

SPECIAL ISSUE

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REPUBLIC OF KENYA

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ELGEYO/MARAKWET COUNTY BILLS, 2020

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MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide for the establishment of Health Services Improvement Fund, to promote prudent utilization and management of resources in health facilities and promote public participation in the management of the health facilities in the County.

The Bill also seeks to promote partnership in the provision and delivery of health and pharmaceutical services in the County; to mobilize resources for the delivery of services; to establish a fund in the health facilities in the county to facilitate the acquisition of medicines, pharmaceuticals and diagnostics; and to ensure reliable and cost effective access to important medicines.

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

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

Statement of how the Bill concerns County Government

The Bill concerns County government.

Statement that the Bill is not 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 15th September, 2020.

SHADRACK LULLEY,
Chairperson, Committee on Health and Sanitation Services.

THE ELGEYO/MARAKWET COUNTY HEALTH FACILITIES IMPROVEMENT FUND BILL, 2020

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**THE ELGEYO/MARAKWET COUNTY HEALTH FACILITIES
IMPROVEMENT FUND BILL, 2020**

AN ACT for the Elgeyo/Marakwet County Assembly to provide for the establishment of the County Health Facilities Improvement Fund, establish the necessary institutional and regulatory mechanisms and for connected purposes.

ENACTED by the Elgeyo/Marakwet County Assembly, as follows—

PART 1— PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Elgeyo/Marakwet County Health Facilities Improvement Fund Act, 2020.

Interpretation

2. This Act, unless otherwise requires —

“Board” means County Health Advisory Board established pursuant to this Bill; established pursuant to this Bill;

“community-based health services” means health-care services that can be provided to people in their communities and includes health education, health promotion, disease prevention, mental-health services, emergency health services, addiction services, public-health services, home care, long-term care, rehabilitation services, palliative-care services and treatment for illness and injury in relation to primary care;

“Executive Member” means the County Executive Committee Member responsible for matters relating to health;

“Chief Officer” means the Chief Officer responsible for matters relating to health;

“exemption” means an automatic excuse from payment based on the patient meeting a certain criteria set down in regulations by the Executive Member;

“Fund” means Facility Improvement Fund established pursuant to this Bill;

“Facility improvement funds” means the meaning as provided in section 3;

“Health Facility” includes a County Referral, sub-county hospitals, health centres and dispensaries that collects revenue for purposes of this Act;

PART V—MISCELLANEOUS PROVISIONS

Guiding Principles

23. (1) The expenditure incurred by a hospital on the services shall be on the basis of, and limited to, the annual allocation or grants and authority to incur expenditure.

(2) The receipts, earnings, accruals and the balance of the services at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained by the respective hospital for the purpose for which the service is established.

Administrative Regulations

24. In the performance of its functions under this Act, the Executive Member may, in consultation with the Executive Member for Finance, make regulations generally for the governance, control and administration of the Fund and in particular for—

- (a) the criteria for granting exemptions and waivers; and
- (b) the criteria for gazetting hospitals that are receiving monies from the Fund.

Transition and Saving Provisions

25. (1) All members of the Hospital management boards serving before the enactment of this Act shall continue to serve for a further 3 months or until the appointment of the Hospital Management Boards as prescribed by the Executive Member.

(2) Legal Notice No. 155 of 16th October, 2009 ceases to apply with respect to hospital management boards, in so far as the composition and membership however all guidelines as to conduct of meetings and format of records shall be utilised until such time that the Executive Member can formulate the Regulations.

- (b) payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds;
- (c) the maintenance of the buildings and grounds of the Fund;
- (d) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and
- (e) any other expenditure necessary or required for the purposes of this Bill.

The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and forwarded to the Executive Committee Member for tabling before the relevant County Assembly Committee.

Accounts and Audit

20. (1) The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the County Head of Audit and the Auditor-General the accounts of the Fund in respect of that year together with—

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

The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

Annual Reports

21. The Board shall, within three months after the end of each financial year, prepare and submit to the Executive Member a report for the immediate preceding year.

Winding up of the Fund

22. In the event of winding up of the Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the Department for the time being responsible for medical services.

“Hospital Management Boards” means the administrative arm that manage hospitals;

“Revenue collection point” means a service delivery unit that collects user fees for services offered;

“Waiver” means a release from payment meeting a certain criteria set down in regulations by the Executive Member.

PART II—ESTABLISHMENT OF THE COUNTY FUND

Establishment of County Health Facility Improvement Fund

3. (1) There shall be established a fund to be known as the Elgeyo/Marakwet County Health Facilities Improvement Fund.

(2) There shall be paid into the Fund —

- (a) such monies as appropriated by the County Treasury;
- (b) grants, gifts, donations or other endowments given to the Fund;
- (c) monies received as user charges as may be payable under this Act;
- (d) all other sums which may in any manner become payable to, or vested in the Fund.

There shall be paid out of the Fund—

- (a) all payments which are due as provided under this Bill;
- (b) the expenses incurred in the administration of the Fund; and
- (c) any other matter incidental to the matters stated in paragraphs (a) and (b).

(4) The receipts, earnings or accruals of the Fund 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 of the Fund.

(5) The County department of Health shall ensure that the Fund has adequate human resource to enable it carry out the functions assigned under this Bill.

Objects of the Fund

4. (1) The Objects and purpose of the Fund are—

- (a) to provide financial resources for medical supplies and small scale equipping of health facilities in the county for basic operation and maintenance;

- (b) to give decision making autonomy to health facilities to plan and manage the resources within their control;
- (c) to support capacity building in the management of hospitals; and
- (d) to improve the quality of health care services in the hospitals.

Administration of the Fund

5. (1) The Fund shall be administered by the Chief Officer responsible for matters relating to Health.

- (2) The Officer Administering the Fund shall—
 - (a) supervise and control the administration of the Fund;
 - (b) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning use of expenditure;
 - (c) issue authority to incur expenditure to authorized officers on a timely basis;
 - (d) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
 - (e) prepare, sign and transmit to the County Head of Audit and Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Bill, 2003 and in such details as the county treasury may from time to time direct;
 - (f) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and
 - (g) designate such staff as may be necessary to assist in the management of the Fund.

Cost sharing of revenue

6. (1) Revenue collected shall be shared equitably and used to improve the quality of health services in the health facilities and also support community based health services.

(2) The Executive Committee Member shall prescribe guidelines on the expenditure of cost sharing revenue.

- (d) ensure compliance with financial planning cycle;
- (e) ensure mitigation against financial risk; and
- (f) ensure internal and external audits are conducted as required under the Fund.

PART IV—FINANCIAL PROVISIONS

Opening and operating bank accounts

- 17.** (1) Each hospital shall operate a bank account in its own name.
- (2) There shall be three mandatory signatories to the bank account—
- (a) the Fund Administrator;
 - (b) the Chief Officer; and
 - (c) the Facility in charge.
- (3) The Hospital accountant shall obtain bank statements on a monthly basis and prepare bank reconciliation statements.
- (4) The Hospital Management Boards shall review and approve monthly bank reconciliation statements that will be presented to the Board.
- (5) The Hospital Management Boards shall ensure that basic books of accounts and financial records of the are maintained by ensuring that—
- (a) the Hospital’s financial management system is up to date and conforms to the required accounting standards; and
 - (b) the financial management system has the capacity to capture useful information and produce required reports for monitoring and management decision making.
- (6) The Hospital Management Boards shall ensure that certified financial reports are prepared and submitted.

Financial Year

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

Annual Estimates

19. (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 Fund for that financial year. The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year concerned and in particular, shall provide for the—

- (a) payment of the salaries, allowances and other charges in respect of the Board members, staff or agents of the Fund;

Functions of the Hospital Management Boards

15. In relation to the Fund, the Hospital Management Boards shall—
- (a) approve budgets, programmes and plans of the health facilities;
 - (b) prepare the fund’s annual budget and plan to be adopted by the Board;
 - (c) formulate strategies on resource mobilisation by health facilities management committees;
 - (d) resolve any conflicts that arise amongst health facilities whose nature is the allocation of resources, membership of the committees or joint programmes;
 - (e) inspect health facilities, prepare reports and forward to the Management Committee for *gazettement*;
 - (f) identify implementation challenges and seek corrective actions;
 - (g) make policy recommendations on cost sharing, public awareness on health and administration of the fund through the chairman to the Management Committee; and
 - (h) determine such number of standing committees and composition of *ad hoc* committees.

Principles of Financial Management for Hospital Management Boards

16. (1) In financial management, the Hospital Management Boards shall—
- (a) review the proposed budgets to ensure they are linked to the priorities as outlined in the Quarterly Implementation Plans and Annual Work Plan;
 - (b) ensure the proposed budgets are based on the available resources;
 - (c) approve the proposed budgets after review; and
 - (d) forward the approved budgets to the Executive Member for approval and submission to the Board.
- (2) In supervising and controlling the administration of all funds, the Hospital Management Boards shall—
- (a) ascertain the available funds and their sources;
 - (b) guide the Hospital on user fees, unit costs, exemptions and waivers, as prescribed by the Executive Member;
 - (c) ensure accounting procedures conform to the Fund regulations and the County Government Financial Management Guidelines;

Procedures of expenditure of the Fund

7. (1) Facilities shall have annual budget, procurement implementation and procurement plan approved by the County Health Management Team or Health facility management committees or Boards before adoption by the County Health Management Team.
- (2) Monthly reports shall be prepared on the resources raised.
 - (3) Quarterly reports shall be prepared and submitted to the respective health facility management committees for approval.
 - (4) The spending of the funds shall be accompanied by an AIE.
 - (5) The funds shall be disbursed to the health facilities not more than fourteen days after appropriate documentation has been submitted to the county treasury.
 - (6) All the spending units shall prepare monthly, quarterly and annual financial reports in a prescribed format to the Board.

PART III—ADMINISTRATIVE PROVISIONS**Establishment of the Board**

8. (1) Establishment of the Elgeyo/Marakwet County Health Facilities Improvement Fund Board.
- (2) There shall be established a Board for the Elgeyo/Marakwet County Health Facilities Improvement Fund.
 - (3) The Fund shall be administered by the Board and the Hospital Management Boards according to such rules and guidelines as prescribed hereunder.

Membership of the Board

9. (1) The Board shall comprise of no more than seven members as follows—
- (a) a chairperson appointed by the Governor;
 - (b) the Chief Officer;
 - (c) the Fund Administrator appointed by the County Treasury;
 - (d) the County Director of Medical Services, who shall be the secretary to the Board; and
 - (e) 3 other persons who shall be appointed by the Executive Member fulfilling such criteria and drawn from such membership as provided in section 10.

Qualification for Membership

10. (1) The appointment of the chairperson under section (9) (1) (a) and members under sub-section (e) shall be subject to such persons—

- (a) satisfying the requirements of Chapter Six of the Constitution; and
- (b) holding a minimum of a bachelors degree from a university recognized in Kenya; or
- (c) on account of their training or experience.

(2) The members of the Board to be appointed under section 9(1)(e) shall be drawn from associations representing non-governmental organizations, professional associations and business drawn from the healthcare sector taking into account gender, disability and youth.

Term of Office

11. The chairperson and members of the Committee appointed under section (10) (1) (a) and (f) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

Termination of Membership

12. A member shall vacate his/her position as a member of the Management Committee if he/she—

- (a) is absent from three (3) consecutive meetings of the committee;
- (b) violates Chapter 6 of the Constitution;
- (c) ceases to be a resident of Elgeyo/Marakwet County or Sub-County or work in the area of Hospital Jurisdiction;
- (d) voluntarily resigns from committee; and
- (e) dies.

Functions of the Board

13. (1) The Board shall—

- (a) provide oversight of the administration of the moneys drawn from the Fund;
- (b) mobilize resources for the Fund;
- (c) provide guidance to the management boards on—
 - (i) proposals on user fees where the management board seeks to propose new user fees or changes to the old fees structure;

- (ii) disciplinary matters including but not limited to theft of funds, spending of revenue at source, spending without proper authorization, fraud, abuse of powers of exemptions and waivers;
- (iii) monitor the performance of the hospital management boards.
- (d) receive reports from the management boards for its consideration and adoption; and
- (e) develop criteria for the granting of waivers and exemptions.

Responsibilities of the Board

14. In administering the Fund, the Board shall have the following responsibilities—

- (a) prepare, sign and transmit to the County Auditor in respect of each financial year and within three months after the end thereof, a statement of account relating to the Fund specifying all contributions to the Fund and the expenditure incurred from the Fund, and such details as the County Treasury may from time to time direct, in accordance with the provisions of the Public Audit Act;
- (b) furnish such additional information as may be required that is proper and sufficient for the purpose of examination and audit by the County Auditor in accordance with the provisions of the Public Audit Act;
- (c) develop the criteria for the allocation of funds for approval;
- (d) prepare annual distribution of resources by health facilities;
- (e) impose conditions on the use of expenditure authorized and may impose any reasonable prohibition, restriction or other requirement concerning such use of expenditure;
- (f) institute prudent measures for the proper utilization for monies deposited in the Fund using suitable internal controls and appropriate mechanism for accountability including audit of accounts by internal auditors of the department responsible for matters relating to finance;
- (g) cause to be kept proper books of accounts and records relating to all receipts, payments, assets and liabilities of the Fund and to any other activities and undertakings financed by the Fund.