



# MODEL COUNTY SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS ACT

AN ACT OF THE COUNTY ASSEMBLY TO GIVE EFFECT TO ARTICLE 26(4), 43(1)(a) &(2), AND SCHEDULE 4 OF THE CONSTITUTION, TO PROVIDE FOR THE PROMOTION AND PROTECTION OF REPRODUCTIVE HEALTH AND RIGHTS, PROVIDE A FRAMEWORK FOR THE PROTECTION AND ADVANCEMENT OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS TO ALL PERSONS, TO PROMOTE AND ENSURE ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES AND FOR RELATED PURPOSES.

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# PART 1:

PRELIMINARY

## Short title and commencement

1. This Act may be cited as the .....Sexual and Reproductive Health Act 2019 for (insert the name of the county) County Government and shall come into operation on such date as the County Executive Committee may appoint. (different dates may be appointed for different parts of the provisions).

## Interpretation

2. In this Act, unless the context otherwise provides

“abortion” means the termination of a pregnancy before the embryo or foetus is capable of independent life outside the pregnant woman’s womb. In medical contexts, this procedure encompasses both spontaneous and induced terminations.

“adolescent” means any person aged between 10 years and 19 years.

“adolescent friendly services” these are sexual and reproductive health services delivered in ways that are responsive to the specific needs, vulnerabilities and desires of adolescents. These services should be offered in a non-judgmental and confidential way that fully respects human dignity.

“age-appropriate” means suitability of information and services for people of a particular age.

“assisted reproductive technology” means procedures used primarily to address infertility and includes procedures such as in vitro fertilization, intracytoplasmic sperm injection, cryopreservation of gametes or embryos and use of fertility medication.”

“child” means an individual below the age of eighteen years.

“choice” means the freedom to decide freely on how to manage reproductive health choices.

“complete abortion” means the complete expulsion of all the products of conception.

“confidentiality” means to be assured that any personal information shall not be made public and shall remain confidential.

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

“County Executive Committee Member” means the County Executive Committee Member (CEC) for the time being responsible for the health docket in a county.

“discrimination” means any exclusion, restriction or arbitrary distinction whether direct or indirect, made based on actual or perceived health status, marital status, religion, race, sex, pregnancy, ethnic or social origin, colour, age, disability, conscience, belief, culture, dress, language or birth.

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has or is perceived by significant sectors of the community to have a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities.

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

“health” means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

“medical emergency” means an acute situation of injury or illness that poses an immediate risk to life or health of a person or has potential for deterioration in the health of a person that if not managed in a timely manner would lead to adverse consequences in their wellbeing.

“family planning” means the ability of individuals and couples to anticipate and attain their desired number of children and the spacing and timing of their births.

“guardian” means a person who has a responsibility appointed by a court or has taken responsibility to take care and manage the affairs of a child or an adult with disability.

“health care professional” includes any person who has obtained health professional qualifications and is licensed by the relevant regulatory body.

“health care provider” means any person or institution that has been authorized to deliver health care services and includes health care professionals.

“health facility” means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designated to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health 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 services, after receiving adequate information regarding options, risks, advantages and disadvantages of all the available methods.

“incomplete abortion” means an abortion in which parts of the products of conception are retained in the uterus.

“marginalised groups” means a group of people who, because of laws or practices before, on, or after the effective date were or are disadvantaged by discrimination on one or more of the grounds based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

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

“maternal mortality” means the death of a woman while pregnant or within 42 days of termination of pregnancy or delivery, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

“mature minor” means a child who is either a parent or of sufficient maturity and has the mental capacity to understand the benefit, risks, social and other implications of the treatment and services offered.

“medical practitioner” means a person duly registered as a medical practitioner under the Medical Practitioners and Dentist Act Cap 253.

“missed abortion” is when the embryo or foetus did not form or the foetus has died inside the uterus but the placenta and embryonic tissue are still in the uterus.

“post abortion care” is the medical, social, psychological and spiritual care and support given to a person after an abortion and 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 and includes monitoring, counselling and rendering health care to a mother.

“pregnancy” means the presence of a foetus in the womb.

“provider-initiated health care or testing” means the initiation of provision of care or testing by the medical provider to ensure public health or advancement of medicine.

“rehabilitation” includes psychological interventions, medical treatment, legal and social services designed to assist survivors recover from loss, injury or damage suffered as a consequence of loss or injury.

“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.

“reproductive rights” include the right of all individuals to attain the highest standard/level of sexual and reproductive health care and services and to make informed decisions regarding their reproductive lives free from discrimination, coercion or violence.

“reproductive health care providers” means a public institution which offers reproductive health care services as well as all the staff that work in them.

“right to safe motherhood” means the right to access information and quality service by women throughout pregnancy and childbirth.

“septic abortion” means an abortion associated with serious infection of the products of conception and endometrial lining of the uterus, leading to a generalised infection.

“sexual and reproductive health” means the exercise of control over one’s sexual and reproductive system, its functions and processes.

“sexual and reproductive health and rights” means the exercise of control over one’s sexual and reproductive health linked to human rights.

“stakeholders” means both state and non-state actors and includes Police, Office of the Attorney General, Office of the Director of Public Prosecution, Probation, Prisons, Faith Based Organizations, public officials, health care providers, counsellors, psychologists, civil society organizations, donors, media, private sector, Community Based Organizations, Council of Elders, traditional leaders and other relevant stakeholders.

“termination of pregnancy” means the separation and expulsion, by medical or surgical means, of the contents of the uterus of a pregnant woman before the foetus has become capable of sustaining an independent life outside the uterus.

“trained health professional” means a health professional with formal medical training at the proficiency level of a medical officer, a nurse, midwife, or clinical officer who has been educated and trained to proficiency in the skills needed to manage pregnancy related complications in women and who has a valid licence from the recognised regulatory authorities to carry out that procedure.

“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 or a procedure for terminating pregnancy performed by persons lacking the necessary skills or in an environment that is not in conformity with minimal medical standards or both.

“user” means the person receiving any service, treatment or information in a health facility.

“vulnerable person” means a person who due to their age, gender, disability intellectual or psychological impairment cultural differences, religious differences, or other characteristics as may be prescribed by regulations under this Act, may require the provisions of sexual reproductive health care and support.

## Objectives of the Act:

### The objectives of this Act are to:

- a) provide a framework for the protection and advancement of sexual and reproductive health and rights to all persons;
- b) promote access to reproductive health services including safe, effective, affordable and acceptable family planning services;
- c) provide a framework for the protection and advancement of maternal, newborn and child health;
- d) promote reproductive health and safe motherhood to reduce maternal and newborn morbidity and mortality rates;
- e) promote women's health and safe motherhood;
- f) prevent harmful and retrogressive practices including child marriages, female genital mutilation, and gender-based violence;
- g) prevent unwanted pregnancies and unsafe abortions;
- h) ensure access to quality and comprehensive provision of sexual and reproductive health care services to all;
- i) promote public awareness about sexual reproductive health services;
- j) ensure funds set aside for maternal health and reproductive services are used for the intended purposes;
- k) ensure the integration of sexual and reproductive health services as part of the primary health care in the prevention, treatment and care;
- l) address the social and cultural factors which undermine sexual and reproductive rights; and
- m) promote cooperation between all county and national government departments and agencies and other organisations and agencies involved in sexual and reproductive health.
- n) make budgetary provisions to avail adequate funding for sexual and reproductive health programmes.

# PART 2:

## REPRODUCTIVE HEALTH-RELATED RIGHTS AND RESPONSIBILITIES OF USERS



## RIGHT TO ACCESS SEXUAL REPRODUCTIVE HEALTH (SRH)

4. Every person has a right to sexual and reproductive health regardless of their socio-economic status, political affiliations, religious beliefs, ethnic origin, marital status, geographical location or health status.
5. The County Government shall ensure the protection and promotion of the sexual and reproductive health and rights through development and adoption of policies, standards, practices and administrative action.
6. Reproductive health services include: -
  - a) family planning information and services including;
  - b) prevention of mother-to-child transmission of vertical transmission;
  - c) adolescent and youth reproductive health guidance and counselling;
  - d) provision of services to survivors of sexual and gender-based violence;
  - e) education and counselling on sexuality and reproductive health for all;
  - f) counselling and psychosocial support;
  - g) access to emergency treatment and rehabilitation
7. Every health care facility whether public or private shall facilitate access to health care services for sexual and reproductive health without impediments.

## PROGRESSIVE REALIZATION OF THE RIGHT TO SEXUAL REPRODUCTIVE HEALTH

8. Every county shall ensure the progressive realization of the right to sexual and reproductive health by:
  - a) implementing the national and county governments laws and policies on the right to health including reproductive health;
  - b) ensuring adequate financing for the reproductive health services and programmes; and
  - c) providing administrative measures that guarantee the right to sexual and reproductive health[L16].
9. Sexual and reproductive health services shall be provided in a way that ensures:
  - a) continuity of care for an individual across health conditions, across levels of care and over a lifetime;
  - b) effective, safe, quality services; and
  - c) accessible and equitable services available to all.

## RIGHT TO INFORMATION

10. Every individual has a right to seek and receive age-appropriate sexual and reproductive health information to ensure reproductive health decisions are made with informed consent.

11. Every individual shall have a right to gender-neutral information which relates to reproductive rights and responsibilities within a gender perspective, which is free from stereotypes, discriminatory and obscurantist customs, and is presented in an objective manner.

## PROTECTION FROM DISCRIMINATION

12. Every person shall have a right to access sexual and reproductive health services and information without any form of discrimination on the grounds of race, colour, sex, gender, creed, region, health status or any other criteria of discrimination.

## PRIVACY AND CONFIDENTIALITY

13.(1) All health providers shall ensure that any information relating to a person, including information relating to his or her health status, treatment or stay in a health facility or any details of the services provided to a person, shall not be communicated to third parties without the prior written consent of the patient except where such information is disclosed under an order of a court.

(2) A person in possession of information under this Act shall not divulge such information to any other person unless:

- a) the user consents to that disclosure in writing where the person is an adult of sound mind;
- b) by the parent or caregiver where the person is a child and is not sufficiently mature to understand the benefits, risks and social implications of such a disclosure;
- c) by the child where the child is a parent, a mature minor, or mature enough to understand the benefits, risks and social implications of such a disclosure; and
- d) by court order or under any law that requires disclosure.

## RIGHT TO CHOOSE

14. Any person whether individuals or couples have the right to decide freely the nature of services and where to obtain their reproductive health services.

## RIGHT TO SAFETY

15. Every person has a right to safety in the practice of sexual reproductive health.

## RIGHT TO DIGNITY

16. Every person has the right to be treated with dignity which includes courtesy, consideration and attentiveness and with full respect of their dignity regardless of their level of education, social or economic status or any other characteristics which would single them out to make them vulnerable to abuse.

## RIGHT TO CONTINUITY OF CARE

17. Every person has the right to receive services and reliable supply of reproductive health/maternal newborn health commodities and drugs for as long as they need.

## RIGHT OF EXPRESSION

18. Every person has the right to express their views freely on the services they receive.

19. (1) A user has the right to participate in any decision affecting his or her personal sexual and reproductive health and treatment.

(2)(a) A user who is capable of understanding the nature of the treatment and services given must be informed as contemplated in section 20 even if he or she lacks the legal capacity to give the informed consent required by section 20.

(b) If the informed consent required by section 20 is given by a person other than the user, such a person must, where possible, consult the user before giving the required consent.

(3) If the user is unable to participate in the decision affecting his or her personal reproductive health and treatment, he or she must be informed as contemplated in section 20 after the provision of the health service in question unless the disclosure of such information would be contrary to the users' best interest and right to health.

## RIGHT TO PARTICIPATE IN DECISIONS

## CONSENT OF USER

20. (1) Subject to section 14, a health service may not be provided with any sexual and reproductive health services to a user without the user's informed consent, unless:
- a) The user is unable to give informed consent and such consent is given by a person:
    - i) mandated by the user in writing to grant consent on his or her behalf; or
    - ii) authorized to give such consent in terms of any law or court order.
  - b) The user is unable to give informed consent and no person is mandated or authorised to give such consent, but the consent is given by the next of kin;
  - c) The provision of health services without informed consent is authorised by any applicable law or court order;
  - d) The user is being treated in an emergency;
  - e) Failure to treat the user or group of people which includes the user will result in a serious risk to public health; or
  - f) Any delay in the provision of the health service to the user might result in his or her death or irreversible damage to his or her health and the user has not expressly, or by implication or by conduct refused that service.
- (2) Informed consent means consent for the provision of a specified health service given by a person with the legal capacity to do so on;
- (a) information on the range of services provided and available to the user;
  - (b) benefits, risks, costs and consequences generally associated with each option; and
  - (c) users' rights to refuse recommended medical options and explain the implications, risks and legal consequences of such refusal.
- (3) A health care provider must take all reasonable steps to obtain the user's informed consent.
- (4) The health care provider concerned must, where possible, inform the user as contemplated in subsection (2) in a language that the user understands and in a manner that considers the user's level of literacy.
- (5) No health service shall be provided to a user without the user's informed consent unless:
- a) the user is unable to give informed consent and such consent is given by a person:
    - i) mandated by the user in writing to grant consent on his or her behalf; or
    - ii) authorized to give such consent in terms of any law or court order.
  - b) the user is unable to give informed consent and no person is mandated or authorised to give such consent, and the consent is given by the spouse or partner of the user, or in the absence of such a spouse, partner or a parent.
  - c) The provision of health service without informed consent is authorised by any applicable law or court order;
  - d) The user is being treated in an emergency;
  - e) Any delay in the provision of the health service to the patient might result in his or her death or irreversible damage to his or her health and the patient has not expressly, or by implication or by conduct refused that service.
- (6) A health care provider must take all necessary and reasonable steps to obtain the users' informed consent.

# PART 3:

SEXUAL AND REPRODUCTIVE HEALTH-RELATED  
RIGHTS FOR SERVICE PROVIDERS

## TRAINING

21. Health providers have a right to access continuous pre and in-service training on knowledge and skills on sexual reproductive health and rights.

## INFORMATION

22. Right to information on issues related to their duties.

## INFRASTRUCTURE

23. Right to have appropriate physical facilities and organization.

## SUPPLIES

24. To receive continuous and reliable supplies and materials required for providing reproductive health services at an acceptable standard of quality.

## GUIDANCE

25. To receive clear, relevant and objective guidance.

## EXPRESSION

26. To express their views freely without intimidation on the quality and efficiency of their reproductive health program and services.

PERSONS  
AUTHORISED TO  
OFFER SEXUAL  
AND  
REPRODUCTIVE  
HEALTH CARE

27. The following persons are authorized to offer maternal and sexual reproductive health services:

- a) medical practitioners;
- b) clinical officers;
- c) nurses; and
- d) any other legally recognized health professional.

28. (1) The County Government shall recognize and appoint Community Health Workers within its workforce on such terms and conditions.

(2) Community Health Workers shall:

- a) screen, assess and refer through household visits to ensure access to sexual reproductive health services;
- b) provide information and education on sexual reproductive health and rights and provide home care;
- c) provide psychosocial support and refer for assessment and treatment; and
- d) carry out community assessments, campaigns and screening programmes in communities, schools and early childhood centres.

29. The County Government shall ensure the training of Community Health Workers to provide sexual and reproductive health services.

COMMUNITY  
HEALTH  
WORKERS

# PART 4:

SEXUAL REPRODUCTIVE HEALTH EDUCATION,  
INFORMATION AND COMMUNICATION

## SEXUAL REPRODUCTIVE HEALTH EDUCATION AND INFORMATION

- 30.(1) The County Government shall ensure that appropriate, adequate and comprehensive information on sexual and reproductive health is disseminated and which information must include:
- the types and availability of sexual and reproductive health services;
  - the operating schedules and timetables of visits;
  - the cost of accessing services;
  - procedures for access to health services;
  - procedures for laying complaints;
  - the rights and duties of users and health care providers; and
  - any other information on health services which may be of use to the public.

(2) The County Governments shall promote public awareness about sexual reproductive health rights, HIV and AIDS, and prevention of mother-to-child infections through a comprehensive educational and information campaign.

(3) The educational and information campaign referred to in subsection (2) shall:

- focus on the family as the basic social unit;
- be carried out in institutions of learning and other community places;
- use age-appropriate information tools; and
- provide comprehensive information on sexuality education and confidential services.

31. Sexual and reproductive health-related public education shall include but not be limited to:

- family planning/contraception use and access;
- safe pregnancy and delivery;
- Sexual dysfunctions and reproductive health cancers; and
- prevention of mother-to-child transmission.

32. The County Government shall collaborate with relevant stakeholders to ensure the involvement and participation of individuals, adolescents and community members.

33. (1) The County Executive Committee of Health in consultation with other relevant stakeholders shall ensure the integration of instruction on:

- sexual and reproductive health and rights;
- HIV and AIDS and other sexually transmitted diseases; and
- sexual and gender-based violence in the communities.

(2) The County Government shall ensure the information integrated is age-appropriate, gender-inclusive, targets all communities including persons with disabilities.

34. (1) Sexual and reproductive health and rights information dissemination shall form part of the service delivery package by health care providers at public and private health facilities.

(2) The County Government shall ensure public facility health care providers are trained on proper information dissemination and education on the areas including but not limited to:

- sexual and reproductive health and rights;
- HIV and AIDS;
- family planning services;
- sexually transmitted diseases;
- sexual and gender-based violence;
- sexual and reproductive health services including complaints mechanism; and referral pathways.

## SEXUAL REPRODUCTIVE HEALTH EDUCATION IN COMMUNITIES

## SEXUAL REPRODUCTIVE HEALTH EDUCATION AS A HEALTH CARE SERVICE

# PART 5:

ACCESS TO TREATMENT AND  
COUNSELLING ON HIV AND AIDS



## ACCESS TO INFORMATION ON HIV & AIDS

### The HIV and AIDS Prevention And Control Act (HAPCA)

## HIV TESTING

## ACCESS TO TREATMENT

## CONFIDENTIALITY OF INFORMATION ON HIV & AIDS STATUS

35. The County Executive Committee Member for the time being responsible for health in conjunction with the relevant health care providers and other stakeholders shall:

- regularly disseminate accurate and comprehensive information to members of the public about HIV and AIDS;
- disseminate accurate and comprehensive information to pregnant women on prevention of mother-to-child transmission; and
- disseminate accurate and comprehensive information about HIV and AIDS to adolescents and young persons.

36. (1) A child may give informed consent for HIV testing only after proper counselling, by an appropriately trained person, if:

- the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; or
- if the child's parent or caregiver has knowledge of the test.

(2) Post-test counselling must be provided by an appropriately trained person to the child, if the child is of sufficient maturity to understand the implications of the result; or the child's parent or care-giver if the parent or caregiver has knowledge of the test.

37. The County Government shall ensure access to continuous and regular medical treatment of persons living with HIV, adolescents living with HIV and children born with HIV.

38. (1) No person in possession of information relating to the HIV status of any person may disclose the HIV-status of any person, including a child, without consent given in terms of the HIV & AIDS Prevention and Control Act.

# PART 6:

SAFE MATERNAL AND NEWBORN HEALTH CARE

## ACCESS TO MATERNAL AND NEWBORN HEALTH CARE

39. The County Government shall promote access to maternal and newborn health care services and information including:
- a) standard care and referral system;
  - b) HIV prevention, treatment and care services;
  - c) prevention of mother-to-child transmission;
  - d) contraception and family planning services;
  - e) nutrition services and education;
  - f) family planning and pre-pregnancy care;
  - g) focused antenatal care;
  - h) essential obstetric care;
  - i) essential newborn care;
  - j) targeted postpartum care; and
  - k) post-abortion care.

## MATERNAL HEALTH CARE SERVICES

40. The county health facility shall provide the following services whether in private or public facilities:
- a) prenatal health;
  - b) antenatal care;
  - c) advice to pregnant women who suffer any serious illness or exposed to teratogenic substances; and
  - d) advice on termination of pregnancy.

## ANTENATAL CARE AND DELIVERY SERVICES

41. Every county health facility shall provide free and compulsory antenatal care and delivery services to women and adolescent girls.

# PART 7:

ACCESS TO CONTRACEPTIVES AND FAMILY  
PLANNING SERVICES

## FAMILY PLANNING SERVICES

42. The County Government shall:
- a) ensure access to family planning services;
  - b) ensure the availability of family planning supplies;
  - c) provide family planning information;
  - d) ensure there is consent from the clients; and
  - e) ensure services are provided by a qualified health provider.

## INFORMATION

43. Every family planning service provider must inform the user of:
- a) the range of family planning methods and treatment options generally available to the user;
  - b) the benefits, risks, costs and consequences generally associated with each option; and
  - c) the user's right to refuse the family planning services and explain the implications risks, obligations of such refusal, in a language that the user understands and in a manner which takes into account the user's level of literacy where possible.

## CONSENT OF USER

44. Family planning services may not be provided to a user without the user's informed consent in terms of section 20 of this Act.

## ACCESS TO FAMILY PLANNING METHODS FOR A MATURE MINOR

45. (1) Family planning services may be provided to a child upon request by the child without the consent of their parent or guardian if the child is sexually active; is a parent, or is of sufficient maturity and mental capacity to understand health information to make an informed choice.
- (2) Family planning services available to a mature minor include:
- a) condoms; and
  - b) contraceptives.
- (3) A health service provider shall give proper medical advice and counselling to a mature minor before providing the services.
- (4) A health service provider shall carry out a medical examination before prescribing any family planning method.
- (5) No health provider shall deny a mature minor in terms of (1) above of any of the services prescribed under this Act.
- (6) A health provider shall keep all information about the mature minor confidential.

# PART 8:

TERMINATION OF PREGNANCY

## TERMINATION OF PREGNANCY

46. (1) A pregnancy may be terminated if, after consultation with the pregnant woman, a trained and certified Health Care Provider is of the opinion that:
- the continued pregnancy would pose a risk of injury to the woman's physical or mental health or likely to result in the death of the pregnant woman; or
  - in the instance of emergency care and treatment;
  - where the pregnancy resulted from sexual assault, defilement, rape, or incest; and
  - as provided for by any other written law.
- (2) The termination of the pregnancy shall be carried out by a qualified health care professional, within the meaning of the Health Act, in a facility authorised by and licensed by the County Government.
- (3) Health providers shall offer optional and non-directive counselling, before and after the termination of pregnancy.
- (4) Any person who violates the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding ..... or imprisonment for a term not exceeding ..... or both.

## CONSENT OF PREGNANT WOMAN

47. (1) Subject to section 46 above, termination of pregnancy may only take place:
- with the consent of the pregnant woman;
  - in the case of a pregnant minor, after consultation with the minor's parents, guardian or such other person with parental responsibility for the said minor provided that the best interest of the minor shall prevail; or
  - in case of a mentally unstable person, after consultation with the parents, guardian or such other persons with parental responsibility for the said person.
- (2) 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 within a reasonable time.
- (3) Refusal or deliberate failure to do so shall constitute an offence where upon conviction shall be liable to a fine not exceeding .....or imprisonment for a term not exceeding .....or to both.

## COUNSELLING

- 48.(1) The health provider shall provide counselling before and post-treatment or termination of pregnancy.
- (2) Counselling services given per subsection (1) above shall constitute part of the care treatment.

## INFORMATION CONCERNING TERMINATION OF PREGNANCY

49. (1) Any woman who requests termination of pregnancy from a health care service provider shall be informed of her rights under this Act by the health care service provider.
- (2) The health care provider shall provide information for termination of the pregnancy and the treatment before and after the termination of pregnancy.

## POST-ABORTION CARE

50. (1) County health facilities shall offer post-abortion care free of charge.
- (2) Any woman is entitled to post-abortion care at any of the county health facilities without discrimination.
- (3) A woman undergoing post-abortion care must give consent for the treatment as provided for in section 47 above.
- (4) Post-abortion care shall be available as an emergency service in all health facilities.
- (5) Where the services are not available in a facility, the patient must be referred to a facility that can offer the services.

### 51. Post-abortion care includes:

- a) treatment of incomplete and unsafe abortion and complications that are life-threatening;
- b) post-abortion counselling;
- c) post-abortion family planning, counselling and contraception services;
- d) referral to reproductive and other health services; and
- e) community linkages for appropriate support.

## PLACE WHERE SURGICAL TERMINATION OF PREGNANCY MAY TAKE PLACE

52. (1) The surgical termination of a pregnancy may take place only at a facility designated by the County Executive of Health by a notice in the Kenya Gazette for the purpose under the following subsection.
- (2) The County Executive of Health may designate any facility for the purposes provided in subsection (1), subject to such conditions and requirements as he or she may consider necessary or expedient for achieving the objects of this section.
- (3) The County Executive of Health may withdraw any designation under this section after giving 14 days prior notice of such withdrawal in the gazette.

## DUTY TO FORWARD INFORMATION AND KEEPING OF RECORDS

53. (1) A health care provider shall, as soon as is practicable, but no 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) The identity of a woman who has requested or obtained a termination of pregnancy shall remain confidential at all times unless she chooses to disclose that information.
- (3) Any person who violates any condition set above commits an offence and is liable upon conviction to a fine not exceeding ..... shillings or to imprisonment for a term not exceeding ..... or to both.



# PART 9:

SEXUAL AND GENDER-BASED VIOLENCE

## REHABILITATION, SAFETY AND ACCESS TO EMERGENCY TREATMENT FOR SURVIVORS OF SEXUAL AND GENDER-BASED VIOLENCE

54. (1) Survivors of sexual and gender-based violence shall be entitled to rehabilitation and safety services at a public hospital, facility or institution at the expense of the county.
- (2) The County Executive Member in charge of Health shall prescribe circumstances under which a survivor of sexual and gender-based violence may at any time access services prescribed in subsection (1) above in any public hospital or institution or any other institution approved or gazetted by the County Executive Member for Health.
- (3) Sexual and gender-based violence survivors shall be entitled to emergency treatment at a public or private hospital.

## SAFE/ RESCUE HOUSES

55. The County Government shall facilitate the establishment of safe houses in the county by public and private entities for the rehabilitation and safety of the survivors of gender-based violence.

## GUIDELINES AND STANDARDS

56. (1) The County Government in collaboration with other agencies and stakeholders shall develop guidelines for the establishment, management, and conditions of rescue homes.
- (2) The County Government shall oversee accrediting and or licencing institutions and organizations to run rescue homes.

## APPLICATION AND ISSUANCE OF A LICENCE

57. (1) An institution or organization desirous of establishing and running a rescue home shall apply in writing for a licence in terms of the regulations.
- (2). The County Government may after scrutiny of the application issue or refuse to issue the licence to run a rescue home.
- (3) The County Government may after scrutiny of the application for renewal of the licence per the regulations renew the licence issue or refuse to issue a licence.
- (4) The service shall determine the tenure of the licence, licence fees and licence renewal fees.

## GRANT OF LICENCE

58. (1) The County Government shall grant a licence to an organization which can run a rescue home within the county.
- (2) The CEC in charge of Health shall by notice in the Gazette designate any institution as an authorised organization to run a rescue home.
- (3) The holder of the licence granted in terms of the provisions above must comply with the prescribed guidelines and standards as prescribed and must provide the prescribed related services.
- (4) The CEC in charge of Health may in the notice contemplated in subsection (1) impose such conditions in respect of the exercise of the power referred to in subsection (2). The licence issued under subsection (2) shall be renewed every year.

## ADMINISTRATIVE ACTION

59. If the licence holder violates any of the conditions contained in the licence or fails to abide by any notification, order and directive issued, the county may issue the following administrative orders:
- a) warning;
  - b) suspending the licence subject to a time limit; and
  - c) cancellation of licence.

## APPEALS

60. (1) An institution or organization dissatisfied with the order or decision passed against them in terms of section 35 may appeal in writing to the County Executive in charge of Health against such decision.
- (2) Such an appeal must:
- a) be lodged within 60 days from the date on which the written reasons for the decision were given by the service; and
  - b) set out the grounds of appeal.
- (3) After considering the grounds of appeal and the reasons for the decision, the County Executive in charge of Health must as soon as is practicable:
- a) confirm, set aside or vary the decision; or
  - b) substitute any other decision for the decision of the service.
- (4) The decision of the county shall be final and conclusive.

## REGULATIONS RELATING TO LICENSING

61. (1) The County Executive in charge of Health may, after consultation with the other stakeholders, make regulations relating to the requirements for the issuing or renewal of a licence.
- (2) The regulations made under 70(1) shall-
- a) prescribe the fees payable in respect of the application for issuing and renewal of licence;
  - b) prescribe the formats and procedures to be used in applications for issuing and renewal of licence; and
  - c) prohibit business practices or perverse incentives which adversely affect the rights of users.

## REFERRAL MECHANISM

62. The County Government shall in collaboration with the other stakeholders develop a referral mechanism for sexual and gender-based violence survivors.

## GENDER-BASED VIOLENCE COMMITTEES

63. The County Executive Committee Member in charge of Gender and Health in consultation with other stakeholders shall facilitate the establishment of gender violence committee at the ward level to [L34].

# PART 10:

REPRODUCTIVE HEALTH OF ADOLESCENTS

## PROGRAMMES TO PROMOTE HEALTHY BEHAVIOURAL CHANGE

## ACCESS TO SEXUAL REPRODUCTIVE HEALTH, HEALTH CARE SERVICES FOR ADOLESCENTS

## ADOLESCENT REPRODUCTIVE AND SEXUAL RIGHTS INFORMATION

## INVOLVEMENT OF ADOLESCENTS

## ACCESS TO CONTRACEPTIVES AND FAMILY PLANNING SERVICES

## ADOLESCENTS AND YOUNG PERSONS LIVING WITH HIV AND AIDS AND STIS

## INTEGRATION OF SEXUAL REPRODUCTIVE HEALTH AND HIV SERVICES

## TRAINING OF HEALTH CARE WORKERS

64. The County Government shall:
- promote the provision of accurate information and services to prevent early and unintended pregnancies among adolescents;
  - ensure the provision of information on contraception and family planning;
  - strengthen community involvement in the prevention of early and unintended pregnancy; and
  - establish effective referrals linkages to relevant services for pregnant adolescents.
65. (1) The County Government shall facilitate the provision of adolescent comprehensive, accessible, non-judgmental and affordable friendly integrated reproductive health services.
- (2) The County Government shall ensure linked referral services to a qualified person for the provision of necessary services.
66. The County Government shall provide holistic and integrated Adolescent Sexual and Reproductive Health information and services through multi-pronged and multi-sectoral approaches that are effective and efficient in reaching adolescents with information and services by:
- providing age-appropriate Adolescent Sexual and Reproductive Health and HIV and AIDS information;
  - building the capacity of health care providers to provide sexual reproductive health information to adolescents; and
  - using community health structures to provide Adolescent Sexual and Reproductive Health information.
67. The County Government shall involve adolescents in the planning, implementation, monitoring and evaluation of Adolescent Sexual and Reproductive Health program.
68. (1) The County Government shall make available to adolescents' contraception and family planning services including contraceptive options, counselling, information and education.
- (2) Every health care service provider prescribing a contraceptive method shall provide to the person receiving the prescription the advantages and disadvantages of the prescription.
- (3) The service provider shall ensure that they receive the informed consent of the person to whom they are prescribing a contraceptive method.
69. The County Government shall:
- ensure the provision of HIV and AIDS and STI information to adolescents;
  - establish and promote adolescent-friendly HIV counselling and testing sites; and
  - support community-based approaches to improve treatment adherence and retention in the care of adolescents living with HIV.
70. The County Government shall ensure the integration of HIV and AIDS and other STIs information services into sexual reproductive health services at all levels of health care.
71. The County Government shall ensure the adequate capacity of health care workers at all levels of health care for the provision of integrated high-quality sexual reproductive health services in the context of STIs and HIV to adolescents.

# PART 11:

## REPRODUCTIVE HEALTH FOR MEN AND BOYS

### PART 11

#### ACCESS TO SERVICES

72. The County Government shall ensure the provision of special male reproductive health services which include but are not limited to such service on: -
- a) uro- genital infections;
  - b) STIs or HIV and AIDS;
  - c) infertility and erectile dysfunction;
  - d) prostate and testicular cancer; and
  - e) male circumcision.

#### TRAINING OF HEALTH PERSONNEL ON MALE REPRODUCTIVE HEALTH RIGHTS

73. The County Government shall enhance the capacity of the health personnel to offer services to men and boys on their reproductive health and rights.

# PART 12:

## SUPPORT PROGRAMMES FOR VULNARABLE GROUPS

### PART 12

#### ACCESS TO HEALTH SERVICES FOR VULNERABLE GROUPS

74. The County Government shall put in place measures for availing sexual and reproductive health services to vulnerable groups, including survivors of child marriages, orphans, adolescents, persons with disabilities, minorities, key populations and marginalized groups.

#### MEASURES TO ADDRESS SPECIAL NEEDS PERSONS WITH DISABILITIES

75. The County Government shall provide for disability-friendly sexual reproductive health information and services, which includes:

- a) information in a manner in which they understand including braille or sign language;
- b) physical access to health facility; and
- c) trained qualified health personnel to deal with challenges facing persons with disabilities.

# PART 13:

LICENSING OF HEALTH FACILITIES AND  
INSTITUTIONS



## LICENCING SECTION 20(D) THE HEALTH ACT 2017

## APPLICATION AND ISSUANCE OF A LICENCE

## ADMINISTRATIVE ACTION

## APPEALS

76. (1) The County Government shall issue or revoke a licence to any health facility or institution concerning the provision of sexual and reproductive health services.
- (2) The County Government shall set out through regulations the conditions to a licence within its mandate.
77. (1) A health facility or institution intending to carry out any services relating to sexual and reproductive health shall apply in writing for a licence in terms of the regulations.
- (2) The County Executive in charge of Health:
- may after scrutiny of the application issue or refuse to issue a licence;
  - may after scrutiny of the application for renewal of licence renew or refuse to issue a new licence per the regulations; and
  - shall determine the tenure of the licence and the fees payable for such an application for the licence.
78. Where a licence holder violates any of the conditions contained in the licence or fails to abide by any notification, order or directive issued under the licence or this law, the County Government may:
- issue a warning,
  - suspend the licence subject to a time limit; or
  - cancel the licence.
79. (1) Any institution or health facility dissatisfied with an administrative action taken per section 78 may appeal in writing to the County Executive Member in charge of Health against such a decision.
- (2) An appeal under subsection (1) must:
- be lodged within sixty days from the date on which the written reasons and decision were given by the county, and
  - set out the grounds of appeal.
- (3) After considering the grounds of appeal and the reasons for the decision, the County Executive must as soon as is practicable:
- confirm, set aside or vary the decision; or
  - substitute any other decision for the decision of the county.
- (4) A decision of the County Executive Member in charge of Health shall be final.
- (5) Any person aggrieved by the decision of the County Executive may appeal to the High Court.

# PART 14:

## COLLABORATION WITH OTHER COUNTY GOVERNMENTS, NATIONAL GOVERNMENT AND AGENCIES

### PART 14

#### A MULTI-SECTORAL APPROACH TO IMPLEMENTATION

#### COLLABORATING WITH OTHER GOVERNMENTS

#### COLLABORATING WITH THE PRIVATE SECTOR

80. (1) The County Government shall in the implementation and enforcement of this Act adopt a multi-sectoral approach.

(2) The County Government shall promote a healthy culture and practice on sexual and reproductive health and rights by providing accessible services in collaboration with other county and national government departments, agencies and relevant civil society organizations including departments of education, security, gender, the criminal justice system, and development agencies.

81. The County Government may collaborate with another county for the sufficient provision of sexual and reproductive health and rights within the collaborating counties.

82. The County Government may collaborate with the private sector in the provision of sexual and reproductive health services.

# PART 15:

## COMPLAINTS MECHANISM

### PART 15

### COMPLAINT MECHANISM

83. (1) Any person may lay a complaint about the manner in which he or she has been treated at a health care establishment and have the complaint investigated.
- (2) The County Government in consultation with other relevant stake holders will establish a procedure for the laying of complaints within the county facilities.
- (3) The procedure for laying complaints must be displayed:
- a) in all health facilities in a manner that is visible for any person entering the facility,
  - b) the procedure must be communicated to all the users on a regular basis.
- (4) Any person laying a complaint as contemplated in subsection (1) must follow the procedure established by the County Government

# PART 16:

MISCELLANEOUS PROVISIONS

## RESEARCH AND DATA MANAGEMENT

84. The County Government shall ensure the collection and custody of accurate and updated data relating to sexual and reproductive health from all health facilities public and private.

## MONITORING AND EVALUATION

85. The County Government shall set up monitoring and evaluation systems that track sexual and reproductive health indicators and related targets including those aimed at and relevant to young persons.

## POWER TO MAKE REGULATIONS

86. (1) The County Executive in charge of Health in consultation with other stakeholders may make such regulations relating to any matter which he or she may consider necessary or expedient to prescribe for achieving the objects of this Act.
- (2) Subject to the provisions of this Act, the County Executive Committee Member may make regulations regarding:
- any matter which is required or permitted by this Act to be prescribed by regulations;
  - the inter-sectional implementation of this Act;
  - any other matter which is necessary or expedient to achieve or promote the objects of this Act;
  - regulations for medical and health facilities; and
  - professional ethics and standards.

## FUNDING

87. The County Government shall allocate adequate funding to guarantee the provision of sexual reproductive health services and programmes.

## OFFENCES AND PENALTIES

88. (1) Any person who:
- is not a health care service provider and who performs the termination of pregnancy referred to in section 46;
  - prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of pregnancy, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding ..... years
- (2) Any person who contravenes or fails to comply with the provisions of section.....shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period of exceeding.....  
Transitional provision

## TRANSITIONAL PROVISION

89. The existing facilities licensed prior to the enactment of this act shall continue to operate until licensed by the county government in accordance with this act.

## SCHEDULE OF SERVICE DELIVERY

1. Community health workers/traditional birth attendants
  - a. Screen, assess and refer users through the household visits
  - b. Provide information and education on sexual and reproductive health and rights, and provide appropriate home care
  - c. Psychosocial support
  - d. Carry out community assessments, campaigns and screening programmes in communities, schools and early childhood centres
  
2. Clinics/ health centres
  - a. Information, education and counselling
  - b. Gender-based violence
  - c. Family planning
  - d. Termination of pregnancy
  - e. Infertility
  - f. Antenatal care
  - g. Safe delivery
  - h. HIV and AIDS/ STIs
  
3. Mobile points
  - a. Gender-based violence
  - b. Family planning
  - c. Maternal, perinatal and newborn health
  - d. HIV and AIDS/STI
  
4. Health centres
  
5. District hospitals
  - a. Gender-based violence
  - b. Family planning
  - c. Antenatal care
  - d. Safe delivery care
  - e. Termination of pregnancy
  - f. Postpartum care
  - g. Counselling
  - h. Information

## **JUSTIFICATION**

This Act recognises the need for the protection of Sexual and Reproductive Health Act and the need to improve the quality of life of all citizens. This also takes in mind that the County Government in compliance with article ..... and schedule 4 of the Constitution of Kenya, 2010, is expected to respect, protect, promote and fulfil the rights enshrined in the article 43 and schedule 4 of the Constitution. The Constitution also requires the state and the county governments to take reasonable legislative and other measures within its available resources to achieve the progressive realization of the right to the people to have access to their reproductive health services.



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