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THE MAKUENI COUNTY CANCER CONTROL ACT, 2016

AN ACT of the County Assembly of Makueni to establish the Makueni County Cancer Management Institute and provide for the prevention, treatment and control of cancer and for connected purposes

ENACTED by the County Assembly of Makueni as follows—

PART—PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Makueni County Cancer Control Act, 2016 and shall come into operation on such date as the County Executive Committee Member may, by notice in the Gazette, appoint, which date shall not exceed ninety days from the date of publication.

Interpretation

2. In this Act, unless the context otherwise requires—

"board" means the Board of Trustees established by section 6;

"chairperson" means the Chairperson of the Board appointed under section 6;

"chief executive officer" means the Chief Executive Officer of the Institute appointed under section 10;

"county executive committee member" means the County Executive Committee Member for the time being responsible for matters relating to health;

"department" means the Department of Health Services;

"government" means the County Government of Makueni;

"institute" means the Cancer Management Institute established by section 4;

"medical institution" means a Hospital, Clinic, Dispensary or other place where a diagnosis of cancer is made and includes a medical practitioner practicing in his own name;

"medical practitioner" has the meaning assigned to it under the Medical Practitioners and Dentists Act;

"person with cancer" means a person diagnosed as having cancer.
Purpose of Act

3. The purpose of this Act is to—
   (a) promote public awareness about the causes, consequences, means of prevention and control of cancer;
   (b) extend to every person with cancer in the County, basic health care and social services;
   (c) promote utmost safety and universal precautions in practices and procedures that relate to the treatment of cancer; and
   (d) positively address and seek to eradicate conditions that cause and aggravate the spread of cancer in the County.

PART II—ADMINISTRATION

Establishment of the Institute

4. (1) There is established a body to be known as the Makueni County Cancer Management Institute.
   (2) The Institute shall be a body corporate 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 money or making investments;
      (d) charging fees for services rendered by it and requesting for securities for such fees; and
      (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the Institute

5. The functions of the Institute shall be to—
   (a) advise the County Executive Committee Member on matters relating to the treatment and care including palliative care, of persons with cancer and to advise on the relative priorities to be given to the implementation of specific measures;
   (b) encourage and secure the establishment of a fully fledged Cancer treatment unit and palliative Care centre in the County referral hospital for the welfare and treatment of persons with cancer in the County;
(c) encourage and secure provision of basic diagnostic equipment at hospitals in all the sub-counties in the County;

(d) encourage and secure training for staff on treatment and diagnosis of cancer in the County;

(e) co-ordinate services provided in the County for the welfare and treatment of persons with cancer and to implement programmes for vocational guidance and counselling;

(f) collect, analyse and disseminate all data useful in the prevention, diagnosis and treatment of cancer and share the same with any national institution charged with cancer management;

(g) facilitate collection of data to ensure that accurate figures of persons with cancer are obtained in the County for purposes of planning;

(h) collaborate with national and international institutions for the purpose of undertaking cancer research in the County;

(i) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with cancer, including those controlled and managed by the County and National Governments;

(j) encourage and secure the care of persons with cancer within their communities and social environment;

(k) establish and support measures that seek to eradicate conditions that cause and aggravate the spread of cancer;

(l) recommend measures to prevent discrimination against persons with cancer;

(m) collaborate with any registered cancer associations in the Republic of Kenya for purposes of meeting its objectives;

(n) collaborate with the relevant government and other institutions to—

   (i) ensure provision of high standards of services in the welfare, diagnosis, awareness and related activities in the care and prevention of cancer;

   (ii) facilitate the training of specialists in the field of cancer care and establishment of centres of excellence in cancer care and prevention;
(iii) ensure that pharmaceuticals, biological and other therapeutic substances used in the treatment and management of cancer are of good quality and safe for use by patients;

(o) generally to carry out measures for public information on the rights of persons with cancer and the provisions of this Act;

(p) enter into partnerships with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance of the purpose for which this Act is established; and

(q) where it considers it necessary or desirable become a member of, or associate with corporations or other bodies or associations for purposes of assisting in promoting cancer management projects, programmes and activities.

Board of Trustees

6. (1) There is established a Board of Trustees of the institute which shall consist of—

(a) the Chairperson who shall be a person knowledgeable in cancer management recruited through a competitive process and appointed by the County Public Service Board with the approval of the County Assembly;

(b) the Chief Officer in the department for the time being responsible for matters relating to health or his designated alternate;

(c) the Chief Officer in the department for the time being responsible for finance or his designated alternate not being below the level of Director;

(d) the head of Legal Services in the County Executive;

(e) one medical practitioner nominated by the County Executive Committee Member with approval of the County Assembly;

(f) one person nominated by the County Executive Committee Member who shall be a registered nurse working in the County with sufficient knowledge and interest in cancer management with the approval of the County Assembly; and

(g) the Chief Executive Officer appointed under clause 10 who shall be an ex-officio member and Secretary to the Board.

(2) No person shall be appointed under subsection (1)

(a) unless such person is a registered—
(i) medical practitioner of not less than ten years experience and has sufficient interest in cancer management;

(3) Nomination or selection of board of trustees shall take into account the principle of equality and non-discrimination, regional balance and gender parity.

(4) Appointment of Board of trustees shall be by notice in the County Gazette.

(5) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Board or with the authority of the Board shall be deemed to have been done by the Institute.

Conduct of Business and Affairs of the Board

7. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Powers of the Board

8. (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of the subsection (1), the Board shall have power to—

(a) control, supervise and administer the assets of the Institute in such manner as best promotes the purpose for which the Institute is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Institute;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;

(d) open such banking accounts for the funds of the Institute as may be necessary;

(e) invest any funds of the Institute not immediately required for its purposes in the manner provided in section 19;

(f) establish such directorates, departments and regional centres of the Institute to deal with such specific matters as may be necessary; and

(g) undertake any activity necessary for the fulfilment of any of the functions of the Institute.
Remuneration of Board Members

9. The Board shall pay its members such remuneration, fees or allowances for expenses as it may determine in consultation with the County Executive Committee Member for the time being responsible for matters relating to finance and upon the advice of Salaries and Remuneration Commission.

Chief Executive Officer

10. (1) There shall be a Chief Executive Officer who shall be appointed by the County Public Service Board through a competitive process and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person has—

(a) a degree from a recognized university;

(b) at least five years’ experience and proven competence in cancer management or management of a similar facility.

(3) The Chief Executive Officer shall—

(a) be the secretary to the Board; and

(b) subject to the directions of the Board be responsible for the day to day management of the affairs of the Board and staff of the Institute.

Staff of the Institute

11. The County Public Service Board shall in consultation with the Secretary to the Board of the Institute appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the County Public Service Board may determine.

Delegation by the Board

12. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Institute, the exercise of any of the powers or the performance of any of the functions or duties of the Institute under this Act or under any other written law.

Protection from Personal liability

13. (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or
duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Institute of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Common Seal

14. (1) The common seal of the Institute shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Institute shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

Funds of the Institute

15. (1) There is established a fund to be known as the Cancer Management Institute Fund which shall vest in and be operated and managed by the Board of Trustees comprising of—

(a) such sums as may be appropriated by County Assembly from the County Revenue Fund for that purpose;

(b) grants, gifts or donations that the Institute may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions.

(c) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and

(d) all monies from any other lawful source provided for or donated or lent to the Board.

(2) The funds of the Institute and its balances at the close of each financial year shall not be paid into the County Revenue Fund, but shall be retained for the purposes for which the Institute is established.
Financial Year

16. The financial year of the Institute shall be the period of twelve months ending on the thirtieth June in each year.

Annual Estimates

17. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Institute for that year.

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

(a) the payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Institute;
(b) the payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Institute;
(c) the proper maintenance of the buildings and grounds of the Institute;
(d) the maintenance, repair and replacement of the equipment and other property of the Institute; and
(e) the construction of cancer treatment and management facilities at the County and sub-county hospitals;
(f) the purchase of cancer diagnostic and treatment equipment;
(g) the purchase of cancer management drugs.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the County Executive Committee Member for approval and consolidation with the budget of the Health department.

Accounts and Audit

18. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Institute.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Institute together with—

(a) a statement of the income and expenditure of the Institute during that year; and
(b) a balance sheet of the Institute on the last day of that year.
(3) The accounts of the Institute shall be audited and reported upon in accordance with the Public Audit Act, 2003.

**Investment of Funds**

19. The Board may invest any of the funds of the Institute in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the County Treasury may, from time to time, approve for that purpose.

**PART III—THE CANCER REGISTRY**

**Cancer Register**

20. (1) The Institute shall cause to be kept and maintained a cancer register containing the particulars specified under subsection (2).

(2) The register shall contain the following particulars—

(a) the frequency, type and geographical location of any cancer for which due notification has been given pursuant to section 21;

(b) institutions, associations and organizations, in the County, that provide care and treatment services for persons with cancer; and

(c) such other particulars as the Board may prescribe.

(3) All particulars under sub-section (1) and changes in such particulars shall be entered in the register by the Chief Executive Officer as soon as is practicable after he has received notification thereof.

(4) The Chief Executive Officer may supply a copy of any entry in the register upon payment of such fee as the Board may prescribe.

**Notification to Institute**

21 (1) Every medical institution in the County including those under private management shall, as soon as reasonably practical after making a diagnosis of cancer on a person, deliver a notification to the Institute for purposes of section 20 (2) (a).

(2) A notification under subsection (1) shall—

(a) be in such form as may be prescribed;

(b) specify the type and geographical location of the cancer;

(c) not disclose the name of the person with cancer unless with the consent of the person or his guardian where such person is a minor; and

(d) be given not later than fourteen days after the diagnosis.
(2) Any person who contravenes the provision of this section commits an offence.

**Alteration of Register**

22. The Board may, at any time, direct that correction be made in respect of any entry which has been incorrectly or fraudulently made.

**PART IV—EDUCATION AND INFORMATION**

**Government to undertake Information, Education and Communication**

23. (1) The Makueni County Government shall promote public awareness about the causes, consequences, means of prevention, treatment and control of cancer through a comprehensive County-wide education and information campaign conducted by the Government through the relevant departments and other agencies.

(2) The Government in collaboration with the Institute shall provide training, sensitization and awareness programmes on the prevention, treatment, palliative care and control of cancer for—

(a) employees of all Government Departments, and agencies; and
(b) employees of private and informal sectors’;
(c) community and social workers; and
(d) media professionals, educators, and other stakeholders involved in the dissemination of information to the public on cancer prevention, treatment and control.

(3) In conducting the education and information campaign referred to in this section, the Government shall ensure the involvement and participation of individuals and groups affected by cancer.

(4) The information provided under this section shall cover issues such as confidentiality in the work-place and attitudes towards affected employees and workers.

(5) For the purposes of this section, the Government in collaboration with the Institute shall ensure training of healthcare providers on proper information dissemination and education on cancer prevention and treatment.

(6) The information in 5 above shall include sensitization campaigns on importance of periodic check-ups and screening for cancer.
Cancer Prevention and Control to form part of Health care

24. (1) The Institute shall liaise with the Department to ensure that education and information dissemination on the prevention and treatment of cancer and the care of persons with cancer including palliative care, shall form part of health care services by healthcare providers.

(2) For the purposes of subsection (1), the Department in collaboration with the Institute shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on cancer prevention control and palliative care.

Cancer Prevention and Control Dissemination in Communities

25. The Institute shall conduct an annual educational and information campaign on cancer prevention, treatment and control within the County.

PART VI—MISCELLANEOUS

Consent to Research

26. (1) No person shall undertake within the County any cancer related human biomedical research on another person or on any tissue or blood removed from such person except—

(a) with the written informed consent of that other person; or

(b) if that other person is a child, with the written informed consent of a parent or legal guardian of the child; and

(c) If that person is incapacitated by infirmity, by the legal guardian.

(2) The person whose consent is sought to be obtained under subsection (1) shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

(3) A person who contravenes any of the provisions of this section commits an offence.

General Penalty

27. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding Kenya Shillings two hundred thousand or to imprisonment for a term not exceeding two years or to both.
28. (1) The County Executive Committee Member, on the recommendation of the Board may make rules generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality of sub section (1), the rules shall prescribe anything which this Act requires to be prescribed.
PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE BOARD

Tenure of Office

1. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of five years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term.

Vacation of Office

2. (1) A member other than an ex-officio member may—

   (a) at any time resign from office by notice in writing to the County Executive Committee Member;

   (b) be removed from office by the County Executive Committee Member on recommendation of the Board if the member—

      (i) has been absent from three consecutive meetings of the Board without its permission;

      (ii) is convicted of a criminal offence that amounts to a felony in Kenya;

      (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; and

      (iv) is otherwise unable or unfit to discharge his functions.

   (2) Whenever the office of a Chairperson or member of the board appointed under Section 6 prematurely falls vacant the vacancy shall be filled in the same manner specified for that office under Sections 6 and 10 and the person thereby appointed shall serve for the remainder of the term.

Meetings

3. (1) The 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) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.
(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days’ written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be half of the total members including the Chairperson or the person presiding.

(5) The members present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Board

4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

Disclosure of Interest

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.
(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings.

Contracts and Instruments

6. 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 Board by any person generally or specially authorized by the Board for that purpose.