

SPECIAL ISSUE

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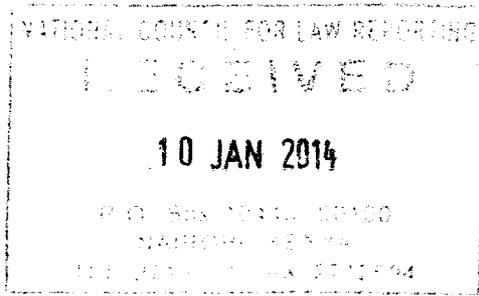
SENATE BILLS, 2013

NAIROBI, 28th October, 2013

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**THE KENYA MEDICAL SUPPLIES AUTHORITY
(AMENDMENT) BILL, 2013**

A Bill for

**An Act of Parliament to amend the Kenya Medical
Supplies Authority Act, 2013.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Medical Supplies Authority (Amendment) Act, 2013.

Short title

2. The long title of the Kenya Medical Supplies Authority Act, 2013, in this Act referred to as the “principal act”, is amended by inserting the words “as an authority serving both the national government and the county governments” immediately after the words “Kenya Medical Supplies Authority”.

Amendment of
the long title of
No. 20 of 2013

3. The principal Act is amended in section 2 by inserting the following new definitions in proper alphabetical sequence—

Amendment of
section 2 of No.
20 of 2013.

(a) “Council” means the Council of County Governors established under of section 19 of the Intergovernmental Relations Act;

No. 2 of 2012

(b) “County governments” means the county governments established under Article 176(1) of the Constitution.

(c) “essential medicines and medical supplies” means the medicines and supplies that satisfy the priority health care needs of the people as may be prescribed by the Authority;

4. Section 4 of the principal Act is amended in subsection (10)—

Amendment of
section 4 of No.
20 of 2013

(a) by inserting the following new paragraph immediately after paragraph (a)—

(aa) in consultation with the Council, procure, warehouse and distribute essential medicines and medical supplies to the county governments;

- (b) by deleting paragraph (c);
- (c) by deleting paragraph (e) and substituting therefor the following new paragraph—
- (e) support county governments to establish drawing rights and maintain appropriate supply chain systems for drugs and medical supplies;

Amendment of
section 4 of No.
20 of 2013

5. The principal Act is amended by inserting the following new section immediately after section 4—

Agreement between the
national and the county
governments

No. 2 of 2012

4A(1). Subject to Article 186 of the Constitution and sections 24 and 25 of the Intergovernmental Relations Act, the national government and the county governments shall enter into an intergovernmental agreement under which the county governments may-

- (a) transfer any functions that fall under the jurisdiction of the county governments to the Authority, as may be agreed;
- (b) delegate the exercise or performance of agreed powers, functions or competencies ordinarily residing in county governments to the Authority, as may be deemed appropriate.

(2) In reaching agreements for the transfer or delegation of functions or powers under sub-section (1), the national government and the county governments shall ensure that-

- (a) adequate resources are provided to carry out the transferred or delegated power, function or competency;

- (b) the transfer is in accordance with the procedures set out under the Intergovernmental Relations Act or the Regulations prescribed thereunder;
- (c) a transfer or delegation under this section does not transfer constitutional responsibilities assigned to county governments.

6. Section 5 of the principal Act is amended in sub-section (1)—

Amendment of section 4 of No. 20 of 2013

(d) by inserting the following new paragraph immediately after paragraph (e)—

(ee) two persons, of whom one shall be a woman, competitively recruited by the Council and appointed by the Cabinet Secretary;

7. Section 21 of the principal Act is amended—

Amendment of section 21 of No. 20 of 2013

(a) by deleting sub-section (1) and substituting therefor the following new sub-section—

(1) The Cabinet Secretary may, on the recommendation of the Authority and after due consultations with the Council of County Governors, make Regulations for the better carrying out of the objects of the Act.

(b) in sub-section (2) by inserting the words “and payment for” immediately after the words “requisition of” appearing paragraph (c).

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The object of this Bill is to amend the Kenya Medical Supplies Authority Act, No.20 of 2013, so as to make some necessary changes needed to bring the Act in tandem with the functions of the devolved governments established under Article 176 of the Constitution.

Clause 2 of the Bill proposes to amend the long title to the Act to provide that the Kenya Medical Supplies Authority shall serve both the national government and the county governments.

Clause 4 of the Bill proposes to amend section 4 of the Act so as to enable the Authority, in consultation with the Council of County Governors, to procure, warehouse and distribute essential medicines and medical supplies for the county governments.

Clause 5 of the Bill proposes to insert a new section 4A in the Act that provides for agreements to transfer some of the functions of the county governments to the national government, in accordance with Article 186 of the Constitution and sections 24 and 25 of the Intergovernmental Relations Act, No. 2 of 2012.

Clause 6 of the Bill proposes to amend section 5 of the Act in order to expand the membership of the Board of Directors of the Authority by including two members recruited by the Council and appointed by the Cabinet Secretary.

Clause 7 of the Bill proposes to amend section 21 of the Act to provide that the Council must be consulted before the Cabinet Secretary makes any Regulations under the Act.

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

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

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution in that the proposed agreements for the transfer of functions under Article 186 of the Constitution affect the functions and powers of the county governments.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 24th day of September, 2013.

KITHURE KINDIKI,
Senator.

The long title to No. 20 of 2013 which it is proposed to amend—

AN ACT of Parliament to make provisions for the establishment of the Kenya Medical Supplies Authority and for connected purposes

Section 2 of No. 20 of 2013 which it is proposed to amend—

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

Interpretation.

“Authority” means Kenya Medical Supplies Authority as established under section 3;

“Board” means the Board of Directors established under section 5;

“Cabinet Secretary” means the cabinet secretary for the time being responsible for matters relating to medical supplies;

“director” means a director of the Board appointed under section 5;

“drugs” has meaning assigned to it in the Pharmacy and Poisons Act;

Cap. 244

“medical supplies” refers to and includes products or materials used in the delivery of health care services to namely pharmaceuticals, non pharmaceuticals, nutraceuticals, vaccines and therapeutic antisera, medical equipment and devices, medical appliances and materials, health technologies, laboratory supplies and reagents, dental materials, hospital consumables, and any other material or equipment as may be necessary for the delivery of health care services in Kenya;

“strategic reserve stock” means at least six months stocks of a list of prescribed medical supplies to be identified and updated as and when required by the Cabinet Secretary in consultation with the Authority.

Section 4 of No. 20 of 2013 which it is proposed to amend—

4. (1) The functions of the Authority shall be to—

Functions of the Authority.

(a) procure, warehouse and distribute drugs and medical supplies for prescribed public health

programmes, the national strategic stock reserve, prescribed essential health packages and national referral hospitals;

- (b) establish a network of storage, packaging and distribution facilities for the provision of drugs and medical supplies to health institutions;
- (c) enter into partnership with or establish frameworks with county Governments for purposes of providing services in procurement, warehousing, distribution of drugs and medical supplies;
- (d) collect information and provide regular reports to the national and county governments on the status and cost-effectiveness of procurement, the distribution and value of prescribed essential medical supplies delivered to health facilities, stock status and on any other aspects of supply system status and performance which may be required by stakeholders;
- (e) support county governments to establish and maintain appropriate supply chain systems for drugs and medical supplies.

(2) The Cabinet Secretary shall, in consultation with the Authority and the appropriate county government organs, determine the requirement of drugs and medical supplies in public health facilities.

Section 5 of No. 20 of 2013 which it is proposed to amend—

Board of
Directors.

5. (1) The management of the Authority shall vest in a Board of Directors which shall comprise of—

- (a) a non-executive chairperson appointed in accordance with subsection (2);
- (b) the Principal Secretary of the ministry for the time being responsible for health or a representative designated in writing by the Principal Secretary;
- (c) the Principal Secretary, of the ministry for the time being responsible for finance or a representative designated in writing by the Principal Secretary;

- d) the Principal Secretary for the time being responsible for matters related to devolved government or a representative designated in writing by the Principal Secretary;
 - (e) four other persons appointed in accordance with subsection (3);
 - (f) the chief executive officer of the Authority who shall be an ex-officio member.
- (2) The chairperson shall be competitively recruited and appointed by the President from amongst persons who—
- (a) have at least a university degree in a relevant discipline;
 - (b) have at least fifteen years experience in matters relating to healthcare or business management;
 - (c) satisfy the requirements of Chapter Six of the Constitution.
- (3) The persons referred to in subsection (1)(e) shall be competitively recruited and appointed by the Cabinet Secretary from amongst persons who—
- (a) have at least a university degree in a relevant discipline;
 - (b) have at least ten years experience in management or in the health sector; and
 - (c) satisfy the requirements of chapter six of the Constitution.
- (4) In making the recruitment and appointment under subsection (3), the Cabinet Secretary shall ensure that the appointments fulfill the requirements of the gender and regional balance as enshrined in the Constitution and that at least one person is appointed from each of the following categories—
- (a) a procurement or supply chain management specialist;
 - (b) a pharmacist experienced in drug and medical supplies management; and
 - (c) one person with knowledge and experience in finance or commerce.

(5) The chairperson and the directors appointed under subsection (1) (e) shall, serve for a term of three years, and shall be eligible for re-appointment for one further term of three years.

(6) The procedure for the conduct of business and affairs of the Board shall be as set out in the Schedule.

Section 21 of No. 20 of 2013 which it is proposed to amend—

Regulations

21. (1) The Cabinet Secretary may, on recommendation of the Authority, make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may-

- (a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
- (b) provide manner of operationalisation of any subsidiary or commercial service of the Authority;
- (c) provide for the manner in which the Authority may facilitate counties in adopting appropriate systems for requisition of drugs and medical supplies from the Authority to their health facilities;
- (d) provide for the manner of determination of drugs and medical supplies needs for the national and county governments;
- (e) provide for the manner in which the Authority shall collect and disseminate data on drugs and medical supplies consumption;
- (f) provide for the composition and quantities of the drugs and medical supplies to be stored in the national strategic reserve and the manner of utilizing the reserve.