wellbeing;

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

“Midwife” means a person duly registered and licensed as a midwife under the Nurses’ Act Cap 257;

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

“Post-abortion care” is the comprehensive health care provided to a woman presenting with complications arising from spontaneous or induced abortion.

"Postnatal care" is the comprehensive health care and support provided to a woman and her baby immediately after delivery up to 42 days after delivery, it includes prevention, identification and management of complications during the post natal period;

"Postnatal period" is the period immediately after child birth up to 42 days.

"Pregnancy" means the presence of clinical or/and laboratory evidence of intra or extra uterine conception.

"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 services by women throughout pregnancy, childbirth, and up to 42 days of childbirth with the desired outcome of a live and healthy mother and baby;

"Right to respectful maternity care" means the rights as contained in the WHO respectful maternity care charter.

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

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

Objects and Purposes of the Act

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

Part 11: Maternal Care

Adequate medical care.

- 4.**
- (1) Every woman has the right to affordable, accessible quality maternal health services in a dignified and respectful manner;
 - (2) A health care provider offering maternal care shall operate in a conducive environment with adequate medical equipment and ensures quality maternal care
 - (3) All public & private institutions including schools, health facilities and other work-related environments must ensure provision of lactation stations

in accordance with the provisions of the Health Act, 2017.

Persons authorized to offer adequate medical care

5. (1) The following persons shall be authorized to offer adequate medical care -
- (a) Medical practitioners;
 - (b) Clinical Officers;
 - (c) Nurses/midwives;

(2) Trained Community Health Workers, as recognized in the National Community Health Strategy Implementation Guide shall establish linkages between the health systems and communities.

Post Abortion Care

6. A woman is entitled to post-abortion care under this bill which including; treatment of incomplete and unsafe abortion complications that are potentially life-threatening;

Testing of a pregnant woman on HIV/AIDS

7. (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 HIV.
- (2) No pregnant woman shall be tested for HIV/AIDS without her informed consent.
- (3) The confidentiality of test results shall be carefully protected.

Information, access to treatment and counseling

8. The County Executive Committee in conjunction with the relevant health care providers within Nakuru County shall:-
- a) regularly disseminate accurate and comprehensive information to members of the public about HIV and AIDS, including prevention of mother to child infection and the options available to infected pregnant women;
 - b) ensure voluntary HIV counseling and testing services are offered to women and their families

- c) ensure access to continuous and regular care and treatment to children born to HIV infected women;
- d) ensure counseling of pregnant women and their partners living with HIV or AIDS on how to promote and improve their sexual and reproductive health.

Part 111: NEWBORN HEALTH

- Childbirth. **9.** For purposes of this Act, childbirth is one part of the continuum of care 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.

PART IV—CHILD HEALTH

- Child healthcare. **10.** Every child has a right to health care, of which parents, national government and the county government shall have the responsibility of providing irrespective of age, race, sex, tribe or religion
- Immunization, vaccination and de-worming **11.** Every child has a right to free immunization, vaccination, growth, monitoring, and de-worming at any public health facility.
- Annual check up **12.** Any child below the age of five years is entitled to free medical care at any public health facility.
- Medical training. **13.** (1) The County Executive Member responsible for health in the County shall facilitate training to;
- a) midwives and health care providers on maternal and child health services to improve ante-natal and post-natal care for women and children; provided that the midwife is licensed under the Nurses' Act Cap 257
 - b) CHVs on community maternal and newborn health package to provide community Maternal Newborn Health information, identify medical and/or obstetric problems in order to refer and escort mothers and babies to health facility including referral for skilled birth attendance.
- Consent of a **14.** (1) A child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either

child.

subsection (2), (3), (4), (5), (6) or (7).

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

(a) the child is pregnant, or

(b) the child is already a parent or

(c) If in the opinion of a health care provider the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.

(3) The parent, guardian or care giver of a child may, subject to section 2, consent to the medical treatment of the child if the child is-

(a) is of insufficient maturity and lacks the mental capacity to understand the benefits,

risks, social and other implications of the surgical operation; and

(b) Duly assisted by his or her parent or guardian.

(4) A health care provider may consent to the medical treatment of or a surgical operation on a child if-

a) the treatment or operation is necessary to preserve the life of the child or to save the child

from serious or lasting physical injury or disability; and

(b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.

(5) A health care provider may consent to the medical treatment of or surgical operation on a child if the parent or guardian of the child:

(a) unreasonably refuses to give consent or to assist the child in giving consent; or

(b) is incapable of giving consent or of assisting the child in giving consent;

(c) cannot readily be traced; or

(d) Is deceased.

(6) A health care provider may consent to the medical treatment of or surgical

operation on a child if the child unreasonably refuses to give consent.

(7) A High Court or children's court may consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent.

(8) No patient, parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (3) or withhold consent in terms of subsections (4) and (5) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice acceptable by law to the medical treatment or surgical operation concerned; in such an instance the patient, parent or guardian may sign for discharge against medical advice.

HIV Testing

- 15.** (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)
 - (2) Consent for a HIV test on a child may be given by
 - (a) the child, as per the HIV Prevention and Control Act, if the child is
 - (i) involved in sexual activities that puts him/her at risk of contracting sexually transmitted infections; or
 - (ii) under the age of 18 years but of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (b) the parent or care-giver, if the child is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (c) a Welfare Officer, if the child is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (d) a designated child protection organization arranging the placement of the child, if the child 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 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
- iii. if consent is unreasonably withheld
- f) a children's court, if
- (i) consent in terms of paragraph (a), (b), (c),(d) or (e) is unreasonably withheld;
- (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

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

Counselling before and after HIV- testing

- 17.** (1) A child may be tested for HIV only after proper pretest counselling, by an appropriately trained person
- a) 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
- (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.

PART V—HEALTH FACILITIES

Medical facilities.

- 18.** All Health Providers offering maternal and child health care services shall operate in a conducive environment with adequate medical facilities necessary to offer quality medical care.

Minimum Package of care

- 19.** 1. There shall be established a minimum maternal, newborn and child health package for provision of MNCH services at all levels of care in the county
2. There shall be established Youth Friendly corners within all health centres in the

county to promote provision of youth friendly health care services.

- Emergency Services
- 20.** 1) There shall be ambulances stationed in strategic locations available 24 hours a day at easy access to rural health facilities, and communities for referral of mothers and newborns to higher level facilities
- 2) No woman or child shall be denied emergency maternal medical treatment in any health institution, regardless of their inability to pay.

- Adequate medical providers
- 21.** (1) The hospital shall have such a number of health care provider, clinical officers, nurses and midwives as the county executive member for health in consultation with health care providers within the county, shall from time to time determine based on national staffing norms standards.

PART VI—MISCELLANEOUS PROVISIONS

- Power of County Executive member to make regulations
- 22.** (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 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) The County Executive Committee member, in consultation with all relevant stakeholders within Nakuru County shall make regulations:—
- a) To promote best practices on safe motherhood;
- b) To facilitate the provision of affordable maternal and neonatal care in all health institutions.
- c) Establish a health information and financing system for maternal, newborn and child health services
- d) Provide the necessary physical infrastructure, medical equipment,

medicines and ambulances and commodities

- e) To facilitate operational research
- f) Establish a minimum package of care for MNCH services and ensure adherence by all MNCH service providers
- g) Promote adherence to provision of respectful maternity care and other patient rights
- h) Ensure that all maternal and perinatal deaths are audited at both facility and community level and quality improvement interventions identified from the audits implemented to prevent more deaths from preventable causes;
- i) Regulation, training and facilitation of community health workers in line with the Republic of Kenya Community Health Workers' Training Guide and the Strategy for Community Health 2014-2019.

Savings for other laws 23. Save as otherwise expressly provided in this Bill, nothing in this Bill shall be deemed to derogate from the provisions of any other written law which relate to matters of maternal new born and child health.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill is anchored on the provisions of Article 43 (1) (a) of the Constitution and seeks to make provision for the regulation of maternal, newborn and child health care rights, and partly, the actualization of respectful, dignified maternity care and reproductive rights.

It seeks to protect mothers, newborns and children from unethical and adverse medical practices, particularly in HIV testing; and ensures that mothers and newborns access basic essential and emergency obstetric and newborn care. The Bill also seeks to deal with the issue of inadequate human resource and physical facilities at county government hospitals, by regulating and

mandating the provision of a minimum package of care for maternal and newborn services. Aware of the county statistics, the bill also addresses itself to critical sexual and reproductive health questions around availability of youth friendly centers, provision of lactation stations and access to contraceptives, The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

The Bill concerns County Governments in terms of Article 110(a) of the Constitution as it affects the functions and powers of County Governments set out in the Fourth Schedule. The issue of health care and especially provision of health facilities affect the functions of county governments.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the..... November, 2021

HON. NJUGUNA MWAURA
Member of the County Assembly.