

SPECIAL ISSUE

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REPUBLIC OF KENYA

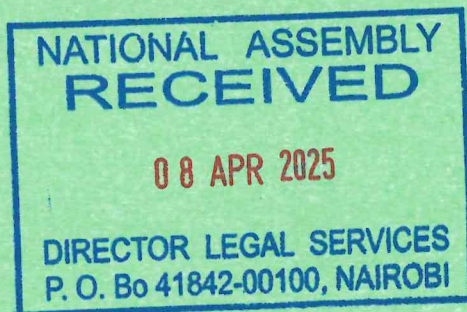
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 27th December, 2024

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NATIONAL ASSEMBLY
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THE HEALTH (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Health Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Health (Amendment) Act, 2024.

Short title.

2. Section 2 of the Health Act, Cap. 241 (in this Act referred to as the “principal Act”), is amended by deleting the definition of “emergency treatment” and substituting therefor the following new definition —

Amendment of Section 2 of Cap. 241.

“emergency medical treatment” means the necessary initial or immediate medical care that is administered to a critically ill or injured person to avert or prevent death, disability, unnecessary morbidity or worsening of a medical situation;”

3. Section 7 of the principal Act is amended—

Amendment of Section 7 of Cap. 241.

- (a) in subsection (1), by inserting the words “prior to the prepayment of prospective medical costs.” immediately after the words “medical treatment”.
- (b) in subsection (2)(a), by inserting the words “including the appropriate or recommended medical care provided at the scene of injury or illness, during transportation to a health facility, and through to a department responsible for emergency treatment and early in-patient care” immediately after the word “care”
- (c) in subsection (2)(b), by deleting the words “the individual” and substituting therefor the following words—
“a critically ill or injured patient prior to transportation to a definitive healthcare facility;”
- (d) in subsection 2(c), by deleting the words “the victim” and substituting therefor the words “a patient who is critically ill or injured.”
- (e) by inserting a new paragraph immediately after subsection (2)—

- (f) by inserting the following new subsections immediately after subsection (3)—

“(4) A person in charge of a public health facility commits an offence, if the person demands or permits the demand of payment of prospective medical fees or admission fees prior to providing emergency treatment, and is liable on conviction to a fine not exceeding three million shillings.

(5) A person in charge of a public health facility commits an offence, if the person detains or permits the detention of the body of a deceased person for purposes of enforcing settlement of pending bills, and is liable on conviction to a fine not exceeding two million shillings.”

4. Section 12 of the principal Act is amended by inserting the following new subsection immediately after section 12(2)—

Amendment of
section 12 of Cap.
241.

“2A. All healthcare providers in the public sector shall not demand for prepayment of prospective medical costs as a condition for the provision of emergency treatment to a user.”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Health Act, Cap. 241 of the Laws of Kenya, to provide for access to emergency treatment and healthcare services prior to the payment of prospective medical cost by users.

The Bill further seeks to amend the principal Act to make it an offence for public healthcare facilities and healthcare providers in charge of healthcare facilities to detain the body of a deceased person as a means of enforcing settlement of outstanding medical bills.

This is in order to resolve the problem of patients or their relatives/kin having to pay medical fees and/or admission fees prior to their admission and treatment.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments.

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth schedule to the Constitution.

Statement on whether the Bill is a Money Bill within the meaning of Article 114 of the Constitution.

The amendment of this Bill shall occasion additional expenditure of Public funds.

Dated the 29th November, 2024.

JANE NJERI MAINA,
Member of Parliament.

Section 2 of (Cap. 241) which is proposed to amend—

2. Interpretation

In this Act unless the context otherwise requires—

“abortion” means termination of a pregnancy before the foetus is viable as an independent life outside the womb;

“alternative medicine” means complementary medicine and includes a broad set of healthcare practices that are not part of Kenya's tradition and are not integrated into dominant healthcare system;

“Authority” means the Kenya Health Professions Oversight Authority established under section 45;

“Board” refers to the governing Board of the Kenya Health Professions Oversight Authority;

“breastfeeding” means the method of feeding an infant directly from the female breast;

“Cabinet Secretary” means the Cabinet Secretary for Ministry responsible for matters relating to health;

“Committee” means the National Research for Health Committee established under section 93;

“Director-General” means the Director-General for health appointed under section 16;

“disaster” means but is not limited to an adverse situation or event, which overwhelms local capacity for response and recovery, necessitating external assistance;

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

“e-Health” means the combined use of electronic communication and information technology in the health sector including telemedicine;

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

“expressing milk” means the acts of extracting human milk from the breast by hand or by pump into a container;

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

“healthcare professional” includes any person who has obtained health professional qualifications and licensed by the relevant regulatory body;

“healthcare provider” means a person who provides healthcare services and includes a healthcare professional;

“healthcare services” means the prevention, promotion, management or alleviation of disease, illness, injury, and other physical and mental impairments in individuals, delivered by healthcare professionals through the healthcare system's routine health services, or its emergency health services;

“health extension worker” means a healthcare professional working in health centres in rural and medically underserved areas, where they provide emergency treatments and a range of other health services to patients;

“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 in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health service;

“health system” means an organization of people, institutions and resources, that deliver healthcare services to meet the health needs of the population, in accordance with established policies;

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

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

“informed consent” refers to a process of getting permission before conducting a healthcare prevention on a person;

“lactation stations” means private, clean, sanitary and well ventilated rooms or areas in the workplace where nursing mothers can wash up, breast feed or express their milk and hygienically preserve it;

“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 or if not managed timely would lead to adverse consequences in the well-being;

“private health services” means provision of health services by a health facility that is not owned by the national or county governments and includes healthcare services provided by individuals, faith-based organizations and private health institutions;

“public good” means a good or service whose benefits may be provided to a group at no more cost than that required to provide for one person;

“public health services” means health services owned and offered by the national and county governments;

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

“reproductive cloning of a human being” means the manipulation of genetic material in order to achieve the reproduction of a human being and includes nuclear transfer or embryo splitting for such purpose;

“research for health” includes but is not limited to research which seeks to contribute to the extension of knowledge in any health related field, such as that concerned with the biological, clinical, psychological or social processes in human beings improved methods for the provision of health services; or human pathology; or the causes of disease; or the effects of the environment on the human body; or the development or new application of pharmaceuticals, medicines and other preventative, therapeutic or curative agents; or the development of new applications of health technology;

“risk” means probability or threat of damage, injury, liability, loss or any other negative occurrence caused by external or internal vulnerabilities that may be avoided through pre-emptive action;

“specialist” means a health professional who is specially trained in a certain branch of his or her profession related to specific services or procedures;

“telemedicine” refers to the provision of healthcare services and sharing of medical knowledge over distance using telecommunications and it includes consultative, diagnostic, and treatment services;

“therapeutic manipulation or cloning” means handling of genetic material of zygotic or embryonic cells in order to alter, for therapeutic purposes, the function of cells or tissues;

“tissues” shall include but not limited to the placenta, embryonic or foetal tissue, stem cells and umbilical cord; and

“traditional medicine” includes the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness.

Section 7 of No. 21 of 2017 which it is proposed to amend—

7. (1) Every person has the right to emergency medical treatment.

(2) For the purposes of this section, emergency medical treatment shall include —

- (a) pre-hospital care;
- (b) stabilizing the health status of the individual; or
- (c) arranging for referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

(3) Any medical institution that fails to provide emergency medical treatment while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding three million shillings.

Section 12 of No. 21 of 2017 which it is proposed to amend—

12. (1) The Rights and duties of healthcare providers shall include—

- (a) not to be unfairly discriminated against on account of any of the grounds set out in Article 27(4) of the Constitution;
- (b) the right to a safe working environment that minimizes the risk of disease transmission and injury or damage to the healthcare personnel or to their clients, families or property;
- (c) the right to refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her except in an emergency situation where no alternative healthcare personnel is available;
- (d) the right to apply for and accept a salaried post in the public service or the private sector.

(2) All healthcare providers, whether in the public or private sector, shall have the duty—

- (a) to provide healthcare, conscientiously and to the best of their knowledge within their scope of practice and ability, to every person entrusted to their care or seeking their support;

(b) to provide emergency medical treatment as provided for under section 7(2);

(c) to inform a user of the health system, in a manner commensurate with his or her understanding, of his or her health status:

Provided that where this would be contrary to the best interests of the user, then in such cases, the requisite information should be communicated to the next of kin or guardian as case may be.

(3) Notwithstanding the provisions of subsection (1)(a), the head of any health facility may impose conditions on the service that may be provided by a healthcare provider taking into account his or her health status.

