

## **SPECIAL ISSUE**

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REPUBLIC OF KENYA

# **KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2024**

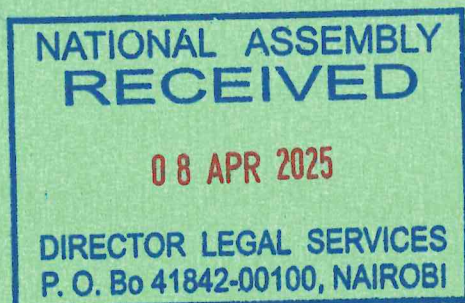
**NAIROBI, 11th December, 2024**

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NATIONAL ASSEMBLY  
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P.O. Box 41842-00100, NAIROBI



## THE HEALTH (AMENDMENT) BILL, 2024

### A Bill for

**AN ACT of Parliament to amend the Health Act, Cap. 241 to provide for the establishment, governance and management of Teaching, Referral and Research Facilities, 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 (in this Act referred to as “the principal Act”) is amended by inserting the following new definitions in the proper alphabetical sequence—

Amendment of section 2 of Cap. 241.

“Charter” means the Charter granted to a Teaching, Referral and Research Health Facility under section 21B;

“chief executive officer” means a Chief Executive Officer of a Teaching, Referral and Research Health Facility appointed under section 21M;

“facility” means the Teaching, Referral and Research Health Facility established under Part IIIA of this Act;

“Governing Board” means the Board of Directors of the Teaching, Referral and Research Health Facility appointed under section 21F;

“satellite facility” means a health facility that is located separately from, but is affiliated and administratively connected to the facility established under this Act; and

“specialized healthcare services” means the provision of targeted and advanced healthcare services by a healthcare provider with specialized training and expertise in a particular area of medicine in relation to specific medical services, procedures, conditions, diseases or specialized needs using advanced equipment, technology or treatment modalities.

3. The principal Act is amended by inserting the following new Part immediately after PART III—

Insertion of a new Part in Cap. 241.



### **PART IIIA—ESTABLISHMENT OF TEACHING, REFERRAL AND RESEARCH HEALTH FACILITIES**

Categories of health facilities.

**21A.** Health facilities under this Part shall be organized under the following categories—

- (a) national referral facilities;
- (b) specialized facilities;
- (c) level 5 secondary facilities;
- (d) level 6 tertiary facilities;
- (e) centres of excellence; and
- (f) any other categories as the Cabinet Secretary may specify.

Establishment of a facility.

**21B.** (1) The facilities provided for under section 21A shall be established by the Cabinet Secretary through a Charter published in the *Gazette*.

(2) The facilities shall be bodies corporates with perpetual succession and a common seal and shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing, lending or investing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

(3) A Charter under this section shall provide for —



- (a) the establishment and composition of the Governing Board of the facility;
- (b) the functions and organs of governance of the facility;
- (c) the headquarters of the facility;
- (d) the appointment of the chief executive officer;
- (e) the power of the Governing Board to formulate and approve guidelines, policies and any other instruments of governance for the facility; and
- (f) any other matter as may be prescribed or required by the Cabinet Secretary.

(4) Despite subsection (1), the hospitals set out in the Seventh Schedule and any other hospital under the category set out in section 21A and established under any other law shall be deemed to be established under this section.

(5) The Cabinet Secretary shall, prior to granting a Charter, ensure that the teaching, referral and research health facility has complied with the provisions of this Act.

Functions of the facility.

**21C.** The facility established under this Part shall—

- (a) receive patients on referral from other facilities within or outside Kenya for specialized healthcare;
- (b) provide multi-specialty referral healthcare services including public and private, out-patient and in-patient diagnostic services, treatment, surgical treatment and other related medical services;



- (c) provide facilities for medical education, training and research in medical and other related services directly or in collaboration with health facilities and academic institutions within and outside Kenya;
- (d) train healthcare professionals in medical and health care related disciplines including through providing postgraduate training and internships;
- (e) contribute to and participate in national health planning, as appropriate;
- (f) collaborate with the National Government in training, research, development of health care and other related services;
- (g) provide technical assistance and support to health facilities that are close to it, as may be appropriate;
- (h) conduct research on matters related to the provision of healthcare services;
- (i) provide policy advice and make recommendations to the Cabinet Secretary on matters related to the provision of healthcare services and specialized healthcare services; and
- (j) perform such other functions as may be prescribed by any other written law or as necessary for the performance of the functions under this Part.

Powers of the facility.

**21D.** (1) The facility shall have all the powers necessary for the proper performance of its functions under this Part, its Charter and any other written law.



(2) The Governing Board shall have the power to—

- (a) establish such units or satellite facilities as it considers necessary for the proper discharge of its functions;
- (b) enter into associations, collaborations or linkages with other bodies or organizations within or outside Kenya in furtherance of the purpose and functions for which the facility is established;
- (c) manage, control and administer the assets of the facility in accordance with the Public Procurement and Assets Disposal Act;
- (d) determine the provisions to be made for capital and recurrent expenditure and the reserves of the facility;
- (e) open such bank accounts for the funds of the facility as may be necessary;
- (f) subject to approval of the Cabinet Secretary for the National Treasury, invest any surplus funds of the facility not immediately required for the purposes of this Act, as it may determine;
- (g) levy fees for the services rendered by the facility as may be determined from time to time by the Governing Board;
- (h) receive any gifts, grants, donations or endowments made to the facility or any other monies in respect of the facility and make legitimate disbursements therefrom in accordance with the provisions of

Cap. 412C.



this Act and the Charter of the facility; and

- (i) undertake any activity necessary for the performance of any of its functions.

Operation of the facility.

**21E.** (1) Subject to the provisions of this Act, a facility established pursuant to this Part shall be governed and managed in accordance with the provisions of its Charter granted under this Act and guidelines, policies or instrument of governance approved by its Governing Board.

(2) The governance, management and structures of the facility established under this Part shall—

- (a) enhance accountability, and transparency in the operation of the facility;
- (b) encourage co-operation and collaboration among all stakeholders for the effective performance of the functions of the facility under this Act; and
- (c) ensure respect for inherent dignity and personal autonomy.

Governing Board.

**21F.** (1) In addition to the provisions of its Charter, the management of the facility shall vest in a Governing Board comprising of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for matters relating to health or a representative designated in writing;
- (c) the Principal Secretary for the National Treasury or a representative designated in writing;



- (d) the Attorney-General or a representative designated in writing;
- (e) a representative of a public university with a medical school utilizing the facility through a memorandum of understanding with the facility;
- (f) three other members, not being public officers, appointed by the Cabinet Secretary; and
- (g) a chief executive officer who shall be an *ex officio* member of the Governing Board.

(2) The appointment of the chairperson and members of the Governing Board under subsection 1(e) and (f) shall be by notice in the *Gazette*.

Qualification for appointment as Chairperson or Member of the Governing Board.

**21G.** (1) A person shall qualify for appointment as the chairperson of the Governing Board, where the person —

- (a) holds a postgraduate degree from a university recognized in Kenya;
- (b) has professional knowledge and experience of at least fifteen years on matters relating to health services, research, corporate governance, public administration and management, business management, finance and administration and social sciences;
- (c) has served in a senior management level for a period of at least ten years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall qualify for appointment as a member of the Governing



Board under section 21F (1) (e) and (f), where the person—

- (a) holds at least a postgraduate degree in a relevant field from a university recognized in Kenya;
- (b) has professional knowledge and experience of at least ten years on matters relating to medicine, healthcare management, finance, economics, health economics, public administration, law, business administration and management; and
- (c) meets the requirements of Chapter Six of the Constitution.

Term of office.

**21H.** (1) The chairperson shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.

(2) The members appointed under section 21F (e) and (f) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(3) The members appointed under section 21F (1)(b), (c) and (d) shall hold office during their tenure of office unless removed from office by the appointing authority.

Vacation of office.

**21I.** A person shall cease to be a chairperson or member of the Governing Board, where that person —

- (a) is unable to perform the functions of the office by reason of prolonged physical or mental illness;
- (b) is otherwise unable or unfit to discharge his or her duties;
- (c) is adjudged bankrupt;



- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months, without the option of a fine;
- (e) is absent from three consecutive meetings of the Governing Board without lawful cause;
- (f) resigns by notice in writing to the appointing authority;
- (g) dies; or
- (h) is removed from office in accordance with the provisions of the Constitution or any other written law.

Committees of the  
Governing Board.

**21J.** (1) The Governing Board may establish committees for the effective performance of its functions under this Act.

(2) The Governing Board may co-opt into the membership of a committee any person whose knowledge and expertise may be necessary for the effective performance of the functions of the facility.

(3) A person co-opted into a Committee under subsection (2), may attend the meetings of the Committee and participate in its deliberations, but shall not vote at such meetings.

Conduct of business  
and affairs of the  
Governing Board.

**21K.** (1) The Governing Board shall conduct its business and affairs in accordance with the provisions of the Fifth Schedule.

(2) The Governing Board may regulate its own procedure.

Delegation by the  
Governing Board.

**21L.** The Governing Board may, by resolution either generally or in any particular case, delegate to any committee of the Governing Board or to any member of the Governing Board in writing and by name



the exercise of any of the powers or the performance of any of the functions or duties of the Governing Board under this Act.

Chief Executive  
Officer of the facility.

**21M.** (1) The Governing Board shall, through an open, transparent and competitive recruitment process, appoint a qualified person to be the chief executive officer of the facility.

(2) A person shall qualify for appointment as chief executive officer under this Part, where the person —

- (a) holds at least a post graduate degree from a university recognized in Kenya;
- (b) has had at least ten years professional knowledge and experience in matters of medicine, healthcare, health insurance, health financing, financial management, health economics, public administration, law or business administration;
- (c) has served in a senior management level for a period of at least ten years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The chief executive officer shall serve on such terms and conditions as the Governing Board may determine.

(4) The chief executive officer shall hold office for a period of five years and shall be eligible for re-appointment for one further term of five years.

(5) The chief executive officer shall, in the performance of the functions and duties of the office, be responsible to the Governing Board.

Cap. 7L.



- (6) The chief executive officer shall—
- (a) be the accounting officer of the facility;
  - (b) be responsible for—
    - (i) implementing the decisions of the Governing Board;
    - (ii) the day-to-day administration and management of the affairs of the facility; and
    - (iii) the coordination and supervision of the staff of the facility; and
  - (c) perform any other duties as may be assigned by the Governing Board and any other written law.

(7) The chief executive officer may be removed from office by the Governing Board in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) conviction for an offence relating to the functions of the facility with a sentence to imprisonment for a term exceeding six months, without the option of a fine;
- (e) being adjudged bankrupt;
- (f) being declared as being of unsound mind;
- (g) violation of the Constitution or any other written law; or
- (h) breaching any other grounds specified in the terms and



conditions of service of the chief executive officer.

(8) Where the question of the removal of the chief executive officer under subsection (1) arises, the Governing Board shall act in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution and the Fair Administrative Action Act.

Corporation  
Secretary.

**21N.** (1) The Governing Board shall, through an open, transparent and competitive recruitment process, appoint a qualified person to be the Corporation Secretary of the facility on such terms as the Governing Board may determine.

(2) A person shall qualify for appointment as the Corporation Secretary if that person—

- (a) holds at least a postgraduate degree from a university recognized in Kenya;
- (b) holds a bachelor's degree in law from a university recognized in Kenya;
- (c) is an Advocate of the High Court of Kenya;
- (d) is a Certified Public Secretary;
- (e) is a member in good standing of the Institute of Certified Public Secretaries of Kenya;
- (f) has at least five years' experience in governance matters; and
- (g) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be the Secretary to the Governing Board and shall—

- (a) in consultation with the Chairperson of the Governing



Board, issue notices for meetings of the Governing Board;

- (b) take minutes of the meetings of the Board;
- (c) keep, in custody, the records of the deliberations, decisions and resolutions of the Governing Board;
- (d) transmit decisions and resolutions of the Governing Board to the chief executive officer for execution, implementation and other relevant action;
- (e) provide legal advice to the Board;
- (f) provide guidance to the Governing Board on their duties and responsibilities on matters relating to governance; and
- (g) perform such other duties as the Governing Board may direct.

Staff of the facility.

**21O.** (1) The Governing Board shall, through a competitive and transparent process, employ such officers, agents and other staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Governing Board may determine.

(2) The Governing Board may request for the secondment of public officers to the facility.

Remuneration.

**21P.** The chairperson, members of the Governing Board and staff of the facility shall be paid such remuneration, fees, allowances and such other reimbursements as may be approved by the Cabinet Secretary upon the advice of the Salaries and Remuneration Commission.

Protection from personal liability.

**21Q.** (1) No matter or thing done by a member of the Governing Board or an



officer, employee or agent of the facility shall, where the matter or thing was done in good faith in the execution of the functions or powers of the facility, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

(2) Despite subsection (1), nothing in this section shall exempt a member of the Governing Board, officer, employee or agent of the facility from individual responsibility for unlawful or criminal act committed by the member of the Governing Board, officer, employee or agent of the facility.

Common seal.

**21R.** (1) There shall be a common seal of the facility which shall be kept in the custody of the Corporation Secretary and shall not be used except on the direction of the Governing Board.

(2) The affixing of the common seal of the facility shall be authenticated by the signatures of the Chairperson and the chief executive officer and any document required by law to be made under seal and all decisions of the Governing Board may be authenticated by the signatures of the Chairperson and the chief executive officer.

(3) The Governing Board shall, in the absence of either the Chairperson or the chief executive officer in any particular matter, nominate one member to authenticate the seal of the facility on behalf of either the Chairperson or the chief executive officer.

(4) The common seal of the facility when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order by the facility under this section shall be presumed to have been duly given.



Funds of the facility.

**21S.** (1) The funds of the facility shall comprise of—

(a) monies appropriated by the National Assembly;

(b) monies as may accrue to or vest in the facility in the course of the exercise of its powers or the performance of its functions under this Act;

(c) monies from fees or charges paid to the facility in respect of the services offered by it;

(d) monies as may be payable to the facility pursuant to this Act or any other written law;

(e) gifts, grants, donations or endowments as may be given to the facility; and

(f) monies from any other lawful source provided for the facility.

(2) All the funds donated, lent or issued to the facility under this Part shall be accounted for and appropriated in accordance with the Public Finance Management Act.

Cap. 412A.

(3) There shall be made to the facility, out of monies provided by National Assembly by virtue of section 86 of this Act for that purpose, grants towards the expenditure incurred by the facility in the exercise of its powers or the performance of its functions under this Act.

(4) The receipts, earnings or accruals of the facility and the balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for purposes of the facility under this Act.

(5) All monies in the facility which are not immediately required to be applied for



the purposes of this Act shall be invested in—

(a) such investment in a reputable bank on the advice of the Central Bank of Kenya, being an investment in which trust funds, or part thereof, are authorized by law to be invested; and

(b) government securities as may be approved by the National Treasury.

(6) The financial year of the facility established under this Part shall be the period of twelve months ending on the thirtieth day of June in each year.

(7) The facility, unit of the facility or satellite facility may, subject to the Public Finance Management Act and any other relevant law, be exempted from such taxes, duties, fees, levy, cess or other charges pertaining to materials, articles or equipment designed for use by the facility including laboratory and clinical equipment and supplies, specialized research software and technical assistance grants as the Cabinet Secretary for the National Treasury may determine, by notice in the Gazette.

(8) The facility shall, where it has accepted security in the event of default on payment of a debt, have the power to effect sale by public auction or private treaty of any property provided as security to the facility.

**21T.** (1) The facility shall, within three months after the end of the financial year, cause to be prepared estimates of its revenue and expenditure for that financial year.

(2) The annual estimates shall make provision for all estimated expenditure of the facility for the financial year concerned, and in particular shall provide for the—

Cap. 412A.

Annual estimates.



- (a) payment of salaries, allowances and other charges in respect of the staff of the facility;
  - (b) payment of allowances and any other emoluments to the members of the Governing Board;
  - (c) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the facility;
  - (d) funding of training, research and development activities of the facility;
  - (e) proper maintenance of buildings and grounds of the facility;
  - (f) acquisition, maintenance, repair and replacement of the equipment and other movable property of the facility; or
  - (g) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the facility may consider appropriate.
- (3) The annual estimates shall be approved by the Governing Board before the commencement of the financial year to which they relate and after the approval, the annual estimates shall not be increased without prior consent of the Governing Board.
- (4) No expenditure shall be incurred for the purposes of the facility except in accordance with the annual estimates approved under subsection (3).



## Accounts and audit.

**21U.** (1) The Governing Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the facility.

(2) Within three months at the end of each financial year, the Governing Board shall submit to the Auditor-General, the accounts of the facility together with a—

- (a) statement of income and expenditure of the facility during the year; and
- (b) statement of the assets and liabilities of the facility on the last day of that year.

(3) The accounts of the facility shall be audited and reported upon in accordance with the provisions of the Public Finance Management Act and the Public Audit Act.

Cap. 412A.  
Cap. 412B.

## Annual report.

**21V.** (1) The Governing Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report on the operations of the facility for the immediately preceding year.

(2) The annual report shall contain in respect of the year to which it relates—

- (a) the financial statements of the facility;
- (b) a description of the activities of the facility;
- (c) statistical information as the Governing Board may consider appropriate in relation to the functions of the facility;
- (d) any recommendations to the Cabinet Secretary and the action taken;



- (e) the impact of the exercise of any of the functions of the facility;
- (f) any impediments to the achievement of the objects and functions under this Act or any other written law;
- (g) information as the Cabinet Secretary may request; and
- (h) any other information relating to the functions of the facility that the Governing Board considers necessary.

(3) The Cabinet Secretary shall, within three months of submission of the report under subsection (1), transmit the report to Parliament.

**Policies.**

**21W.** (1) The Governing Board may make policies for the carrying into effect the provisions of this Act.

(2) The Governing Board may make policies on—

- (a) the procedure for the appointment of staff;
- (b) performance parameters and targets for any unit or member of staff of the facility;
- (c) the kind of security that the facility shall accept from its debtors in lieu of fees;
- (d) deliverables of the facility;
- (e) the types of health services to which a patient is entitled to at the facility;
- (f) the organization of health services;
- (g) operating schedules and timetable for visits;
- (h) procedures for access to healthcare services;



- (i) procedures for lodging complaints;
- (j) the rights and duties of the users of healthcare services at the facility;
- (k) the manner of accessing assistance provided for special groups;
- (l) responsibilities of staff towards the patients; and
- (m) any other information that may be of use to the patient and the public.

(3) The facility shall disseminate the policies developed under this section and information contained in the policies to the public through—

- (a) the media; and
- (b) notices in places that are visible to any person entering the facility.

(4) The Governing Board and the staff of the facility shall subscribe to the code of conduct set out in the Sixth Schedule.

(5) The Governing Board may make further policies or guidelines prescribing the code of conduct for its members and staff of the facility.

Offences related to this Part.

**21X.** A person, staff or agent of the facility who, by any act or omission done or committed in the performance of his or her functions under this Act —

- (a) willfully causes any harm to a patient;
- (b) through negligence, causes any harm to any patient;
- (c) impersonates a healthcare professional;



- (d) releases confidential information;
- (e) publishes or discloses to an unauthorized person, any document, communication or information which has come to his or her knowledge in the course of performing his or her duties;
- (f) commits theft of intellectual property;
- (g) abuses the common seal of the facility; or
- (h) acts in contravention of any of the provisions of this Part;

commits an offence and shall upon conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Existing hospitals.

**21Y.** (1) The hospitals set out in the Seventh Schedule which were in operation on or before the 24th January, 2024 shall continue to operate as if they had been approved under this Act and shall forthwith each be issued with a Charter by the Cabinet Secretary.

(2) The respective facility issued a charter under subsection (1) shall be the successor of respective hospital set out in the Seventh Schedule.

(3) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the respective hospital existing at the commencement of this Act shall be automatically and fully transferred to the respective facility issued a Charter under subsection (1).

**4.** The principal Act is amended by inserting the following new schedules immediately after the Fourth Schedule—

Insertion of new  
schedules in Cap.  
241.



**FIFTH SCHEDULE**  
**CONDUCT OF BUSINESS AND**  
**AFFAIRS OF THE GOVERNING**  
**BOARD OF THE TEACHING,**  
**REFERRAL AND RESEARCH**  
**HEALTH FACILITY**

(s. 21K)

Meetings of the  
Governing Board.

1. (1) The Governing Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The chairperson may call a special meeting of the Governing Board at any time the chairperson deems fit for expedient transaction of the business of the Governing Board.

(3) The notice for a meeting of the Governing Board shall be given in writing to each member of the Governing Board at least fourteen days before the day of the meeting.

(4) In the case of a special, or extraordinary meeting, a notice of less than fourteen days' notice shall be considered sufficient.

(5) Despite subparagraph (2), the chairperson may, upon requisition in writing by at least two thirds of the members, convene a special meeting of the Governing Board at any time for the transaction of the business of the Governing Board.

(6) The notice to be given under subparagraph (2) and (3) shall state the—

- (a) venue and time of the meeting; and
- (b) agenda with sufficient details of business to be discussed at the meeting.



(7) The chairperson shall preside at every meeting of the Governing Board at which the chairperson is present but in the chairperson's absence, the members present shall elect from among themselves a chairperson who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(8) Unless a unanimous decision is reached, a decision on any matter before the Governing Board shall be by the concurrence of a majority of all the members present and voting at the meeting.

(9) The Governing Board may, with approval of the Cabinet Secretary, co-opt or invite any number of persons to act as advisors or consultants at any of its meetings or form such committees to perform such functions or duties of the Governing Board as the Governing Board shall determine.

(10) Subject to the provisions on quorum, no proceedings shall be invalid by reason only of a vacancy among the members of the Governing Board.

(11) Subject to the provisions of this Schedule, the Governing Board may determine its own procedure and the procedure for any committee of the Governing Board.

(12) The quorum for the meetings of the Governing Board shall be five members. Co-opted or invited persons shall not be counted in the quorum of the meetings of the Governing Board and shall not be eligible to vote.

Contracts and  
instruments.

2. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or



executed on behalf of the facility by any person generally or specially authorized by the facility for that purpose.

**Disclosure of Interest.**

3. (1) If a member of the Governing Board is present at a meeting of the Governing Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable before the commencement of the meeting, declare such interest.

(2) The person making the disclosure of interest under subsection (1) shall not, unless the Governing Board or committee otherwise directs, take part in any consideration or,

discussion of, or vote on any question touching on the matter.

(3) A person who contravenes subparagraph (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

(4) No member of the Governing Board or officer, employee or agent of the Governing Board shall enter into a service contract or trade with the Governing Board.

(5) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

**Minutes.**

4. The Governing Board shall cause the minutes of all resolutions and proceedings of meetings of the Governing Board to be entered in books kept for that purpose.



**SIXTH SCHEDULE**  
**CODE OF CONDUCT FOR THE**  
**TEACHING, REFERRAL AND**  
**RESEARCH FACILITY**

(s. 21(W)(4))

**1. Introduction**

The Code of Conduct defines the facility's commitment to the highest standards of behaviour so as to contribute to the achievement of the national development goals. The Code sets out expectations for individual behaviour necessary to meet these standards and includes requirements and guidance to help you to carry out your role with integrity and in compliance with the law. The Code shall apply in addition to the applicable laws and detailed policies that are relevant to your role.

This Code applies to the members of the Governing Board and the staff of the facility including contract staff. Adherence to the values in this Code is a condition of the appointment of the members of the Governing Board and the employment of the staff of the facility. A breach of this Code shall result in disciplinary measures being taken, including separation from the facility.

**2. Values**

**2.1. Respect for People**

The members of the Governing Board and the staff of the facility are entitled to work in an environment in which people are treated with respect. The members of the Governing Board and the staff of the facility must therefore avoid actions or behaviours that are or may be viewed as harassment and are required to treat all people with respect, dignity and fairness.



## **2.2. Integrity**

The members of the Governing Board and the staff of the facility are expected to act with integrity by consistently upholding the highest standards of honesty and truthfulness. The members of the Governing Board and the staff of the facility should not use their positions to inappropriately obtain an advantage for themselves or to advantage or disadvantage others; and should take all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs.

## **2.3. Transparency and Accountability**

The members of the Governing Board and the staff of the facility are expected to work together in a manner that promotes openness, honesty and transparency and encourages collaboration and respectful communication.

## **2.4. Stewardship**

The members of the Governing Board and the staff of the facility are responsible for using the assets entrusted to them in an appropriate and prudent manner including safeguarding the assets against waste, loss, damage, misuse, theft, misappropriation or infringement in order to protect their value. All transactions relating to the facility shall be reflected accurately in the books of accounts. Falsification of asset records or misrepresentation of facts shall constitute fraud.

## **2.5. Excellence**

The members of the Governing Board and the staff of the facility shall demonstrate excellence by providing responsive, fair, timely, efficient and effective services to the public. The members of the Governing



Board and the staff of the facility shall exercise high levels of discipline and commitment in the performance of their duties and shall continually improve the quality of policies, programs and services provided by the facility.

### **3. Conflict of Interest**

The members of the Governing Board and the staff of the facility shall avoid conflicts of interest between their private activities and the performance of their duties and responsibilities at the facility. The facility shall maintain a register to record conflict of interests.

### **4. Whistle-Blowing**

Any person who has reason to believe that a member of the Governing Board or member of the staff of the facility has not acted in accordance with this Code may notify the relevant authority or appropriate government agency. The facility shall not retaliate or tolerate retaliation against any person who brings any matter to its attention in good faith.

### **5. Handling of disputes**

The members of the Governing Board and the staff of the facility shall to adhere to this Code and shall resolve issues in a fair and respectful manner. The facility may use alternative dispute mechanisms, as appropriate in the resolution of disputes.

## **ACCEPTANCE**

I agree to the terms of this Code of Conduct, which forms part of my appointment to the Governing Board or the contract of employment. I have read and understood the Code and agree to abide by its provisions.



I understand that any breach of its provisions shall subject to the appropriate disciplinary action.

Full Name of the Member of the Governing Board/Member of the Staff of the Facility.....

Position.....

Signature.....

Date.....

### **SEVENTH SCHEDULE**

#### **EXISTING HOSPITALS**

(s.21B, 21Y)

1. Kenyatta National Hospital;
2. Moi Teaching and Referral Hospital;
3. Kenyatta University Teaching and Referral Hospital;
4. Mathari National Teaching and Referral Hospital; and
5. National Spinal Injury Hospital.



## MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Health (Amendment) Bill, 2024 is to provide for a governance and management framework for teaching, referral and research hospitals. The Bill also seeks to make provision for the establishment, powers and functions of the teaching, referral and research hospitals.

Teaching, referral and research hospitals as currently established vide Legal Notices have inadequate legal frameworks as some of these Legal Notices have expired leaving the hospitals to operate without a proper regulatory framework. The Bill therefore seeks to redress this by providing an elaborate legal framework for the establishment and management of all teaching, referral and research hospitals in the country.

### Overview of the Bill:

**Clause 1** provides the short title of the Bill.

**Clause 2** seeks to amend section 2 of the Health Act, (Cap. 241) to make provision for the inclusion of new definitions of terms such as satellite facility, Chief Executive Officer and Charter among others. A Charter is defined as the Charter to be granted to a Teaching, Referral and Research Health Facility under section 21B of the Bill. A satellite facility is also defined to mean a health facility that is located separately from, but is affiliated and administratively connected to the facility established under this Act. Specialized healthcare services are further defined to mean the provision of targeted and advanced healthcare services by a healthcare provider with specialized training and expertise in a particular area of medicine in relation to specific medical services, procedures, conditions, diseases or specialized needs using advanced equipment, technology or treatment modalities.

**Clause 3** seeks to insert a new Part in the Health Act, (Cap. 241) on the establishment of teaching, referral and research health facilities. Under the new Part, teaching, referral and research health facilities are to be established through a Charter published in the *Gazette* and shall be body corporates with perpetual succession and with power to perform all the functions that may lawfully be performed by a body corporate.

The Charter shall provide for several things including the establishment and composition of the Governing Board of the facility, the functions and organs of governance of the facility, the headquarters of the Facility, the appointment of the Chief Executive Officer of the facility and power of the Governing Board to formulate and approve guidelines, policies or any other instruments of governance for the facility.



The functions of teaching, referral and research health facilities under the Bill are to:

- (a) receive patients on referral from other facilities within or outside Kenya for specialized healthcare;
- (b) provide multi-specialty referral medical services;
- (c) provide facilities for medical education, training and research in medical and other related services;
- (d) train health care personnel on health disciplines and specialties;
- (e) participate in national health planning;
- (f) conduct research on the provision of healthcare services;
- (g) provide technical assistance and support to health facilities close to the facility; and
- (h) provide policy advice and make recommendations to the Cabinet Secretary on healthcare services and specialized healthcare services.

The clause also sets out the powers of the teaching, referral and research health facilities which are necessary for the proper performance of their functions including the—

- (a) management of assets of the facility;
- (b) investment of the funds of the facility;
- (c) levy of fees for services rendered;
- (d) entering into partnerships; and
- (e) collaborations and receipt of gifts and grants among others.

The clause further makes provision for the composition of the Governing Board, their term of office and the qualifications. It further provides for the appointment of a Chief Executive Officer, a Corporation Secretary as well as other staff of the teaching, referral and research health facilities.

On financial provisions, the clause makes provision for the source of funds of the facility which includes the monies appropriated by the National Assembly. It also provides for the handling of the investments and accounts of the facility including the audit of its finances as well as the modalities on annual reporting by the facility.

The teaching, referral and research health facilities are also given the power to make policies on several matters such as procedures for the appointment of staff and the types of health services to be provided at the facility.



The Bill also saves the existing hospitals namely:

- (a) Kenyatta National Hospital;
- (b) Moi Teaching and Referral Hospital;
- (c) Kenyatta University Teaching and Referral Hospital;
- (d) Mathari National Teaching Referral Hospital; and
- (e) National Spinal Injury Hospital.

These hospitals shall continue to operate as if they had been established under the proposed law and shall forthwith be issued with a Charter by the Cabinet Secretary for health. These hospitals shall also be the successors of the former hospitals and all their rights, duties, obligations, assets and liabilities existing at the commencement of the proposed law shall be automatically and fully transferred to the respective facilities issued a Charter under the proposed law.

**Clause 4** seeks to insert three new Schedules to the Health Act, (Cap. 241). The Fifth Schedule provides for the conduct of the business and affairs of the Governing Board of the teaching, referral and research health facilities in terms of minutes, meeting, quorum among others. The Sixth Schedule provides for the code of conduct of the teaching, referral and research health facilities which sets out the values to be observed at the respective facilities. The Seventh Schedule lists the existing hospitals which are to be issued with a Charter upon the commencement of the proposed law.

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

The Bill delegates legislative powers but it does not limit fundamental rights and freedoms.

#### **Statement on whether the Bill concerns County Governments**

The Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution. National referral health facilities is a function of the National Government under paragraph 23 of Part 1 of the Fourth Schedule to the Constitution.

#### **Statement on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

This Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 18th September, 2024.

ROBERT PUKOSE,  
*Chairperson of the Departmental Committee on Health.*



*Section 2 of Cap. 241 which it 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 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 facility, 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, facilities 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 facilities;

“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 21 of Cap. 241 which it is proposed to amend –*

## **21. Coordination**

The National Health System shall work in a manner that respects the distinct levels of government, while respecting the principles of cooperation and coordination as outlined in this Act and in legislation regulating the relationships and functions of the county and national government.

*The Fourth Schedule of Cap. 241 which it is proposed to amend –*

### **FOURTH SCHEDULE [s. 98]**

#### **PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

##### **1. Meetings**

(1) The Committee shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.

(2) Meetings shall be convened by the Chairperson or in his absence by the vice-Chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days notice of a meeting shall be given to every member.

(4) The Chairperson shall preside over all the meetings of the Committee or in his absence, the meetings shall be presided over by the vice-Chairperson or in both their absences, by a person elected by the Committee at the meeting for that purpose.

(5) A decision of the Committee shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(6) The first order of business of the Committee shall be to elect a vice-Chairperson.

##### **2. Quorum**

The quorum for meeting shall be five members.



### 3. Minutes

Minutes of all meetings shall be kept and entered in books kept for that purpose.

### 4. Conflict of Interest

A member of the Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the Committee shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Committee.

### 5. Disclosure of interest by members of the Committee

A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Committee and the member shall not be present while that matter is being dealt with by the Committee and shall not take part in any deliberations or vote relating to the matter.

### 6. Remuneration of Committee members

The Committee shall pay the members of the Committee such allowances and expenses as shall be determined by the Cabinet Secretary.







