

**THE HOMA BAY COUNTY HEALTH SERVICES ACT, 2020**

**No. 3 of 2020**

*Date of Assent: 19th December, 2019*

*Date of Commencement: See Section 1*

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**THE HOMA BAY COUNTY HEALTH SERVICES ACT, 2020**

**AN ACT of the County Assembly of Homa Bay to provide a framework for the establishment of systems for the delivery and Administration of health services within Homa Bay County, and for connected purposes**

**ENACTED** by the Assembly of Homa Bay County as follows—

**PART I— PRELIMINARY**

**Short title and Commencement**

1. This Act may be cited as Homa Bay County Health Services Act, 2020 and will come into operation fourteen days after publication in the *Kenya Gazette*.

**Interpretation**

2. In this Act unless the context otherwise requires—

“adult” means an individual who has attained the age of eighteen years.

“alternative medicine” means complementary medicine and includes a broad set of health care practices that are not part of Kenya’s tradition and not integrated into dominant health care system.

“County Assembly” refers to assembly of county representatives with the speaker at the county level.

“blood product” means any product derived or produced from blood, including plasma, sera, circulating progenitor cells, bone marrow progenitor cells and umbilical cord progenitor cells.

“board” means the Board of hospital contemplated under Section 36

“County Executive” means the County Executive Committee Member responsible for Health.

“County Health Inspectorate Unit” means recognized unit empowered to undertake inspections at the county under this Act.

“child” means an individual who has not attained the age of eighteen years.

“disease” refers to any physical or mental condition that causes pain, dysfunction, distress, social problems and/or death to the person afflicted and/or similar problems for those in contact with the person.

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

“exemption” means an automatic excuse from payment based on the patient meeting certain specific conditions.

“facility management committee” means the committee contemplated under Section 42.

“financial year” means the period of twelve months starting from 1st July ending 30th June.

“faith based” — health facilities owned by religious organization

“FMC” means the facility management committee appointed by the County Executive responsible for health;

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

“health care professional” includes any person who has received professional training from an approved training institution and has attained required qualifications to provide services in the health care sector, as per his or her designated profession and is registered with the relevant regulatory board.

“health care services” means health promotion, prevention, curative and rehabilitation services delivered in the health care system at the county.

“health care workers” mean employees, including both health care professionals and those who do not themselves contribute directly to the provision of health care but offer support or semi-skilled services within the health care system at the county.

“health facility” means the whole or part of a public or private institution, building or place, whether for profit or not, that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service.

“health system” means the multi facet approach process that delivers quality health care services at the county.

“health management team” means the County Health Management Team established under section 6;

“hospital” means a gazette level 4 or higher level Health Facility;

“HMC” means the hospital management committee appointed by the county executive responsible for health services.

“hospital management team”, means a committee made up of all the heads of units in the hospital, whose chairman and secretary are the medical superintendent and Health Administrative officer respectively.

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

“NHIF” means National Hospital Insurance Fund;

“private health facilities” means a health facility that is not owned or funded by the national or county government

“public health facilities” means health services that are owned and operated by county government

“referral” means the process by which a given level of health facility transfers a client service, specimen and client parameters to another level of health care to assume responsibility for consultation, review or further management.

“Primary health facility” means a gazetted public health centre or dispensary;

“ring fencing” means a guarantee that funds allocated for a particular purpose will not be spent on anything else.

“universal health coverage” means that all people and communities can use promotive, preventive, curative, rehabilitative and palliative health services they need, or sufficient quality to be effective, while also ensuring that the use of these services does not expose the user to financial hardship.

“user fees” means charges, made by hospitals and other entities under the cost sharing programme.

“waiver” means a release from payment based on financial hardship at a particular point in time and it is not automatic.

### **Objects of the Act**

**3.** The objects of this Act are to enable the realization of the rights to quality health as underpinned in the Constitution and to provide equality in respect of health services across the county and to achieve the following objectives—

- (a) establishing a county health system which encompasses public and private providers of health services at the county levels and facilitates in a progressive and equitable manner to the highest attainable standard of health services;
- (b) to set out the rights and duties of the various organs within the County Health System;

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- (c) to protect, respect, promote and fulfill the rights of all persons living in Homa Bay to the progressive realization of their right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment;
- (d) to guarantee the people of Homa Bay an environment that is not harmful to their health;
- (e) to protect, respect, promote and fulfill the rights of children to basic nutrition and health care services contemplated in Articles 43(1) (c) and 53(1)(c) of the Constitution ; and
- (f) to protect, respect, promote and fulfill the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health.

#### **Responsibility of the County Government of Homa Bay**

4. Subject to the contemplation of Articles 43 1(c) and 53 (1) (c) of the Constitution, it is a fundamental duty of the county to observe, respect, protect, promote health and fulfill the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by *inter alia*;

- (a) developing, rules, regulations and other measures necessary to protect, promote, improve and maintain the health and well-being of every person in the county;
- (b) promoting the prioritization of health issues and investment plans in the health sector;
- (c) ensuring the realization of the health related rights and interests of vulnerable groups within the county, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities;
- (d) ensuring the provision of a health service package at all levels of the health care system, which shall include services addressing promotion, prevention, treatment and rehabilitation of health, as well as physical and financial access to health care as defined in consultation with the national health office; and
- (e) ensuring equitable investment in health service delivery.

#### **Duties and Rights of a Patient**

5. (1) Every person has the right to—

- (a) the highest attainable standard of health including access to promotive, preventive, curative, and rehabilitative health services;
  - (b) to access quality treatment services with a professional standard of care, by appropriately qualified and experienced staff in approved or licensed institution that meets required standards of safety;
  - (c) enjoy respect, decency, dignity and respect to their privacy in accordance to the constitution and this Act.
- (2) A patient shall have a duty—
- (a) adhere to the rules and regulation governing health service provided by the relevant authorities;
  - (b) respect the medical advice and treatment process provided by the standard operation procedures;
  - (c) provide the health care practitioner with honest and accurate information;
  - (d) respect the health provider; and
  - (e) seek prompt medical treatment.

## **PART II—THE COUNTY HEALTH MANAGEMENT TEAM**

### **County Health Team**

6. There is established the Homa Bay County Health Management Team which shall comprise of—

- a) county department responsible for health headed by a County Executive who shall be the chairperson and who shall be appointed by the Governor, two chief officers, one for curative and the other for preventive services, a county director of health services and two deputy directors of health services, one for preventive and the other for curative services all answerable to the county director of health services.
- b) The chief officers shall be the accounting officers and authorized officers for respective departments, all recruited through a competitive process by the board.
- c) There shall be a director of primary health care/universal health coverage who shall be in charge of community health services and universal health programmes all answerable to the county director of health services.



d) There shall be a director of nursing services answerable to the county director of health services..

7. (1) The county health management team shall be responsible for—

- (a) coordinating the implementation of this Act and development and coordination of implementation of all health policies in the county;
- (b) providing supervision and support to the management of all the health facilities in the county and the sub-county health management teams;
- (c) providing leadership and stewardship for overall health management in the county;
- (d) providing strategic and operational planning, monitoring and evaluation of health service delivery in the county;
- (e) providing a linkage with the national ministry responsible for health;
- (f) collaborating with state and non state stakeholders at the county and between counties in health services;
- (g) resource mobilization of county health services;
- (h) establishing functional referral systems within and between the counties, and between the different levels of the health care system in line with the sector referral strategy;
- (i) quality and compliance assurance;
- (j) coordinating and collaborating through county health stakeholders forum and development partners;
- (k) reviewing and monitoring the implementation of this Act and advising the Department on appropriate measures to be adopted for effective implementation of this Act;
- (l) facilitating county health facilities in the sub-county to comply with the established standards in accordance with section 25;
- (m) consolidating of sub-county quarterly performance reports which shall form the county report, which shall feed into the county annual performance report under section 27; and
- (n) carrying out any other function as maybe assigned by the executive secretary.

(2) The county health management team shall convene at least one quarterly performance review meeting with the sub-county health management team.

- (3) The county executive committee member shall, prescribe guidelines for governing operations at the county management team.
- (6) The sub-county health management team which shall consist of—
- (a) The medical officer in-charge of the sub-county who shall be the chairperson;
  - (b) The sub-county health administrative officer who shall be the secretary;
  - (c) The heads of units in the department at the sub- county;
  - (d) The medical superintendents of the county hospital within the sub- county;
  - (e) Any other officer as the Executive Secretary may designate with the advise of the county health management team.
- (4) The sub-county health management team shall be responsible for—
- (a) coordinating the implementation of this Act and health policies in the sub-county;
  - (b) providing supervision and support to the management of the county health facilities in the sub-county;
  - (c) reviewing and monitoring the implementation of this Act, advising the department on appropriate measures to be adopted for effective implementation of this Act;
  - (d) exercising disciplinary measures over health personnel working in the sub- county as maybe prescribed by the department in consultation with the county public service board.
  - (e) carrying out needs and capacity assessment for county health facilities
  - (f) in consultation with the county health management team, facilitating capacity building of health personnel at the sub-county;
  - (g) facilitating county health facilities in the sub- county to comply with the established standards; and
  - (h) carrying out any other function as maybe assigned by the Executive Secretary;
- (5) The sub-county health management team shall prepare and submit quarterly reports of its operations to the health management team.

(6) The Executive Secretary shall in consultation with the chief officer and the county health management team prescribe guidelines for governing operations of the sub- county health management team.

### **Duties of the Health Department**

**8.** (1) The county health department shall, in furtherance of the functions assigned to it under Schedule 4 of the Constitution and legal notice No.182 of 2013 be responsible for implementing the national health policy and standards as laid down by national government health ministry;

(2) The following are the duties of the county health department—

- (a) service delivery, including the maintenance, financing and further development of those health services and institutions that have been devolved to it;
- (b) coordination of health activities in order to ensure complementary inputs, avoid duplication and provide for cross-referral, where necessary to and from institutions in other counties;
- (c) facilitating accreditation of health facilities and providers according to standards set nationally by the Ministry responsible for health and relevant regulatory bodies;
- (d) designation of a county referral hospital according to criteria established by the national ministry responsible for Health;
- (e) developing and implementing in consultation with salaries and remuneration commission, such incentives as may prove necessary to guarantee the staffing of the public health service;
- (f) procuring and managing health commodities supplies in line with the National procurement laws and Policy ;
- (g) maintaining standards of environmental health and sanitation as laid down in applicable law;
- (h) providing access and practical support for inspections and monitoring undertaken within the county.
- (i) developing supplementary sources of income for the provision of services, insofar as these are compatible with the applicable law;
- (j) reporting, according to standards established by law, on activities, development and the state of finance within the County Health Services;

- (k) Gazette and provide rules and regulations to the management of facilities.
- (l) making known to the public at all times the health facilities through which generalized or specialized services are available to them;
- (m) developing and promoting public participation in the planning and management of health facilities so as to promote broad ownership;
- (n) ensuring and coordinating the participation of communities in the governance of health services at the community and the county level so as to promote a participatory approach in health care governance.
- (o) to establish a clear and predictable framework for community health workforce development, performance management and volunteer compensation and reward system.
- (p) financing the provision of incentives to community health volunteers
- (q) to establish a clear county public healthcare financing mechanism including sustainability strategy and partner coordination at the county and community level
- (r) provide adequate infrastructure and logistics at the county referral facility to support internship
- (s) facilitate establishment of medical training institution at the county.
- (t) to facilitate implementation of disability mainstreaming policy and care in line with the national law on PWDs
- (u) appointment of health facilities management committees' members
- (v) gazette of county public health facilities
- (w) health information management system and reporting
- (x) coordinate and conduct health research
- (y) regulate all health players within the county.

**PART III—HUMAN RESOURCE****Health workers**

9. (1) There shall be county health care workers recruited in consultation with the county government, the county executive committee member responsible for health, and the county public service board.

(2) Department of health shall be responsible for—

- (a) conducting continuous human resource analysis, mapping, rationalization, and projected expertise needs relating to human resources for health;
- (b) advising and making recommendations to the county public service board on the recruitment and retention of competent staff in the health sector;
- (c) advising and making recommendations to the salaries and remuneration commission in the exercise of its functions under Article 230 (4) and (5) as they relate to the health sector professionals and other health employees at all levels;
- (d) the county public service board shall be responsible in consultation with the county executive committee for preparation of—
  - (i) human resource manuals;
  - (ii) staffing norms and standards;
  - (iii) codes of regulations for health workers;
  - (iv) recruitment, retirement and retirement benefits of health workers as per the policies and guidelines;
  - (v) disciplinary measures and appeals;
  - (vi) remuneration packages;
  - (vii) human resource development;
  - (viii) professional standards and ethics in consultation with professional bodies;
  - (ix) compliance with the provisions of Chapter 6 of the Constitution of Kenya;
  - (x) set up an advisory committee that deals with matters including but not limited to promotion;
  - (xi) standard operating manuals in consultation with professional bodies; and
  - (xii) health insurance.

**PART IV—COUNTY HEALTH INSPECTORATE****Composition of the county health inspectorate**

10. (1) There is established a Homa Bay County Health Inspectorate from all cadres in accordance with the enabling legislation.

(2) The obligations of the inspectorate shall be undertaken by the respective health inspectors from all cadres in accordance with the enabling legislation.

(3) The director of public health and sanitation in the department shall lead the inspectorate.

**Inspectorate Functions**

11. (1) The inspectorate shall be responsible for:

- (a) Inspection of professional service delivery by health professionals, workers and institutions both private and public, including persons with special needs;
- (b) Enhancing compliance of standards and technical requirements for institutions and health professionals;
- (c) Advising on formulation of guidelines on delivery of quality health care including environmental health and sanitation;
- (d) Supporting the developing of benchmarks for service delivery in collaboration with national, regional and international similar bodies;
- (e) Collaboration with regulatory bodies to enhance compliance of standards and technical requirements;
- (f) Establishing a quality assurance mechanism within public and private health institutions;
- (g) Monitoring and evaluation of health management system to safeguard quality of health care.

**Powers of the inspectorate**

12. (1) The powers of the inspectorate unit shall be—

- (a) to establish rules and regulations governing investigations of complains against health professionals delivering health services in the county.
- (b) the rules and regulations shall be gazetted by county executive committee member for health.

(2) In the exercise of its powers under this Act, the inspectorate shall be guided by the rules and regulations gazetted by the county under this Act.

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

### **Confidentiality**

**13.** The medical records of a person shall remain confidential except where:

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

## **PART V — COUNTY HEALTH FACILITIES**

### **Establishment of county health facilities**

**14.** The county government shall ensure the establishment of facilities in the county are equitably distributed throughout the county in accordance with Schedule one.

### **Management**

**15.** All health facilities in Homa Bay county shall be managed by health facility management committee.

(2) The county in consultation with national health office shall develop guidelines describing the level of all health facilities in the county.

(3) The structure and management of all health facility in the county shall be defined in the guideline developed under section 14 (2) above.

### **Private Health Facilities**

**16.** (1) Private entities shall be permitted to operate hospitals, clinics, laboratories and other institutions in the health sector, subject to licensing by the appropriate regulatory bodies.

(2) Private health facilities shall be regulated within the county through collaboration between both national and county government.

(3) Quality standard assurances in the county shall have regulatory framework that co-ordinate with national government to ensure that standards are maintained with regular inspections for compliance.

### **Public private partnership**

17. Notwithstanding the provisions of the public private partnership Act and subject to any other law regulating public-private partnerships, nothing under this Act shall prevent county governments from entering into public-private partnerships for the purpose of establishing and deepening health service provision.

## **PART VI—PROCUREMENT AND SUPPLY OF MEDICAL COMMODITIES AND EQUIPMENT**

### **Medicines Vaccines**

18. (1) (a) There shall be a County health procurement unit and Warehouse established and gazzeted by the county executive committee member for health

(b) County health procurement unit shall be headed by officer appointed by chief officer

(2) It's obligation is to procure, store and supply health products and equipment.

(3) There shall be a county health procurement committee.

(4) The committee shall be established by the chief officer in accordance with the procurement laws under Public Finance Management Act, 2012.

(5)(a) KEMSA shall be the first procurement for all medical product for the county.

(b) The county shall procure from other accredited supplies where KEMSA does not meet the counties needs.

(6) The classes of products will be procured by the county health procurement committee from any accredited supplier. It shall extend to therapeutic feeds and nutritional formulations in addition to pharmaceutical and non-pharmaceutical goods, TB and ARVs medicines, Laboratory reagents, equipment and any other essential supplies.

(7) The right to procure under section (5) (1) and (2) above shall be comparative and in accordance with the procurement legislation.

(8) County health facility shall have the right to purchase medical supplies where there is emergency and unavailability of the product at the county health procurement warehouse.



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(9) County government shall provide rules and regulations for the procurement, distribution and management of essential medicines at all levels of the county health system.

(10) The county health procurement committee shall ensure all accredited suppliers to conform to the safety and quality of medicines and medical supplies guidelines.

### **Devices and equipment**

19. The procurement of medical devices, equipment, appliances and materials shall similarly be undertaken by any accredited supplier subject to signing an agreement.

## **PART VII — ADVANCEMENT OF PUBLIC HEALTH SERVICES**

### **Public health**

20. (1) The county shall device and implement the following measures to promote public health to counter influences having an adverse effect upon it;

- (a) The promotion of health life style including regular physical activity and the provision of facilities to this end;
- (b) Steps to counter the excessive use of alcoholic products and the adulteration of such products;
- (c) Measures to reduce the use of tobacco and other addictive substances as defined in the schedules.
- (d) The county shall promote general public health education.
- (e) The county shall establish a comprehensive programme to advance reproductive health services.

(2) County government shall ensure that measures for managing environmental risk factors to curtail occurrence and distribution of diseases are put in place and implemented. In particular such measures shall—

- (a) regulate housing quality control;
- (b) promote urban and rural sanitation;
- (c) control water quality ;
- (d) Control food and eating premises;
- (e) control food hawking;
- (f) manage waste;
- (g) examine food handlers;

- (h) regulate and inspect food plants;
- (i) regulate quality of private hospitals
- (j) conduct disease surveillance, outbreak and emergency response;
- (k) apply nuisance abatement procedures and health education and promotion in community and learning institution.

### **Approval or rejection of building plans**

21. (1) Where plans of any proposed work are, in accordance with any other building laws or subsidiary legislation made under relevant Act of Parliament, deposited with a health authority, the relevant urban authority shall, subject to any other provisions of this Act, or any rule or regulation made here under which expressly requires or authorizes it in certain cases to reject plans, pass the plans unless they either are defective, or show that the proposed work would contravene any of those rules or subsidiary legislation, and, if the plans are defective or would contravene any of those rules or subsidiary legislation, such local authority shall reject the plans.

### **Responsibility**

(2) It shall be upon the owner, occupier, user or developer of the building to maintain it in a safe state structurally and aesthetically and keep it free from danger.

### **Prohibition**

(3) No person shall cause a nuisance or shall suffer to exist on any land or premises owned or occupied by him. It shall be an offence against any owner, occupier, user or developer to keep their premises in an untidy state, poorly maintained in a manner to be a danger to the public.

### **Offences and Penalty**

(4) It shall be an offence punishable by a fine, imprisonment or both for any person or developer to construct a building without proper approval by the authority.

(5) The offence shall attract a fine not exceeding ksh 50,000 or imprisonment for a period not exceeding six months.

(6) It shall be an offence punishable by a fine not less than kshs. 500,000 or imprisonment not less than five years for any person or developer whose house shall collapse and cause death.

### **Occupational safety**

22. (1) It shall be an offence punishable by a fine, imprisonment or both for any person or employer not to provide a safe working

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environment. The offence shall attract a fine not exceeding kshs. 10,000 or imprisonment for a period not exceeding three months.

### **Advancement of Public Health**

**23.** (1) In advancement of public health and protection of human health as enshrined in Article 43 of the Constitution. It shall be the responsibility of everyone to make sure the environment is safe, conducive and free from any nuisances likely to cause ill health, disease, injury, danger or deny enjoyment of life.

(2) For the purposes of this Act, the executive committee member for health in consultation with the county deputy director for public health shall gazette rules and regulations to regulate and control, use of tobacco, mental health, Sanitation and water, food safety, cemeteries, markets, nursing homes and public latrines.

### **Health Programmes**

**24.** (1) The county health department shall create a program for non communicable diseases including cancer unit and UHC.

(2) This program shall ensure;

- a) reduction of the burden of malaria , TB, HIV and diarrhea diseases any other emerging disease.
- b) promotion of nutrition service.
- c) ensure the above receive drugs or any other commodities.
- d) access to treatment by a trained health professional for the conditions.
- e) ensure research is conducted to identify the factors associated with the above conditions.
- f) promotion of primary care towards achieving UHC and screening and management of cancer.
- g) promotion of youth sensitization to help the county tackle issues of teenage pregnancy and new HIV infections.

## **PART VIII—HUMAN BLOOD, BLOOD PRODUCTS, AUTOPSIES AND BIOPSIES**

### **Blood Transfusion services**

**25.** There shall be county blood transfusion service governed by rules and regulations gazetted by the county executive in consultation with national blood transfusion services.

**County Blood transfusion unit**

26. (1) There is be established a county blood transfusion unit through gazettelement by executive committee member for health in consultation with the national blood transfusion.

(2) The county blood transfusion unit shall operate, deliver the transfusion services required in consultation with the national blood transfusion services.

(3) The functions of this unit are—

- (a) co-ordination of blood transfusion services in the county
- (b) ensure availability of safe blood and blood products for transfusion
- (c) ensure safe transportation, storage and processing of blood and blood products
- (d) all donors of blood or blood products shall have a right to access their results to enhance good lifestyles and management

**Offences**

- (4) (a) No person shall remove blood, a blood product or tissue from the body of a living person without consent of the person or guardian.
- (b) No person shall engage in unauthorized selling of blood, blood products and tissues from a living person.

**Confidentiality**

- (5) The county blood transfusion shall have the duty to maintain the results of the donor confidential unless authorized.

**Penalties**

- (6) Any person who contravenes or fails to compile with this section is liable to imprisonment for period not exceeding six months or a fine not exceeding Kshs. 100,000.

**Postmortem**

27. (1) a post mortem examination of the body of a deceased person may be conducted if—

- (a) the person when alive gave consent there to;
- (b) the spouse, partner, major child, parent, guardian, major brother or major sister of the deceased, in the specific order mentioned, gave consent thereto; or

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(c) such an examination is necessary for determining the cause of death.

(2) A post mortem examination may be conducted in level 4 or above county health facility with mortuary services, licensed funeral homes or Parlors, private hospitals, faith based hospitals,

(3) medical expert qualified to conduct a postmortem shall be:

(a) a pathologist

(b) medical officer

(c) specialist medical doctor

### **Penalties for Postmortem**

**28.** Any person or persons contravening the above section is liable on conviction to a fine not exceeding Ksh. 500,000 or imprisonment not exceeding 2 years or both.

## **PART IX—COUNTY HEALTH SERVICES FINANCIAL PROVISIONS**

### **Sources of funds**

**29.** (1) The sources of funds for financing health services in Homa Bay County shall consist of the following;

(a) such grants or transfers as may be received from national government.

(b) such other monies received from national government as conditional grant

(c) such monies as may be appropriated by the County assembly;

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

(e) such monies received as user fees or facility improvement fund;

(f) all chargeable public health services defined as public health chargeable in Schedule Two.

(g) funds received under private partnership arrangement

(2) subject to section 109 2(b) of the Public Finance Management Act, 2012 the Homa Bay county health facilities shall;

(a) collect funds under section 24 (1) (e) in this Act

(b) collect funds under section 24 (1) (f) in this Act

(b) ensure that funds collected are deposited in the facility account

(3) the funds for provision of primary care and UHC shall be ring

fenced to meet the UHC as defined and will be the first charge on health budget.

**No expenditure without authorization**

**30.** All funds collected shall not be spent at source without authorization by the county chief officer.

**Establishment Health Facility Improvement Fund**

**31.** (1) There is established a health facility improvement fund

(2) The sources of the fund includes the following—

(a) monies received as user charges from hospitals

(b) monies received from NHIF claims.

(c) NHIF capitation

(3) The facility improvement funds will be part of the ring fenced funds as stated in section 29

**Purpose of Fund**

**32.** (1) The objects and purposes of the Health Facility Improvement Fund collected at facility are to—

(a) provide financial resources for medical supplies, rehabilitation and equipping hospitals in the county;

(b) support Capacity building in management of Health Facility;

(c) give more powers to Health Facility to plan and manage facility improvement fund resources and;

(d) improve the quality of health care services in the Health Facility.

(2) At community unit level the funds are to—

(a) carry out mobilization on immunization services and defaulter tracing;

(b) conduct community health action and dialogue days;

(c) supply chemicals for treatment of domestic water supplies , demonstration, vector ,rodent and vermin control;

(d) support for food and water quality control and safety;

(e) improving community hygiene and sanitation e.g. Village triggering to acquire open defecation free (ODF) to reduce diarrheal diseases and poliomyelitis;

(f) support health education activities to the community to reduce the burden of communicable diseases;

(g) facilitate disaster preparedness and mitigation;

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- (h) formation of community units and training of the community health volunteers; and
- (i) conduct school health education on sanitation and hygiene.

**Administration of the fund**

**33.** (1) Subject to section of this Act the county executive committee member for finance shall gazette rules and regulations that will guide the management and administration of facility improvement fund.

(2) Subject to relevant provisions of the Public Finance Management Act, 2012 and after consultation with stakeholders and the public, the county executive member for health shall gazette the rules and regulations governing the collection of facility user fees, public health fees charges and other health utility charges.

**Waivers**

**34.** (1) There shall be an elaborate waiver system that cushions the individuals from financial hardships and ensure that no client is denied essential health care due to inability to pay.

(2) The waiver shall be automatic and that the client shall apply for it using the prescribed waiver application form specified in the Schedule.

(3) There shall be a waiver committee in every hospital appointed by medical superintendant;

(a) The waiver committee shall comprise of—

- (i) health Administrative officer, who shall be the Chairperson.
- (ii) medical social worker, who shall be the secretary;
- (iii) three other officers who shall be nurses in-charge of major wards.

(4) (a) The role of the waiver committee shall be, to assess the waiver applications and grant waiver for deserving cases.

(b) The waiver committee shall meet once weekly.

**Exemptions**

**35.**(1) There shall be an elaborate exemption system that shall ensure that promotion of health for special groups and treatment of certain disease conditions;

(2) the special groups shall include—

- (a) children under 5 years of age;
- (b) adults over 65 years of age;
- (c) orphans and vulnerable children;
- (d) prisoners;

- (e) gender based violence survivors;
- (f) pregnant women;
- (g) persons living with disabilities and /or mentally impaired;

(3) The disease conditions shall include—

- (a) HIV/AIDS;
- (b) tuberculosis;
- (c) leprosy;
- (d) malaria.

(4) Reasons for each exemption specific reasons shall be recorded in relevant department service department for both inpatients and outpatients.

**36.** (1) A county referral and a county hospital shall be governed by a board.

(2) The county executive committee member for health shall nominate qualified and experienced members of the board as set out in Section 38 (f) from among persons competitively sourced and recommended by the county and the sub-county health management teams respectively.

(3) The nominees under subsection (1) shall be appointed by the governor and approved by the county assembly.

**PART X — HEALTH FACILITY MANAGEMENT COMMITTEES**  
**Establishment and Composition of health Management committee**

**37.** There is established in each a Hospital Management Committee (HMC).

**38.** (1) The Hospital Management Committee shall consist of:-

- (a) A chairperson who shall be—
  - (i) a non public servant or politician
  - (ii) experienced in management, administration and financial matters,
  - (iii) in possession of a minimum of a two year post 0-level certificate training in any field.
- (b) The area sub-county administrator or his/her representative duly nominated by him/her in writing.
- (c) The county director of health services or his/her representative nominated by him/her in writing.
- (d) A county public health officer or his representative in-charge of the sub-county or locality of the hospital.



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- (e) The person in charge of the health facility who shall be the secretary.
- (f) The following persons, who shall be residents of the area of jurisdiction, appointed by the county executive committee member for health—
  - (i) one person nominated by women groups.
  - (ii) one person nominated by the Faith based organizations.
  - (iii) not more than one person nominated by Community Based organizations who shall be a woman.
  - (iv) one person representing the youth groups.
  - (v) one person representing people with disabilities.
- (2) A person shall not be appointed as a member of HMC or the board—
  - (a) unless that person holds at least O – Level certificate of education or its equivalent from a recognized university
  - (b) has at least five years experience in management, leadership or administration.
- (3) A member of the HMC apart from *ex-officio* shall hold office for a period of three years and shall be eligible for re-appointment for one further term.
- (4) Provided that not more than two-third of members of the facility management committee or the Board shall be of the same gender.

### **HMC Membership**

**39.** The total membership of the HMC shall be at least seven and not more than nine members appointed by the county executive member for health.

### **Meetings**

**40.** (1) The HMC shall meet at least four times a year and shall maintain records of its deliberations that shall be submitted to the county committee every quarter.

(2) The quorum for the meetings of the committee shall be five of all the members including the secretary.

### **Functions**

**41.** (1) Functions The HMC Committee shall—

- (a) oversee the administration of funds allocated to health facility
- (b) mobilize resources for the hospital
- (c) approve work plans on estimated expenditures.

- (d) approve budgets before AIE(authority to incur expenditure) is issued.
- (e) cause to be kept basic books of accounts and records of accounts of the income, expenditure, assets and liabilities of health facilities as prescribed by officer administering the fund,
- (f) prepare and submit to county chief officer of health certified periodic financial and performance reports; and
- (g) cause to keep a permanent record of all its deliberations.

### **Membership and composition of FMC**

42. Each rural facility in the county shall have a facility management committee (FMC).The total membership of each rural facility management committee shall be at least five and not more than seven members appointed by the county executive member for health.

- (1) Each FMC shall consist of—
  - (a) The person in charge of the health facility who shall be the secretary
  - (b) The sub-county medical officer of health his/her representative duly nominated by him in writing.
  - (c) The sub county public health officer or his representative in-charge of the locality of the facility.
  - (d) The following persons, who shall be residents of the area of jurisdiction, appointed by county executive:
    - (i) one person who shall have knowledge and experience in finance and administration;
    - (ii) two persons of whom one shall be woman;
    - (iii) the chairperson of community health committee;
    - (iv) ward administrator or his representative nominated in writing;
    - (v) one person representing the youth group who shall be nominated by the County Executive Committee Member;
    - (vi) one person nominated by the umbrella body representing persons living with disability;

Provided that not more than two-thirds of members of the facility management committee shall be of the same gender.

(2) Each FMC shall elect a chairman, who shall not be an *ex-officio*, from among its members.

(3) A member of a FMC, apart from *ex-officio* shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

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(4) A FMC shall meet at least four times a year and shall maintain records of its deliberations.

(5) The quorum for the meeting of FMC shall be five of all the members including the secretary.

(6) A FMC shall be responsible to the officer administering the Fund.

**Roles of FMC**

**43.** Each FMC shall—

(1) Supervise and oversee the administration of funds allocated to the rural facility.

(2) Open and operate and account at a bank to be approved by the county executive member for the time being responsible for finance.

(3) Prepare budgets/work plans based on estimated expenditures

(4) Cause to be kept basic books of accounts of the income, assets and liabilities of the facility as prescribed by the officer administering the Fund

(5) Prepare and submit to county committee certified periodic financial and performance reports and

(6) Cause to be kept a permanent record of all its deliberations.

**PART XI — ROLE OF THE PRIVATE SECTOR****Private sector and public private partnership**

**44.** (1) The county or individual health institutions may enter into agreements with the private entities under public private partnership , but in such instances the approval of the department responsible for health will be required, following consultation with the county government.

(2) Such partnerships shall be validated through an agreement signed by the governor with the approval of the county assembly.

(3) No institution or health entities shall be allowed to engage in direct partnership with any partner without the involvement of the county Department of health.

**PART XII—HEALTH RESEARCH AND SURVEYLLANCE****Research**

**45.** Having regard to the necessity of both scientific and policy research in field of health in Homa Bay, an appropriate portion of the national budget for health care shall be devoted to the initiation and support of relevant research projects in the county.

**Donor support**

46. Notwithstanding the functions of county government under section of this Act, non-governmental and international organization may cooperate with the county in providing support for provision, promotion and conduct of health services and research.

**PART XIII—REGULATIONS****Regulations, Rules, Guidelines and Policies**

47. The County executive shall make rules, regulations and guidelines generally for the better carrying out of the provisions under sections 17 (a), 28 (1) and (2), 21(2) and First Schedule of this Act

**FIRST SCHEDULE            S 17 (A), AND (2), 21(2) 28(1)****Regulations, Rules, Policies and guidelines Gazettement and Adoption**

The county director for Health and county heads of units shall, within eighteen months upon the commencement of this Act, prepare and submit to the county executive committee and the county assembly for adoption and gazettment the rules, regulations, guidelines and policies stipulated under the First Schedule. Without prejudice to the generality of section 17(2), 21 (2) and 28 (2) the adoption and gazettement of rules, regulations and guidelines may-

- (a) prescribe for the health facilities under the provided categories;
- (b) prescribe the number of dispensaries and community units in a ward;
- (c) and dispensaries' committees;
- (d) prescribe for operational policies and guidelines for management and administration of a county health facility;
- (e) prescribe the health outcomes;
- (f) prescribe the operational guidelines for management and administration of health facilities;
- (g) prescribe the standards and procedures for conducting inspections and health systems audit;
- (h) prescribed data and information to be collated from private health service providers; and
- (i) prescribe the procedure of conduct of the business of the county health sector forum and its executive committee.

**SCHEDULE TWO S 24(1) (F)**

**Gazettement of Public Health Chargeable Services and chargeable fees**

(a) Homa Bay public health chargeable services

1. medical examination services fees and medical certificates
2. food licenses
3. building plans approval fees (variable)
4. private schools inspection fees
5. private clinics and hospitals inspections fees
6. yellow fever vaccination fees
7. fumigation and spraying of premises chargeable per square.
8. business premises inspections and licensing fees
9. public and private schools inspection
10. liquor inspection for licensing
11. water sampling and testing from institutions
12. food sampling and analysis from public and private institutions and business premises

(b) The director of public health and sanitation services shall within 12 months after the gazettement of this Act forward to the county executive committee guidelines, rules and regulations for management and expenditure of public health and sanitation funds.

(c) The county executive committee member for health in consultation with stakeholders and through public participation shall gazette the fees rates after every three years.

**SCHEDULE THREE**

**S 29**

**WAIVER APPLICATION FORM**

**Part A: (To be filled by applicant)**

Waiver Number .....

Name.....

Age .....

Gender.....

Marital status .....

Occupation.....

Mobile Phone number.....

Village.....

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Sub-location.....

Location.....

Ward.....

Sub County.....

Area chief/sub chief/ Ward Administrator.....

Means of Transport.....

**Part B (To be filled by officer granting waiver e.g. clinician, ward nurse etc)**

IP/OPD No.....

Date of Admission or Treatment.....

Ward Admitted.....

Bed No.....

Reason/reasons for recommending waiver  
.....  
.....

**PART C (To be filled by medical social worker)**

Notes by the medical social worker investigating the case:  
.....  
.....

**PART D (To be filled by secretary, Waiver committee)**

Recommendations by Waiver Committee  
.....  
.....

Chairman’s name and Signature.....

Secretary’s Name and Signature.....

**Part E (Approval/ Disapproval by Medical Superintend)**

This waiver is approved ( ) / Disapproved ( ) as recommended by waiver committee.

Name and Signature.....

**Official Rubber stamp**

**SCHEDULE 4****CLASSIFICATION OF LEVELS OF HEALTHCARE****LEVEL 1—COMMUNITY HEALTH SERVICES**

Functions—

- (a) Facilitates individuals, households and communities to carry out appropriate healthy behaviors;
- (b) Provides agreed health services;
- (c) Recognizes signs and symptoms of conditions requiring referral;
- (d) Facilitates community diagnosis, management and referral.

*Note.— The In-charge is the community health extension Worker*

**LEVEL 2—DISPENSARY/CLINIC**

Functions—

- (a) This is a health facility with no in-patient services and provides consultation, treatment for minor ailments;
- (b) Provides rehabilitative services;
- (c) Provision of preventive and promotive services.

*Note.— The In-charge is a nurse or clinical officer.*

**LEVEL 3—HEALTH CENTRE**

Functions—

- (a) it provides out-patient care;
- (b) provision of limited emergency care;
- (c) maternity for normal deliveries;
- (d) laboratories, oral health and referral services;
- (e) provision of preventive and promotive services;
- (f) in-patient observations.

*Note.— The In-charge is the clinical officer or medical officer with at least two years managerial experience.*

**LEVEL 4—PRIMARY HOSPITAL**

Functions—

- (a) clinical supportive supervision to lower level facilities;
- (b) referral level out-patient care;
- (c) in-patient services;
- (d) emergency obstetric care and oral health services;



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- (e) surgery on in-patient basis;
- (f) client health education;
- (g) provision of specialized laboratory tests;
- (h) radiology service;
- (i) proper case management of referral cases through the provision of four main clinical specialties (i.e. internal medicine, general surgery, obstetrics & gynecology and pediatrics) by general practitioners backed by appropriate technical devices;
- (j) proper counter referral;
- (k) provision of logistical support to the lower facilities in the catchment area;
- (l) co-ordination of information flow from facilities in the catchment area.

*Note.—The In-charge is a registered medical practitioner with a Master's degree in a health related field.*

#### **LEVEL 5—SECONDARY HOSPITAL**

Functions—

- (a) provision of specialized services;
- (b) training facilities for cadres of health workers
- (c) who function at the primary care level (paramedical staff);
- (d) serves as an internship centre for all staff, up to medical officers;
- (e) serves as a research centre, that provides research services for issues of county importance;

*Note.—The in-charge is a registered medical practitioner with a master's degree in a health related field. (CEO)*