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**SENATE BILLS, 2018**

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**NAIROBI, 26th November, 2018**

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CONTENT

Bill for Introduction into the Senate—

PAGE

The Kenya Medical Supplies Authority (Amendment) Bill, 2018 ..... 727



**THE KENYA MEDICAL SUPPLIES AUTHORITY  
(AMENDMENT) BILL, 2018**

**A Bill for**

**AN ACT of Parliament to amend the Kenya Medical Supplies Authority Act, to provide for collaboration between the Kenya Medical Supplies Authority and County Governments; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Kenya Medical Supplies Authority (Amendment) Act, 2018.

Short title.

**2.** The long title of the Kenya Medical Supplies Authority Act, hereinafter 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.** Section 2 of the principal Act is amended—

Amendment of section 2 of No. 20 of 2013.

(a) by inserting the following new definition immediately after the definition of the word cabinet secretary —

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

No. 2 of 2012.

(b) in the definition of the word “medical supplies” by inserting the words “therapeutic feeds, nutritional formulations,” immediately after the words “hospital consumables”.

**4.** Section 4 of the principal Act is amended in subsection (1) by deleting paragraph (e) and substituting therefor the following new paragraph—

Amendment of section 4 of No. 20 of 2013.

(e) enter into partnership with county governments to establish drawing rights and maintain appropriate supply chain systems for drugs and medical supplies.

- 5.** Section 5 of the principal Act is amended in — Amendment of section 5 of No. 20 of 2013.
- (a) subsection (1) by deleting paragraph (e) and substituting therefor the following new paragraphs —
- (e) two persons competitively recruited and appointed by the Cabinet Secretary; and
- (ea) two persons, of the opposite gender, competitively recruited by the Council and appointed by the Cabinet Secretary;
- (b) subsection (3) by deleting the introductory clause and substituting therefor the following new clause —
- (3) The persons referred to under subsection (1) (e) and (ea) shall be competitively recruited and appointed from amongst persons who —
- (c) in subsection (5) by inserting the words “and (ea)” appearing immediately after the words “subsection (1) (e)”.
- 6.** Section 19 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) — Amendment of section 19 of No. 20 of 2013.
- (1A) Where procurement is carried out pursuant to an agreement with a county government under section 4 (1) (e), the Authority shall ensure that there is consultation and proper identification of the needs of the county government prior to such procurement.
- 7.** Section 21 of the principal Act is amended— Amendment of section 21 of No. 20 of 2013.
- (a) by deleting subsection (1) and substituting therefor the following new subsection —
- (1) The Cabinet Secretary may, on the recommendation of the Authority and upon consultation with the Council, make Regulations for the better carrying out of the objects of the Act.
- (b) in subsection (2) by inserting the words “and payment for” immediately after the words “requisition of” appearing in paragraph (c).

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The Bill seeks to align the Act with the Constitution. The fourth schedule of the Act assigns the National Government responsibility over health policy whereas the County governments are obligated to take responsibility over county health services. Further, the Health Act, 2017 assigns responsibility to the County Governments to procure medical supplies with respect to health facilities in counties. The Health Act further provides that Counties may refer to Kenya Medical Supplies Authority for their medical supplies procurement needs.

The object of this Bill is therefore to amend the Kenya Medical Supplies Authority Act, No. 20 of 2013, so as to ensure the Authority's functions are in tandem with the functions of the devolved governments established under Article 176 of the Constitution and section 67 of the Health Act, 2017 and provide a framework through which Kenya Medical Supplies Authority can collaborate with and work with county governments.

**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 to enter in to partnership with county governments, to establish drawing rights and maintain appropriate supply chain systems for drugs and medical supplies.

**Clause 5** of the Bill proposes to amend section 5 of the Act in order to include two members recruited by the Council and appointed by the Cabinet Secretary to the Board of Directors which would enable better collaboration between the Authority and the Council. The proposals seeks to have the voice of counties represented in the Board since the amount of business the counties are likely to generate for the Authority is high and therefore only fair for the counties to have a say in the Board of the Authority.

**Clause 6** of the Bill proposes to amend section 19 of the Act to provide further responsibility to the Authority to ensure that the Authority consults the county government prior to procuring drugs for the county governments.

**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**

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

**Statement of how the Bill concerns County Governments**

The Bill concerns provision of health services by the county governments in terms of Article 110 (1) (a) of the Constitution. Health Services are devolved under the Fourth Schedule of the Constitution.

**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 21st November, 2018.

MARY SENETA,  
*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. Interpretation**

In this Act, unless the context otherwise requires—

“**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, neutraceuticals, 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. Functions of the Authority**

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

- (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 —*

## **5. Board of Directors**

(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
- (d) for finance or a representative designated in writing by the Principal Secretary;
- (e) the Principal Secretary for the time being responsible for matters related to devolved government or a representative designated in writing by the Principal Secretary;
- (f) four other persons appointed in accordance with subsection (3);
- (g) 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 19 of No. 20 of 2013 which it is proposed to amend —*

### **19. Manner of discharge of functions**

(1) In discharging its functions under this Act the Authority shall put into place measures to ensure —

- (a) maximum efficiencies;
- (b) benefit from economies of scale;
- (c) efficacy, safety, quality and affordability of drugs and medical supplies procured;
- (d) a steady supply of drugs and medical supplies to public health facilities;

- (e) maintenance and sustenance of strategic reserves of essential medicines and medical supplies;
- (f) application of sound commercial principles in the procurement, storage and distribution of drugs and other medical supplies;
- (g) the carrying out of technical or laboratory analysis of drugs and medical supplies to determine their suitability for procurement, use, storage or disposal by the Authority so as to ensure their compliance with the standards set by the relevant law;
- (h) timely distribution of drugs and medical supplies to health facilities;
- (i) a feedback mechanism to its consumers;
- (j) an effective monitoring and evaluation mechanism; and
- (k) availability of information relating to its operations.

(2) The Authority may make available its facilities for use for educational purposes on such terms and conditions as the Board may consider necessary.

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

## **21. Regulations**

(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.