

THE ELGEYO/MARAKWET COUNTY HEALTH FACILITIES

IMPROVEMENT FUND ACT, 2022

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# THE ELGEYO/MARAKWET COUNTY HEALTH FACILITIES

## IMPROVEMENT FUND ACT, 2022

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;

“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;

“County Hospital Management Board” means the management arm that supervises the Facility Improvement Fund.

“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, **Sub County Public Health Centers**, health centers and dispensaries that collect revenue for purposes of this Act;

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

“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

### **Objects of the Fund**

3. (1) The Objects and purpose of the Fund are—
  - (a) To provide financial resources for medical supplies, infrastructural improvement of health facilities and 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 health facilities; and
  - (d) to improve the quality of health care services in the health facilities.

### **Establishment of County Health Facility Improvement Fund**

4. (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) Funds received as reimbursement from NHIF or any other insurance source;
  - (e) 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 Executive Member of Health shall ensure that the Fund has adequate human resource to enable it carry out the functions assigned under this Bill.

### **County Revenue Fund**

5. All monies due to the fund shall be;
- (a) Received and paid to the fund in full and shall be collected and accounted for through the established accounting system;
  - (b) Reimbursed to the department for purposes of defraying its expenses;
  - (c) Received and accounted for as appropriation in aid

### **Administration of the Fund**

6. (1) The County Executive Committee Member responsible for Finance shall, in accordance with section 116(2) of the Public Finance Act, 2012, designate the Fund Administrator.
- (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;
- (g) designate such staff as may be necessary to assist in the management of the Fund; and
- (h) ensure compliance with the provisions of Public Finance Management Act.

#### **Cost sharing revenue**

- 7. (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 regulations on the cost sharing programme and also on the expenditure of cost sharing revenue.

#### **Procedures of expenditure of the Fund**

- 8. (1) Each Health Facility shall have annual budget, procurement implementation and procurement plan approved by the County Health Management Board.
- (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**

- 9. (1) There is established a Board known as Elgeyo Marakwet County Health Management Board.
- (2) The Fund Shall be managed by the Board as prescribed under this Act.

#### **Membership of the Board**

- 10. (1) The Board shall comprise of no more than eight members as follows-

- (i) A non-executive chairperson appointed by the Governor;
- (ii) The Chief Officer Finance;
- (iii) The Fund Administrator;
- (iv) The Director of Health who shall be the secretary and ex-officio Member to the Board;  
and
- (v) Four other persons: -
- (vi) One person representing faith based organizations nominated by a joint forum in the county;
- (2) One person representing non-governmental organization providing health services in the county nominated by a joint forum of the non-governmental organization in the county;
- (3) One person representing health professional bodies in the county nominated by the joint forum of the body in the county; and
- (4) One person representing persons living with disabilities nominated by a joint forum of organization of the persons with disabilities in the county;

Provided that such persons fulfil such criteria as provided in section 11 of this Act.

### **Qualification for Membership**

11. (1) The appointment of the chairperson under section (10) (1) (i) and members under sub-section (v) shall be subject to such persons—
- (a) satisfying the requirements of Chapter Six of the Constitution;
  - (b) holding a minimum of a Bachelor's degree from a university recognized in Kenya; or
  - (c) have at least five years' experience in matters relating to public management, leadership or administration.

### **Term of Office**

12. The chairperson and members of the Board appointed under section (10) (1) (i) and (v) shall hold office for a term of three years and shall be eligible for reappointment for one further term.

## **Termination of Membership**

13. A member shall vacate his/her position as a member of the Management Board if he/she-
- (a) Is absent from four (4) consecutive meetings of the Board without the permission from the Chairperson;
  - (b) violates Chapter 6 of the Constitution;
  - (c) voluntarily resigns from Board;
  - (d) dies;
  - (e) is removed or retired from office by the County Executive Member for-
    - (i) serious violation of the Constitution;
    - (ii) Gross misconduct;
    - (iii) Physical or mental incapacity to perform functions of the office;
    - (iv) Incompetence;
    - (v) Bankruptcy.

## **Functions of the Board**

14. (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 and committees 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**

15. 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) impose conditions on the use of expenditure authorized and may impose any reasonable prohibition, restriction or other requirement concerning such use of expenditure;
  - (d) 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;
  - (e) 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.
- Functions of the Hospital Management Boards

### **Board of Hospital**

16. (1) A county and a sub-county hospital shall be governed by a Management Board appointed by the Executive Member comprising—
- (a) a non-executive chairperson;
  - (b) the Medical Superintendent of the hospital who shall be an **ex-officio member** and the secretary;
  - (c) one officer of the department designated by the Executive Member from among members of the county health management team or sub county health management team;
  - (d) one person representing faith-based organizations nominated by a joint forum of the organizations in the county or sub county;

- (e) one person representing nongovernmental organizations providing health services in the county or sub county nominated by a joint forum of non-governmental organizations in the county or sub county;
- (f) one person representing persons with disabilities nominated by the joint forum of organizations of persons with disabilities in the county or sub county;
- (g) one person nominated by the joint forum of health professional bodies in the county or sub county, from amongst their members who are not public officers;
- (h) one person who has knowledge or experience in finance or accounting, and
- (i) one person nominated by organizations involved in provision of health services for women in the county or sub county

(2) In appointing the members under sub section 1 (a), (d), (e), (f), (g), (h) and (i) the Executive member shall ensure that there are equal opportunities for persons living with disabilities, persons from marginalized communities and that not more than two thirds of the members are of the same gender

(3) The Board may invite such other member of the county or sub-county hospital management team to attend its meeting as the Board may deem appropriate

(4) A person shall not be eligible for appointment as a chairperson of a hospital unless the person—

(a) possesses a degree from a recognized university, and

(b) has at least five years' experience in management, leadership or administration

(5) A person shall not be eligible for appointment as a member under subsection (1) (d), (e), (f), (g), (h) and (i) unless the person —

(a) possesses at least a diploma from a recognized institution,

(b) has at least five years' experience in community health, development administration or management or accountancy and finance in the case of a person appointed under subsection (h), and (c)

(c) a resident of the county or sub county as the case may be

(6) The term of office of a member appointed under sub section (1) (a), (d), (e) (f), (g), (h) and (i) shall be three years which may be renewed for one further and final term

(7) The Secretary shall provide secretariat services to the Board Functions of the Board

### **Responsibilities of the Boards**

17. The Board shall be responsible for—

- (a) providing oversight over the administration of the hospital;
- (b) promoting the development of the hospital;
- (c) approving plans and programs for implementing county health strategies in the hospital;
- (d) approving estimates before submission to the Executive Member, and
- (e) carrying out any other function assigned by the Executive Member Committee of a Health Center or Dispensary.

### **Health Center Committees**

18. (1) A health Center or dispensary shall be governed by a committee appointed by the Executive Member, consisting of—

- (a) non-executive chairperson;
- (b) the officer in-charge of the facility, who shall be an ex-officio member and the secretary to the committee;
- (c) one person representing faith-based organizations or nongovernmental organizations providing health services in the ward nominated by the joint forum of the organizations, and
- (d) two persons nominated by local community members in accordance with the prescribed procedure

(2) A person shall not be eligible for appointment as a chairperson of a committee of a health center or a dispensary unless the person—

- (a) possesses at least a diploma from a recognized institution,
- (b) has at least three years' experience in management, leadership or administration, and (c) a resident in the ward

(3) A person shall not be eligible for appointment as a member under subsection (1) (c) and (d) unless the person—

(a) possesses at least a certificate from a recognized institution

(b) has at least three years' experience in community health, development administration or leadership, and

(c) a resident in the ward

(4) The term of office of a member appointed under sub section (1) (a), (c) and (d) shall be three years which may be renewed for one further and final term.

### **Responsibilities of the Committee**

19. The Committee shall be responsible for—

(a) health center or dispensary, providing oversight over the administration of the health center or dispensary;

(b) promoting the development of the health center or dispensary, (c) approving plans and programs for implementing county health strategies in the health center or dispensary;

(c) approving estimates before submission to the Executive Member, and

(d) carrying out any other function assigned by the Executive Member Conduct of business

### **Conduct of business**

20. (1) The conduct and regulation of the business and affairs of the board or a committee established under this Act shall be as set out in the First Schedule.

(2) Except as provided in the First Schedule, the Boards or the committees may regulate their own procedure Vacancy

### **Vacancy**

21. The office of a person appointed under section 16 and 17 shall become vacant if the holder—

(a) Dies;

(b) resigns from office in writing to the Executive Member, or

(c) is removed or retired from office by the Executive Member for-

- i) serious violation of the Constitution or any other written law including a contravention of Chapter Six,
- ii) gross misconduct, whether in the performance the functions of the office,
- iii) physical or mental incapacity to perform the functions of the office,
- iv) incompetence,
- v) being convicted and sentenced of a criminal offense for a period exceeding six months,
- vi) Bankruptcy

### **Allowances**

22. The chairperson and members of the Hospital Board or Health Centre/dispensaries shall be paid such allowances as shall be determined by Salaries and Remuneration Commission.

## **PART IV—FINANCIAL PROVISIONS**

### **Bank Accounts**

23. (1) Each hospital shall operate a bank account in its own name.
- (2) Each Hospital Board and Health Facility or Dispensary committee shall cause a bank account to be opened for funds to be disbursed to it under this Act.
  - (3) The account shall be opened and maintained at a commercial bank approved by the County Executive Committee Member in charge of finance.
  - (4) The signatory to the accounts opened in subsection (2) shall be-
    - (a) the Chairperson,
    - (b) officer in -charge or medical superintendent, as the case may be, and
    - (c) one other person appointed by the executive committee member responsible for finance
  - (5) The bank signing instructions shall be such that the
    - (a) signature of the person designated by County treasury in respect of the hospitals shall be mandatory,
    - (b) signature of the chairman of the dispensary or health center shall be mandatory
  - (6) The Hospital Management Boards shall review and approve monthly bank reconciliation statements that will be presented to the Board.

- (7) 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.
- (8) The Hospital Management Boards shall ensure that certified financial reports are prepared and submitted.

### **Financial Year**

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

### **Annual Estimates**

25. (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.
- (8) 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;
  - (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.
- (9) 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**

26. (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.
- (3) 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**

27. 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**

28. 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.

## **PART V—MISCELLANEOUS PROVISIONS**

### **Guiding Principles**

29. (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**

30. 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**

31. (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 utilized until such time that the Executive Member can formulate the Regulations.

## FIRST SCHEDULE

### PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARDS AND COMMITTEES

#### BOARD OR COMMITTEE MEETINGS

1. The Board or Committee 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 the provisions of paragraph 1, above the chairperson may, and upon requisition in writing by at least four members, shall convene a special meeting of the board at any time for the transaction of the business of the Board or Committee
3. Unless three quarters of the total members of the Board or Committee otherwise agree, at least fourteen days' written notice of the meeting of the Board shall be given to every member of the Board or Committee
4. The chairperson shall preside at every meeting of the Board or Committee at which he is present, but in his absence the members present shall elect one of their members to preside who shall with respect to that meeting and the business transacted, have all the powers of the chairperson
5. Unless a unanimous decision is reached, a decision on any matter before the Board or Committee shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote
6. Subject to paragraph 5, no proceedings of the Board or Committee shall be invalid by reason only of a vacancy among the members thereof.

#### CONFLICT OF INTEREST

7. If a member is directly or indirectly interested in an outcome of any decision of the Board or Committee or other matter before the Board or Committee and is present at a meeting of the Board or Committee at which the matter is the subject of consideration, that member shall, at the

meeting as soon practicable after the commencement thereof disclose the fact 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;

8. Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board or Committee may permit the member to participate in the deliberations subject to such restriction as it may impose but such member shall not have the right to vote on the matter in question

9. A member of the Board or Committee shall be considered to have a conflict of interest for the purpose of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Board or Committee

10. Where the Board or Committee becomes aware that a member has a conflict of interest in relation to any matter before the Board or Committee, the Board or Committee shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter

11. If the chairperson has conflict of interest, he shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the board in writing.

12. Upon the Board or Committee becoming aware of any conflict of interest it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Board or Committee and the member with the conflict of interest shall not vote on this determination

13. Where the board or committee determines that the conflict is likely to interfere with the member's proper and effective performance, the member shall resign unless the member has eliminated the conflict to the satisfaction of the Board or Committee within thirty days.

14. The Board or Committee shall report to the department any determination by the Board or Committee that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Board or committee

15. The Board or Committee shall prepare annual report which shall disclose details of all conflicts of interest and determinations during the covered by the report

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

17. A member of the Board or Committee who fails to declare conflict of interest where such is the case commits an offence and is guilty of misconduct