Kenya Gazette Supplement No. 14 (Makueni County Acts No. 5)

Republic of Kenya

KENYA GAZETTE SUPPLEMENT

MAKUENI COUNTY ACTS, 2019

NAIROBI, 19th November, 2019

CONTENT

Act —

Page

The Makueni County Reproductive Health and Family Planning Act, 2019.. 1

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI
THE MAKUENI COUNTY REPRODUCTIVE HEALTH AND FAMILY PLANNING ACT, 2019
No. 5 of 2019
Date of Assent: 14th August, 2019
Date of Commencement: See Section 1
ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

1—Short title and commencement.
2—Interpretation.
3—Purpose of the Act.
4—Objects of the Act.
5—Guiding principles.

PART II—ESTABLISHMENT OF THE MAKUENI COUNTY REPRODUCTIVE HEALTH AND FAMILY PLANNING PROGRAM

6—Establishment of the Makueni County Reproductive Health and Family Planning Program.
7—Composition of the program.
8—Functions of the Program.
9—Powers of the Program.

PART III — ADMINISTRATION OF THE MAKUENI COUNTY REPRODUCTIVE HEALTH AND FAMILY PLANNING PROGRAM

10—Role of the County Department of Health.
11—Innovative strategies.
12—STIs HIV Aids and Reproductive Health diseases.
13—Unique needs of youth and adolescents.
14—Mentorship.
15—Counselling services.
16—Menstrual hygiene management.
17—Male involvement.
PART IV—ACCESS TO REPRODUCTIVE HEALTH AND FAMILY PLANNING SERVICES

18—Eligibility.
19—Right to Information.

PART V—DEVELOPMENT OF APPROPRIATE REPRODUCTIVE HEALTH EDUCATION AND PUBLIC AWARENESS

20—Age Appropriate education.
21—Role of the County Department of Education.

PART VI—REPRODUCTIVE HEALTH AND FAMILY PLANNING PROGRAMS FOR PERSONS WITH DISABILITIES

22—Abolition of barriers to reproductive health for persons with disabilities.
23—Prohibition of any form of discrimination.

PART VII—FINANCIAL PROVISIONS

24—Source of Funds.
26—Reporting.

PART VIII—MISCELLANEOUS PROVISIONS

27—Confidentiality.
28—Protection from liability.
30—Prohibited Acts.
31—Consents’.
32—Redress.
33—Regulations.
THE MAKUENI COUNTY REPRODUCTIVE HEALTH AND
FAMILY PLANNING ACT, 2019
AN ACT of the County Assembly of Makueni to provide for the
establishment of the Makueni County Reproductive Health and
Family Planning Program; the management and coordination of
reproductive health and family planning initiatives in the County
through strategic innovations and for connected purposes
ENACTED by the County Assembly of Makueni as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Makueni County Reproductive
Health and Family Planning Act, 2019, and shall come into force on the
date the Executive Member may, by notice in the Gazette, appoint.

Interpretation.

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

"abortifacient" means any drug or device that induces abortion or
the destruction of a foetus inside the mother’s womb or the prevention of
the fertilized ovum to reach and be implanted in the mother’s womb;

"actors” mean “parents, guardians, care giver, teachers, peers,
religious leaders, media, health care professionals, non-governmental
organizations, counsellors, academia, and civil society”

"adolescent “means young people between the ages of ten to nineteen
years who are in transition from childhood to adulthood;

"age appropriate sexuality education” means sexual education that
may be deemed appropriate or inappropriate to a person’s stage or level of
development

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

"counselling services” means services offered to the individual who
is undergoing a problem and needs professional help to overcome it;

"county departments” means the departments of the County
Government of Makueni

"Executive Committee Member” means the County Executive
Committee Member for the time being responsible for matters of
reproductive health and family planning;
“Department” means the department established by the County Government which is responsible for reproductive health and family planning;

“dignity” means to be treated with respect, consideration and attentiveness;

“discrimination” includes any distinction, exclusion or restriction made on the basis of any ground including sex, race, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by any person, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;

“family planning “means a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a full range of safe, affordable, effective, non-abortifacient modern natural and artificial methods of planning pregnancy;

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

“health facilities” means the whole or part of public or private institutions, buildings or places, whether for profit or not, that are operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventive or other health services;

“innovative strategies” means plans used by the department of health to encourage better and unique ways of service delivery;

“male involvement” refers to the inclusion, commitment, accountability and responsibility of males in all areas of sexual health and reproductive health, as well as the care of reproductive health concerns specific to men;

“menstrual hygiene management” means of women and adolescent girls to be able to manage menstruation hygienically and with dignity;

“modern methods of family planning” refers to safe, effective, non-abortifacient and legal methods, whether natural or artificial, that are registered with the Department, to plan pregnancy;

“natural family planning” refers to a variety of methods used to plan or prevent pregnancy based on identifying the woman’s fertile days;
“privacy” means to have a confidential environment during counselling and services;

“public health care service provider” refers to—

(a) public health care institution, which is duly licensed and accredited and devoted primarily to the maintenance and operation of facilities for health promotion, disease prevention, diagnosis, treatment and care of individuals suffering from illness, disease, injury, disability or deformity, or in need of obstetrical or other medical and nursing care;

(b) public health care professional, who is a doctor of medicine, a clinical officer, a nurse or a midwife;

(c) public health worker engaged in the delivery of health care services; or

(d) health worker who has undergone training programs under any accredited government and non-governmental organization and who voluntarily renders primarily health care services in the community after having been accredited to function as such by the local health board in accordance with the guideline’s promulgated by the Department of Health;

“poor” means member of a household identified as poor through any relevant system used by the national government in identifying the poor;

“reproductive health” means the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes: this implies—

(a) that people are able to have a responsible, safe, consensual and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so; and

(b) that women and men attain equal relationships in matters related to sexual relations and reproduction.

“reproductive health and family planning stakeholders” means any actor, individual, interest group or organization who participates in Reproductive Health and Family Planning;

“reproductive health care” means the access to a full range of methods, facilities, services and supplies that contribute to reproductive health and well-being by addressing reproductive health-related problems and includes sexual health, the purpose of which is the enhancement of life and personal relations.
“reproductive health care program” means the systematic and integrated provision of reproductive health care to all citizens prioritizing women, the poor, marginalized and those invulnerable or crisis situations;

“reproductive health tract diseases” means diseases, disorders and conditions that affect the functioning of the male and female reproductive systems during all stages of life;

“reproductive health rights” means the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and timing of their children; to make other decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health:

“reproductive health and sexuality education” means a lifelong learning process of providing and acquiring complete, accurate and relevant age- and development-appropriate information and education on reproductive health and sexuality through life skills education and other approaches;

“responsible parenthood” means the will and ability of a parent to respond to the needs and aspirations of the family and children. It is likewise a shared responsibility between parents to determine and achieve the desired number of children, spacing and timing of their children according to their own family life aspirations, taking into account psychological preparedness, health status, sociocultural and economic concerns consistent with their religious convictions;

“sexual health” means a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free from coercion, discrimination and violence;

“sexually transmitted infection” means any infection that may be acquired or passed on through sexual contact, use of IV, intravenous drug needles, childbirth and breastfeeding;

“sustainable human development” means the bringing of people, particularly the poor and vulnerable, to the centre of development process, the central purpose of which is the creation of an enabling environment in which all can enjoy long, healthy and productive lives, done in the manner that promotes their rights and protects the life opportunities of future generations and the natural ecosystem on which all life depends;

“user of the Program” means any person who accesses the Makueni County reproductive health and family planning services.
Purpose of the Act

3. The purpose of this Act is to provide a framework for the advancement of reproductive health and family planning services in Makueni County.

Objects of the Act

4. The objects of this Act are to—

(a) establish and manage the Makueni County Reproductive Health and Family Planning program;

(b) identify and enhance innovative strategies to increase family planning uptake and reproductive health services;

(c) support the implementation of age appropriate and comprehensive sexuality education; ensure specific tailor made interventions to address the unique needs of the youth and adolescents in family planning and reproductive health including mentorship for youth;

(d) build linkages with the reproductive health and family;

(e) mainstream reproductive health and family planning.

Guiding principles

5. This Act shall be guided by the following principles —

(a) every person has the right to the highest attainable standards of health;

(b) every person has inherent dignity and the right to have that dignity respected and protected;

(c) rights to reproductive and sexual health including the autonomy, privacy and confidentiality in making sexual and reproductive decisions;

(d) every person has the right to relevant reproductive and family planning information without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe;

(e) human resource is among the principal assets of the county, as such the County shall ensure adequate, well trained, knowledgeable, and competent and equitably distributed human resource for reproductive health and family planning with the right cadre mix;
(f) to facilitate access to services for all eligible to accessing reproductive health and family planning services by ensuring social and financial risk protection through adequate mobilization, allocation and efficient utilization of financial resources for reproductive health services and family planning;

(g) ensure effective partnership with national government, development partners, non-state actors including the religious sector and the private sector in the design, implementation, coordination, integration, monitoring and evaluation of people-centered programs to enhance the quality of reproductive health and access to family planning;

PART II—ESTABLISHMENT OF THE MAKUENI COUNTY REPRODUCTIVE HEALTH AND FAMILY PLANNING PROGRAM

Establishment of the Makueni County Reproductive Health and Family Planning Program

6. (1) There is established the Makueni County Reproductive Health and Family Planning Program.

   (2) The primary focus of the Program shall be to improve the health and well-being of the users of the program through providing high-quality, reproductive health care and right-based family planning information and services.

Composition of the Program

7. (1) There shall be a steering committee which shall oversee the implementation of the program.

   (2) The Committee in sub section (1) above shall comprise of—

   (a) a Patron;
   (b) the Executive Committee Member;
   (c) the Director in charge of medical services;
   (d) the County reproductive health coordinator;
   (e) a representative of religious organization;
   (f) a representative of development partners in the County;
   (g) a representative of the youth;
   (h) a representative of women and;
   (i) a representative of persons with disabilities.
(3) The Roles of the Steering Committee shall be to—
(a) give technical support to the department in external resource mobilization;
(b) develop guidelines for operationalization of various aspects of the Act;
(c) engage relevant personnel for implementation of the program;
(d) conduct stakeholder engagement forums whose aim shall be to—
   (i) increase the accuracy and value of reproductive health and family planning services by providing an avenue for multiple perspectives;
   (ii) incorporate and collect information on reproductive health and family planning which is not readily available;
   (iii) collaboratively identify priority reproductive health and family planning issues;
   (iv) disseminate information in lay terms;
   (v) identify and facilitate continuous interaction between the county and the stakeholders; and
   (vi) incorporate learning between the stakeholders and the department.

(4) The Patron in consultation with the Executive Committee Member may co-opt such other member as may be necessary for the performance of the duties of the Program.

(5) The Executive Committee Member shall nominate and appoint the Patron of the Program upon the approval of the County Assembly.

(6) The Patron shall be the Chairperson while the Director in charge of medical services shall be the secretary to the Steering Committee.

(7) The Executive Committee Member shall appoint the persons in Clause 7(2) (e) (f) (g) (h) & (i) of this Act from persons ordinarily residents in the County.

(8) The duties of the Patron shall be to—
(a) Champion reproductive health and family planning in the County;
(b) mobilize resources for the implementation of the program;
(c) contribute to the implementation of the program by providing insights, experiences and other enriching leadership perspectives; and

(d) leverage their networks to steer and encourage the involvement of reproductive health and family planning stakeholders.

(9) The Department shall support the Patron in the execution of their duties.

(10) The Patron shall serve for a term of five years renewable once.

(11) The representatives listed in 7(2) (e) (f) (g) (h) and (i) shall serve for a non-renewable term of three years.

(12) A person qualifies for appointment as the Patron of the Program if the person—

(a) possesses a degree from a recognized university;
(b) demonstrate the capability to champion for rights for minority;
(c) has ability to mobilize resources;
(d) is a Kenyan citizen;
(e) satisfies the requirement of Chapter 6 of the Constitution.

(13) A person qualifies for appointment as a representative in Clause 7(2) (e) (f) (g) (h) & (i) if the person—

(a) possesses a minimum in diploma from a recognized institution
(b) is aged 18 years and above
(c) is a resident of the County
(d) satisfies the requirements of Chapter 6 of the Constitution
(e) proof of engagement in social issues

Functions of the Program

8. The functions of the Program shall be to ensure access to quality, safe and affordable reproductive health and family planning information and services and for the avoidance of doubt the program shall—

(a) ensure the availability of services that meet minimum quality standards;
(b) ensure human resources for reproductive health and family planning are competent, responsive, productive, available in adequate numbers and are equitably distributed;
(c) improve leadership and strengthen governance structures and functions to ensure county readiness;

(d) timely, relevant and quality data from health and relevant sectors and analyse the data into information for related decision making;

(e) secure equitable access to quality, safe and cost-effective family planning commodities, essential medical products, vaccines and technologies;

(f) undertake continuous research and adopt evidence based practices to influence decision making;

(g) strengthen the reproductive health and family planning advocacy framework to achieve better health outcomes for the broader community;

(h) perform any other function that may be conferred by this Act or any other written law; and

(i) continuous expand health infrastructure to remove access barriers to family planning.

Powers of the Program

9. The Program may—

(a) partner with public and private sector, Civil Society Organizations (CSOs), Faith Based Organizations (FBOs) and Non-governmental Organizations (NGOs) in the realization of the objects of this Act;

(b) receive or administer funds donated or entrusted to the Program by any agency or organization for any purpose relating to the objects of this Act;

(c) engage with key stakeholders to ensure the proper performance of its functions.

PART III—ADMINISTRATION OF THE MAKUENI COUNTY REPRODUCTIVE HEALTH AND FAMILY PLANNING PROGRAM

Role of the County Department of Health

10. (1) The County Government department of health shall serve as the lead agency for the implementation of this Act and shall integrate in their regular operations the following functions—

(a) fully and efficiently implement the program;

(b) ensure access to quality and affordable reproductive health and family planning information and services; and
(c) perform such other functions necessary to attain the purposes of this Act.

(2) The Department, shall ensure—

(a) comprehensive range of appropriate and inclusive services is provided to the needs of the public;
(b) services are directly and permanently accessible with no undue barriers to cost or culture;
(c) services are timely, effective, safe, people centred and of high quality;
(d) maintain a comprehensive human resource information system;
(e) train and integrate community health volunteers into the program;
(f) promote stakeholder and civic engagement and demand side accountability;
(g) ensure access to information within constitutional parameters;
(h) ensure continuous delivery of age appropriate education;
(i) raise and ring fence sufficient funds from internal and external sources for effective and efficient services;
(j) access to safe, quality and affordable essential medical products, vaccines and technologies;
(k) utilize digital platform to raise awareness on reproductive health and family planning;
(l) create a reproductive health and family planning repository for enhanced knowledge management;
(m) develop data driven reproductive health and family planning strategies linked to the county needs and priorities;
(n) integrate family planning and reproductive health within and without the county government; and
(o) perform any other function that may be conferred by this Act or any other written law.

(3) For purposes of this section “services” means “reproductive health and family planning information and services.”
Innovative strategies

11. (1) The Department shall—
   (a) establish youth friendly spaces as an effective strategy to provide young people with youth friendly Reproductive health and family planning information and services;
   (b) conduct tailor made on-the-job training to build the capacity of health care professionals;
   (c) develop an output based performance system;
   (d) safeguard family planning and reproductive health commodity security.

STI’s, HIV-Aids and Reproductive Health diseases

12. (1) The Department shall—
   (a) develop and disseminate information, education and communication material on reproductive health diseases;
   (b) utilize print, electronic, traditional and social media and mobile marketing platforms to create awareness on transmission prevention and control of STI’s, HIV-Aids and Reproductive Health diseases; and
   (c) strengthen peer to peer awareness mechanisms.

Unique needs of youth and adolescents

13. (1) The Department shall—
   (a) strengthen the capacity of health care professionals to provide adolescent and youth friendly services;
   (b) create avenues to engage the youth in family planning and reproductive health.

Mentorship

14. The Department shall develop a mentorship framework and mainstream it in school health programmes and adolescent and youth interventions.

Counselling Services

15. The Department shall integrate counselling services in reproductive health and family planning.

Menstrual Hygiene Management

16. The Department shall —
(a) supplement provision of commodities for menstrual hygiene management;

(b) create awareness and educate the public on proper menstrual hygiene management; and

(c) provide facilities for the disposal of menstrual hygiene waste.

Male Involvement

17. The Department shall promote male involvement in reproductive health and family planning and shall—

(a) establish safe spaces for men as an effective strategy to increase male involvement in reproductive health and family planning;

(b) design and undertake outreach activities to increase male involvement;

(c) sensitize and educate the public on male involvement;

(d) develop and disseminate content on male involvement.

PART IV—ACCESS TO REPRODUCTIVE HEALTH AND FAMILY PLANNING SERVICES

Eligibility

18. (1) Every person who is of reproductive age should have access to reproductive health and family planning education; and every adult person regardless of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, disability, religion, conscience, belief, culture, dress, language, birth or ability to pay is eligible to access reproductive health and family planning services.

(2) The Department shall make available reproductive health and family planning services, including contraceptive options, counselling, information and education.

(3) The Department shall employ the Medical eligibility criteria for contraceptive use to guarantee the safety of each contraceptive method.

Right to Information

19. Every health care professional prescribing a contraceptive method shall provide information to the person to whom the prescription is being given as to its advantages and disadvantages and ensure informed consent.
PART V—THE IMPLEMENTATION OF AGE APPROPRIATE
REPRODUCTIVE HEALTH EDUCATION AND PUBLIC
AWARENESS

Education and implementation of age appropriate reproductive
health education

20. (1) The Department shall—

(a) ensure the institutionalization of the Life Skills Curriculum or its
equivalent.

(b) strengthen the capacity of the school health program.

(c) provide continuous education for the actors

The Role of the County Department of Education

21. The Department of Education in the County shall lead in the
Institutionalization of the Life Skills curriculum.

PART VI—REPRODUCTIVE HEALTH AND FAMILY PLANNING
PROGRAMS FOR PERSONS WITH DISABILITIES

Abolition of barriers to Reproductive Health and Family Planning
Programmes for Persons with Disabilities

22. The Department shall abolish barriers to reproductive health and
family planning services for persons with disabilities by—

(a) providing physical access, and resolving transportation and
proximity issues to clinics, hospitals and places where
public health education is provided, contraceptives are sold or
distributed or other places where reproductive health services
are provide

(b) adapting examination tables and other laboratory procedures to
the needs and conditions of persons with disabilities;

(c) increasing access to information and communication materials
on reproductive health and family planning in braille, large
print, simple language, sign language and pictures;

(d) providing continuing education and inclusion of rights of persons
with disabilities among health care providers; and

(e) undertaking activities to raise awareness and address
misconceptions among the general public on the stigma and their
lack of knowledge on reproductive health and family planning
needs and rights of persons with disabilities.
Prohibition of any form of discrimination

23. (1) A person shall not, in offering services or assistance, where reproductive health or family planning matters are concerned, discriminate, in any form or manner, against any person with disability.

PART VII—FINANCIAL PROVISIONS

Source of Funds

24. (1) The funds of the Program shall consist of——

(a) monies appropriated by the County Assembly for the Department for purposes of the Program;

(b) grants from National Government;

(c) any other grants, gifts, donations or other endowments given to the Program; and

(d) such funds as may vest in or accrue to the Program in the performance of its functions under this Act or any other written law.

(2) The County Government shall ensure that it reserves one and a half percent of the annual budget of the Department for the program.

(3) The functions of the Program shall be financed through a vote in the estimates of revenue and expenditure of the Department.

(4) The funds of the program shall be utilized for the Realization of the objects of this Act.

Resource Mobilization strategy

25. (1) The Executive Member in consultation with the Steering committee and other relevant stakeholders shall, within six months of the Act coming into force, develop a resource mobilization strategy to identify sources of support, material or financial, to facilitate the realization of the objects of this Act.

(2) The strategy in sub-section (1) shall be reviewed after every Financial Year.

Reporting

26. (1) Before the end of each financial year, the Department shall submit to the Governor an annual consolidated report, which shall provide a definitive and comprehensive assessment of the implementation of the Program.
(2) The report referred to in sub section (1) shall recommend priorities for executive and legislative actions.

(3) The annual report shall evaluate the content, implementation, and impact of all policies related to reproductive health and family planning to ensure that such policies promote, protect and fulfill reproductive health rights and the freedom to choose

(4) The department shall submit Quarterly Financial Reports to the County Assembly.

**PART VIII—MISCELLANEOUS PROVISIONS**

**Confidentiality**

27. A person who possesses information by virtue of this Act shall not divulge such information to any person unless as provided for under this Act.

**Protection from liability**

28. (1) No matter or thing done by any employee or agent of the Department or any community health volunteer, shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Program under this Act, render the employee or agent of the Department or any community health volunteer personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the employee or agent of the Department or any community health volunteer of the liability to pay compensation or damages to any person for any injury to them, their property or any of their interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

**Monitoring, Evaluation, Assessment and Learning Framework**

29. (1) The Executive Member shall within six months of the Act coming into force develop a monitoring, evaluation, assessment and learning framework for the program

(2) The framework in sub-section (1) shall be reviewed after every three years.

**Prohibited Acts**

30. (1) Any health care professional, whether public or private, who—

(a) knowingly withholds information, restricts the dissemination thereof;
(b) intentionally provides incorrect information regarding programs and services on reproductive health, including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods;

Consects

31. For purposes of this Act consent includes—

(a) spousal consent in case of married persons: provided that, in case of disagreement, the decision of the one undergoing the procedure shall prevail; and

(b) parental consent or that of the person exercising parental authority in the case of abused minors,

(c) In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures

(d) In the case of persons with mental or psychosocial disabilities, the written consent of the personal exercising authority or next of kin shall be required for emergency and elective procedures.

Redress

32. (1) If any user of the Program thinks he or she has been wronged in any way by any employee or agent of the County Government or any community health volunteer, he or she may complain in writing to the Executive Member and seek redress for the wrong.

(2) The executive member shall, on receiving a complaint under subsection (1), form an Ad-hoc committee to look into the complaints registered and give proposals on how the issue(s) is/are to be addressed.

(3) This section shall be implemented within the parameters of fair administrative action.

Regulations

33. (1) The Executive Member may, make such regulations as are necessary or expedient to give full effect to or for the carrying out of the provisions of this Act including—

(a) the employment of Medical eligibility criteria for contraceptive use;

(b) access to information;

(c) stakeholder engagement;
(d) resource Mobilization;
(e) mentoring strategies;
(f) monitoring, Evaluation and learning framework;
(g) grant of consents;
(h) exercising Redress;
(i) any other matter necessary for the implementation of this Act.