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**SENATE BILLS, 2019**

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**THE REPRODUCTIVE HEALTHCARE BILL, 2019**

**A Bill for**

**AN ACT of Parliament to provide for the right to reproductive health care; to set the standards of reproductive health; provide for the right to make decisions regarding reproductive health; and for connected purposes.**

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

**PART 1 – PRELIMINARY**

**1.** This Act may be cited as the Reproductive Healthcare Act, 2019.

Short title.

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

Interpretation.

“adolescent” means any person aged between ten and eighteen years;

“adolescent-friendly reproductive health services” means reproductive healthcare services that age and development appropriate and are accessible;

“antenatal care” includes the correct diagnosis of pregnancy, followed by periodic examinations, screening and management of complications during pregnancy;

“authorized facility” means a facility authorized by the Medical Practitioners and Dentists Board for the purposes of this Act;

Cap 253.

“assisted reproduction” means a technique that is used to attempt to obtain a pregnancy by handling or manipulating the sperm or the oocyte outside the human body, and transferring the gamete or the embryo into the reproductive tract;

“assisted reproduction facility” means any premises used for procedures related to assisted reproduction;

“child” has the meaning assigned to it under Article 260 of the Constitution of Kenya;

“clinical officer” means a person registered as a clinical officer under section 7 of the Clinical Officers (Training, Registration and Licensing) Act;

Cap 260.

“commissioning parent” means a woman or a man who seeks the help of a surrogate mother to bear him or her a child through artificial insemination;

“commissioning parents” means a couple of opposite gender who seek the help of a surrogate mother to bear them a child through artificial insemination;

“emergency obstetric care” means the basic and comprehensive life-saving interventions performed to treat major birth complications;

“emergency treatment” means the meaning assigned to it under the Health Act;

“family planning” means the conscious effort by a person to plan for and attain the number of children desired by the person and to regulate the spacing and timing of the births of the children with the use of contraceptives or natural family planning;

“female genital mutilation” has the meaning assigned to it under the Prohibition of Female Genital Mutilation Act;

No. 21 of 2017.

“gamete” means a mature male or female germ cell which is able to unite with another of the opposite sex in sexual reproduction to form a zygote;

“health care provider” has the meaning assigned to it under health care provider as defined in the Health Act;

Cap. 62B.

“health professional regulatory body” refer to an institution authorized by law to regulate the practice of medicine or health care provision;

“in vitro fertilization” means the process by which an ovum is fertilised by a sperm outside the body;

“intra-partum services” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the period from onset of labour to the completed delivery of the newborn and the completed delivery of the placenta;

“maternal care” includes health care of a woman during pregnancy, childbirth and forty-two days after childbirth;

“medical practitioner” means a medical practitioner registered under section 6 of the Medical Practitioners and Dentist Act;

“natural family-planning” means a method of planning or avoiding pregnancies by observation of the

natural signs and symptoms of the fertile and infertile phase of the menstrual cycle;

“neonatal services” means the correct diagnosis of, screening and management of complications in the first four weeks of life;

“parent” means a biological parent of a child, an adoptive parent of a child, a commissioning parent, or a legal guardian of a child; Cap. 253.

“post-natal” means the first six weeks after birth;

“post-natal services” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the first six weeks after birth;

“pregnancy” means the presence of a foetus in the womb;

“referral services” means the process of seeking appropriate treatment in which a health worker at one level of the health system, having insufficient resources to manage a condition, seeks the assistance of an adequately resourced facility;

“reproductive health” means a 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;

“reproductive rights” include the right of all individuals to attain the highest standard of sexual and reproductive health and to make informed decisions regarding their reproductive lives free from discrimination, coercion or violence;

“right to safe motherhood” means the right of women to access information and quality service throughout pregnancy and childbirth with the desired outcome of a live and healthy mother and baby;

“surrogacy” means the process of a woman carrying and giving birth to a baby for another woman and man who want to have a child, but are unable to have a child;

“tier of care” refers to the organization of health facilities in accordance to the Health Act; and

“trained health professional” means a registered clinical officer, a registered nurse and a registered midwife who has acquired the relevant skills for decision-making and provision of reproductive health services.

**3.** The object of this Act is to—

Objects.

- (a) provide a framework for the protection and advancement of reproductive health rights for every person;
- (b) create an enabling environment for the reduction in maternal morbidity, child morbidity and child mortality; and
- (c) ensure access to quality and comprehensive health care services to every person.

**4.** The National Government shall—

Obligations of the National Government.

- (a) put in place the necessary mechanisms and infrastructure to facilitate access to the highest attainable standard and quality of ante-natal, intra-partum, post-partum, neo-natal and post-natal services in national referral hospitals;
- (b) provide the resources necessary for the provision of reproductive health care services in national referral hospitals;
- (c) collaborate with county governments in expanding and strengthening the delivery of reproductive health care services in the respective counties;
- (d) formulate and implement a comprehensive national strategy and plan of action to promote the realisation of the right to reproductive health care under Article 43 of the Constitution including provision of adolescent friendly reproductive health care services;
- (e) develop standards to be maintained by the national health system established under the Health Act in the provision of reproductive health care services including—
  - (i) the number of trained health care professionals required to provide reproductive health services in a health facility;

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- (ii) the type and quantity of diagnostic and therapeutic equipment required by a health facility in order to provide reproductive health services effectively; and
- (iii) the quality of medical supplies for treatment of the complications arising in the delivery of reproductive health services;
- (f) establish a mechanism for referral, for diagnostic and treatment of complications relating to reproduction;
- (g) promote research and innovation in the field of reproductive health;
- (h) carry out sensitization programmes on family planning methods and services;
- (i) put in place mechanisms to enhance access to family planning and counselling services in all national referral hospitals;
- (j) establish linkages and networks with local and international developmental partners and organisations to mobilise and source for funding to promote the realisation of the right to reproductive health and the delivery of effective reproductive health services;
- (k) put in place measures to improve the education, training and skills of health professionals including allied health professionals to ensure effective the delivery of quality reproductive health care services in the country; and
- (l) integrate into the education syllabus age appropriate information on reproductive health.

**5. Each county government shall—**

- (a) implement the national policy and strategies on reproductive health including the referral mechanism for diagnosis and treatment of reproductive health related complications;
- (b) allocate, in the county budget, the funds necessary for the provision of reproductive health care in the county health system including finances required to —

Obligations of the county governments.

- (i) hire adequate personnel;
  - (ii) procure sufficient equipment, medicines and medical supplies required to adequately cater for reproductive health care services in the county; and
  - (iii) carry out sensitisation programmes related to reproductive health;
- (c) put in place the infrastructure and mechanisms necessary to facilitate access to the highest attainable standard and quality of ante-natal, intra-partum, post-partum, neo-natal and post-natal services in the county health system including—
- (i) emergency obstetric and gynaecological emergency services; and
  - (ii) information and treatment of communicable and non-communicable diseases;
- (d) facilitate access to reproductive health services by persons who suffer from varied forms of disability in the respective county by—
- (i) providing physical access to health facilities;
  - (ii) putting in place mechanisms for access to information and communication materials on reproductive health in a form that is accessible by all persons with disabilities;
  - (iii) providing continuing education and inclusion of rights of persons with disabilities among health care providers; and
  - (iv) undertaking activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the reproductive health needs and rights of persons living with disabilities;
- (e) undertake, at such intervals as the respective county executive committee member shall determine necessary, an assessment of the reproductive health needs and gaps in the county and formulate and implement strategies to address the said needs and gaps for the full realisation of the reproductive health needs in the county;

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- (f) formulate and implement county specific strategies and programmes to inform persons of reproductive age of their right to access reproductive health services, including—
    - (i) safe, effective, affordable and acceptable family planning services; and
    - (ii) appropriate health care services that will enable parents go safely through pregnancy, childbirth and postpartum period; and
    - (iii) information and services necessary to provide parents with the best chance of having a health infant;
  - (g) provide age and development appropriate reproductive health services in the county health system and facilitate access to confidential, comprehensive, and non-judgmental reproductive health services by such persons;
  - (h) undertake training and sensitisation programmes on reproductive health and the age and development appropriate interventions available to various age groups and categories of persons within the respective county;
  - (i) incorporate, in the respective county development plan programmes on reproductive health;
  - (j) establish linkages and networks with local and international development partners to mobilise and source for funding to promote the delivery of reproductive health services within the county;
  - (k) put in place measures to improve the education, training and skills of health professionals, including allied health professionals, to ensure the use of evidence-based recommendations and quality reproductive health care within the county; and
  - (l) prepare and publish reports containing statistical or other information relating to programmes implemented by the county in relation to reproductive health care.

## **PART II – ACCESS TO FAMILY PLANNING SERVICES**

**6.** The National and County Governments shall put in place mechanisms to facilitate access to family planning services and counselling services.

Access to family planning services.

**7.** (1) Every person has the right to access reproductive health care services.

Right to reproductive health information.

(2) Every health care provider shall avail to a person requiring information on reproductive health information and education on family planning methods including natural family planning methods.

(3) Every health care provider shall, before prescribing a family planning method, provide relevant information to the person to whom the prescription is being given as to the advantages and disadvantages of the family planning method.

(4) A health care provider shall, before prescribing a family planning method under subsection (3), ensure that the person to whom the prescription is being issued —

- (a) is informed of the person’s right to choose an appropriate form of family planning; and
- (b) obtain the written consent of such person before administering the family planning method.

(5) Every health care provider who provides family planning services shall ensure that the data on family planning services offered by the health care provider is entered in to the health information system under the cover of confidentiality.

## **PART III- ASSISTED REPRODUCTION**

**8.** For purposes of this Part, the word “partner” means a person of the opposite sex in a relationship.

Meaning of partner.

**9.** (1) Every person has a right to assisted reproduction.

Right to assisted reproduction.

(2) The National Government shall collaborate with county governments in the provision of affordable, accessible, acceptable and quality assisted reproduction services.

(3) Assisted reproduction services shall be offered by

a person qualified and licenced by the respective health professional regulatory bodies to offer assisted reproduction services.

(4) An assisted reproduction health care provider, shall before commencing the provision of assisted reproduction treatment —

- (a) provide all concerned parties with the information necessary to enable them make an informed choice and give informed consent, and in particular, information on—
  - (i) the various assisted reproduction methods available;
  - (ii) the chances of success of the various options;
  - (iii) the advantages, disadvantages and the risk of the various options; and
  - (iv) the cost of treatment and the facilities where the treatment options are available;
- (b) provide professional counselling to the parties about the implications of the various assisted reproduction methods; and
- (c) ensure there is preservation and promotion of the health, safety and dignity of the parties.

**10.** (1) An assisted reproduction health care provider shall not provide any treatment or perform any procedure relating to assisted reproduction unless that provider has sought and obtained the written consent of the person seeking such services.

Informed consent.

(2) An assisted reproduction health care provider shall not freeze any human embryos unless the provider has sought and obtained written consent and instructions from the parties seeking assisted reproduction in respect of what should be done with the gametes or embryos in case of —

- (a) death of any of the parties seeking assisted reproduction; or
- (b) incapacity of any of the parties seeking assisted reproduction.

(3) An assisted reproduction health care provider shall obtain the written consent of all parties to whom the assisted reproduction service relates prior to using —

- (a) any human reproductive material to create an embryo; or
- (b) an in vitro embryo for any purpose.

(4) The consent of any of the parties obtained under this section may be withdrawn at any time prior to the process of implanting the embryos or the gametes in the woman's uterus.

**11.** (1) A health professional specializing in in vitro fertilization shall, before carrying out in vitro fertilisation, ensure that—

Conditions for assisted reproduction.

- (a) the gamete provider has submitted their consent for the collection and use of gametes;
- (b) where the gamete provider is deceased, the gamete provider had given their consent for the use of the gametes before their demise;
- (c) the gametes to be used for the procedure have been stored for a period of less than ten years from the date of being obtained from a gamete provider;
- (d) the gamete provider has been medically examined for such conditions as may be prescribed under this Act;
- (e) the gamete provider has been medically examined for all communicable diseases which may endanger the health of the parents, surrogate or child; and
- (f) all parties to the agreement are aware of the rights of a child born through the use of assisted reproduction service.

(2) A health professional specialising in assisted reproduction shall maintain confidentiality and ensure that all information regarding the gamete provider, commissioning parent or commissioning parents and surrogate mother is protected.

(3) A health professional specialising in assisted reproduction shall not disclose any information under subsection (2) unless—

- (a) the professional has obtained the consent of the person to whom the information relates;

- (b) the information is required for the purpose of addressing a medical emergency;
- (c) the information is required by law;
- (d) required to disclose the information by an order of the court; or
- (e) it is in the public interest to disclose such information.

**12.** (1) Any person may donate gametes in a registered assisted reproduction facility in accordance with this Act. Register.

(2) An assisted reproduction health care provider shall provide all the information necessary to the person who intends to donate gametes under subsection (1), to allow the gamete provider make an informed decision.

(3) An assisted reproduction facility shall keep a register containing the gamete provider's—

- (a) full names;
- (b) physical characteristics;
- (c) ethnic origin;
- (d) family history;
- (e) medical history;
- (f) interests and hobbies; and
- (g) professional qualifications and skills

(4) The register under subsection (1) shall be confidential.

(5) A gamete provider shall not acquire any parental responsibility over the child born out of the use of the donated gametes.

(6) A person who intends to use a donated gamete has a right to choose their gamete provider.

(7) A gamete provider shall not receive any form of compensation for the use of their donated gamete.

**13.** An assisted reproduction health care provider shall not— Limitations.

- (a) use gametes in research except with the written consent of the gamete provider;

- (b) supply or export a gamete except with the written consent of the gamete provider;
- (c) use gametes in assisted reproduction treatment if the gamete provider is deceased unless the gamete provider had submitted written consent for the use of their gametes before death; or
- (d) use gametes to create an embryo, if the assisted reproduction health care provider has knowledge that the gamete provider is a family member of the recipient to avoid genetic complications.

**14.** (1) A party may enter into a surrogate parenthood agreement only if—

Parties to a Surrogate parenthood agreement.

- (a) the commissioning parent or commissioning parents are not able to give birth to a child and that condition is irreversible;
- (b) the commissioning parent or commissioning parents, as the case may be,—
  - (i) is at least twenty-five years of age and not more than fifty- five years of age;
  - (ii) is, in terms of this Act, competent to enter into the agreement;
  - (iii) is in all respects suitable to accept the parenthood of the child that is to be conceived; and
  - (iv) understands and accepts the legal consequences of entering in to the agreement and this Act and the rights and obligations arising therefrom; and
- (c) the proposed surrogate mother—
  - (i) is at least twenty-one years of age;
  - (ii) meets the prescribed conditions for acting as a surrogate mother; and
  - (iii) understands and accepts the legal consequences of entering in to the agreement and this Act and her rights and obligations thereof.

**15.** (1) A surrogate parenthood agreement is valid if

Validity of Surrogate parenthood agreement.



- (a) it is in writing and is signed by all the parties thereto;
  - (b) it is entered into in Kenya;
  - (c) it is in the prescribed form;
  - (d) it includes adequate provisions for the contact, care, upbringing and general welfare of the child that is to be born, including the child's position in the event of the—
    - (i) death of the commissioning parent, or if married, the death of one or both of the commissioning parents before the birth of the child; or
    - (ii) separation or divorce of commissioning parents who are married before the birth of the child;
  - (e) the commissioning parent or commissioning parents, agree to meet the expenses of the surrogate mother with regard to the pre-natal care regimen necessary for the care of the surrogate mother and child during the course of the pregnancy;
  - (f) the signatures of the parties to the surrogate parenthood agreement are witnessed by different persons; and
  - (g) prior to entering in to the agreement, the requirement for an explanation under subsection (2) has been met.
- (2) Where a person intends to enter into a surrogate parenthood agreement, a qualified medical practitioner shall explain to the parties—
- (a) their rights and obligations under the surrogate parenthood agreement;
  - (b) the implication of entering into the surrogate parenthood agreement;
  - (c) the requirement to be represented by an advocate;
  - (d) the requirements under this Act and any other conditions imposed by regulation under this Act.

**16.** An assisted reproduction health care provider shall not carry out artificial insemination with respect to a surrogate mother unless the surrogate parenthood agreement is duly signed and deposited in the assisted reproduction facility together with the medical documents prescribed under this Act.

Artificial  
insemination of  
surrogate mother.

**17.** (1) Each party to a surrogate parenthood agreement shall engage a separate Advocate of the High Court of Kenya.

Legal fees.

(2) Any legal fees payable by a surrogate mother shall be paid by the commissioning parent or commissioning parents as the case may be.

**18.** (1) A surrogate parenthood agreement may be terminated –

Termination of a  
Surrogate  
Parenthood  
Agreement.

- (a) automatically, following the termination of pregnancy in accordance with this Act;
- (b) before the implantation of a fertilized embryo in the surrogate mother's womb; or
- (c) where a dispute arises between commissioning parents, and before the fertilized embryo is implanted in the surrogate mother.

(2) Where the commissioning parent or commissioning parents have reason to believe that the child born is not the child contemplated under the surrogate parenthood agreement, the commissioning parent or commissioning parents may apply for the conduct of a DNA test on the child.

(3) Where upon the conduct a DNA test under subsection (2), it is found that the child born is not the child contemplated under the surrogate parenthood agreement, the surrogate parenthood agreement shall be terminated automatically.

(4) Where the surrogate parenthood arrangement terminates under subsection (3), the commissioning parent or commissioning parents shall not bear any parental rights over the child.

**19.** (1) Where a person enters in to a surrogate parenthood agreement under this Act, –

Obligations of  
parties to a  
surrogate  
parenthood  
agreement.

- (a) the commissioning parent or commissioning parents –

- (i) shall be the legal parent or parents of a child conceived by a surrogate mother in accordance with this Act; and
- (ii) shall not reject or discriminate against the child; and
- (b) the surrogate mother—
  - (i) shall not terminate the pregnancy except as provided under this Act or under any other law;
  - (ii) shall hand the child over to the commissioning parent or commissioning parents as soon as is reasonably possible after the birth;
  - (iii) or her spouse, partner or relative shall not have a right of parenthood or care of the child;
  - (iv) or her spouse, partner or relative shall not have a right of contact with the child unless provided for in the surrogate parenthood agreement; and
  - (v) shall not have an obligation to maintain the child born in accordance with Part.

(2) A child born pursuant to a surrogate parenthood agreement shall not, for the purposes of the Succession Act, be deemed to be a beneficiary of the surrogate mother or spouse or relative of the surrogate mother.

(3) Parties to a surrogate parenthood agreement shall not terminate the agreement after artificial fertilisation of the surrogate mother has taken place.

**20.** In the event multiple pregnancies arise out of implantation pursuant to the surrogate parenthood agreement, the obligations of the surrogate mother and the commissioning parent or commissioning parents shall be as provided for under the surrogate parenthood agreement and the provisions of this Act.

Cap 160.  
Multiple  
pregnancies.

**21.** (1) In the case of a child born pursuant to the surrogate parenthood agreement under this Act,—

Citizenship of  
child.

- (a) the commissioning parent or commissioning parents shall be named as the parents of the child

in the birth notification under section 10 of the Births and Deaths Registration Act;

- (b) the child shall acquire the citizenship of the commissioning parent or commissioning parents in accordance with Article 14 (1) of the Constitution of Kenya.

Cap 149.

**22.** (1) Subject to subsection (2), a person shall not, in connection with a surrogate parenthood agreement, give or promise to give to any person or receive from any person a reward or compensation in cash or in kind.

Compensation.

(2) A promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate parenthood agreement or the execution of such an agreement is not enforceable, except with respect to a claim for –

- (a) compensation for expenses that relate directly to the process of in vitro insemination and pregnancy of the surrogate mother, the birth of the child, post natal care and post-delivery complications;
- (b) loss of earnings suffered by the surrogate mother as a result of the surrogacy; and
- (c) insurance to cover the surrogate mother for any acts that may lead to death or disability brought about by the pregnancy.

#### **PART IV—SAFE MOTHERHOOD**

**23.** Maternal care shall be offered by—

Authorized persons.

- (a) medical practitioners;
- (b) clinical officers;
- (c) nurses; and
- (d) midwives.

**24.** The national government shall collaborate with county governments for the provision of free antenatal care, delivery services and post-partum care in all health facilities in the county health system.

Ante- natal care, delivery services and post -partum care.

**25.** (1) A health professional shall not carry out a sterilisation procedure on a person unless the health professional has—

Sterilization.

- (a) offered non- directive counselling to the person;
- (b) explained the implications of the sterilisation procedure to the person; and
- (c) obtained the written consent of the person.

(2) A health professional who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to five years imprisonment or a fine of two million shillings or to both.

#### **PART V – TERMINATION OF PREGNANCY**

**26.** (1) A pregnancy may be terminated by a trained health professional where in the opinion of the trained health professional—

Termination of pregnancy.

- (a) there is need for emergency treatment;
- (b) the pregnancy would endanger the life or health of the mother; or
- (c) there exists a substantial risk that the foetus would suffer from a severe physical or mental abnormality that is incompatible with life outside the womb.

(2) A trained health professional shall offer non-directive counselling before and after the termination of a pregnancy.

**27.** (1) A trained health professional who has a conscientious objection to the termination of a pregnancy as envisaged under this Act shall, except in case of emergency treatment, refer the pregnant woman to a trained health professional who is willing to provide this service.

Duty to refer.

(2) A trained health professional in subsection (1) who does not refer a pregnant woman as specified under subsection (1), commits an offence and is liable, on conviction, to imprisonment for a term of three years or a fine of one million shillings or to both fine and imprisonment.

**28.** (1) A trained health profession shall not, where the circumstances arise under section 26 for the termination of pregnancy, terminate the pregnancy unless the health professional has—

Consent.

- (a) obtained the written consent of the pregnant woman; or

- (b) in the case of a pregnant minor, has consulted with the minor's guardian and determined that the it is in the best interests of the minor; or

(2) Where the person to whom termination of pregnancy is prescribed is a person with mental illness the health professional shall not carry out the procedure to terminate the pregnancy unless the professional has sought and obtained the written consent of—

- (a) the person with mental illness;
- (b) where the person with mental illness is unable to give consent due to the nature of the illness, a supporter duly appointed by that person in accordance to the will and preferences of the person with mental illness; or
- (c) the following persons, where the person with mental illness has not appointed a supporter, --
  - (i) the spouse of the person;
  - (ii) in the absence of a spouse, the parents of the person; or
  - (iii) the next of kin of the person.

**29.** A trained health professional shall provide post-abortion care and counselling for cases of incomplete abortion or complications arising out of the abortion procedure.

Post-abortion care.

**30.** A trained health professional who provides termination of pregnancy services and post-abortion care shall collate the data and ensure it is entered in to the health information system established under section 105 of the Health Act.

Data collection.

No. 21 of 2017

## **PART VI – CONFIDENTIALITY**

**31. (1)** A person who possesses information by virtue of this Act shall not divulge such information to any person except as otherwise provided under this Act.

Confidentiality.

(2) A health practitioner who contravenes the provisions of subsection (1) shall be subject to the disciplinary processes by the relevant health professional regulatory body.

**PART VII – REPRODUCTIVE HEALTH OF ADOLESCENTS**

**32.** (1) The National government shall collaborate with county governments to ensure that adolescents have access to adolescent friendly reproductive health services.

Provision of information.

(2) Adolescent friendly reproductive health services shall include age-appropriate –

- (a) mentorship programmes;
- (b) spiritual and moral guidance;
- (c) counselling on—
  - (i) abstinence;
  - (ii) consequences of unsafe abortion; and
  - (iii) sexually transmitted infections and HIV/AIDS;
  - (iv) substance and drug abuse;
- (d) training in livelihood and life skills;
- (e) vocational trainings; and
- (f) such other health services as the Cabinet Secretary shall determine.

(3) A health care provider from whom reproductive health services are sought by an adolescent shall refer the adolescent to a qualified person for the provision of the necessary services.

**33.** In the provision of adolescent friendly reproductive health services, a health provider shall—

Consent.

- (a) obtain parental consent; and
- (b) give due consideration to the exact age of the adolescent in a bid to provide age-appropriate information, education and reproductive health services.

**PART VIII – MISCELLANEOUS PROVISIONS**

**36.** The Cabinet Secretary and the county executive committee members shall put in place mechanisms to facilitate access to information by persons requiring reproductive health services and information regarding the management of HIV and AIDS by a pregnant woman in

Information and treatment of HIV/AIDS.

accordance to with the HIV and AIDS Prevention and Control Act.

Cap 246A

**37.** All persons who get health complications arising out of genital mutilation shall access treatment from any health care provider without discrimination.

Female genital  
mutilation.  
Cap 62B.

**38.** The Cabinet Secretary shall make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

**39.** The Births and Deaths Registration Act is amended—

Amendments to  
Cap 149.

(a) by inserting the following new definitions immediately after the definition of the word “birth”—

(i) “commissioning parent” shall have the meaning assigned to it under the Reproductive Healthcare Act; and

(ii) “commissioning parents” shall have the meaning assigned to it under the Reproductive Healthcare Act;

(b) by deleting section 11 and substituting therefor the following new section—

**11.** (1) Upon the birth of any child, the registration of whose birth is compulsory, notice of the birth shall be given to the registrar of the registration area in which the birth occurs within such time as may be from time to time prescribed—

(a) by the father or mother of the child, or the commissioning parent or commissioning parents of the child;

(b) where the father or mother or the commissioning parent or commissioning parents of the child, fail to give notice under paragraph (a), then, such notice shall be given by—

(i) the occupier of the house in which the child is born;

(ii) any other person present at the birth of the child; or



(iii) the person having charge of the child.

(2) In the case of a birth in a prison, a hospital, an orphanage, a barracks or a quarantine station, the duty to give notice shall lie on the officer in charge of the establishment in which the birth has taken place.

(c) by deleting section 12.

## **MEMORANDUM OF OBJECTS AND REASONS**

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

Article 43 (1) (a) of the Constitution guarantees every person the right to the highest attainable standard of health including the right to reproductive health care. The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that every person has access to health care services. Further, Part 2 of the Fourth Schedule requires county governments to provide county health services including, promote primary health care. In addition, section 6 of the Health Act, 2017 states that every person has the right to reproductive health care.

It is in this context that this Bill proposes to impose obligations on each level of government to ensure availability of reproductive health care services including requiring both levels of government to provide adequate financial resources in their budgets to meet the obligations.

The Bill further provides a framework for assisted reproduction services. It outlines the requirements for a surrogate parenthood agreement and the conditions for getting in to such an agreement.

The Bill also seeks to provide the framework for access to reproductive health services by adolescents.

### **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 any fundamental rights and freedoms.

### **Statement on how the Bill concerns county governments**

The Bill outlines the obligations of the county government in regard to securing the rights of persons with mental illness.

The Bill is therefore a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

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

The Bill does not impose any taxes, impose any charges on a public fund, appropriate any public funds or propose any other thing contained in Article 114 (3).

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

Dated the 29th October, 2019.

SUSAN KIIHIKA,  
*Senator.*

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*Section 11 of Cap. 149 of which it is proposed to amend*

**11. Duty to notify births where registration compulsory**

Upon the birth of any child the registration of whose birth is compulsory, it shall be the duty of the father and mother of the child, and, in default of the father and mother, of the occupier of the house in which to his knowledge the child is born, and of every person present at the birth, and of the person having charge of the child, to give notice of the birth, within such time as may be from time to time prescribed, to the registrar of the registration area in which the birth occurs:

Provided that, in the case of births in prisons, hospitals, orphanages, barracks or quarantine stations, the duty to give such notice shall lie on the officer in charge of the establishment in which the birth took place.

*Section 12 of Cap. 149 of which it is proposed to amend*

**12. Entry of father in register**

No person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon the production to the registrar of such evidence as he may require that the father and mother were married according to law or, in accordance with some recognized custom.