

SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Samburu County Acts No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SAMBURU COUNTY ACTS, 2022

NAIROBI, 23rd May, 2022

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IMPROVEMENT FUND ACT, 2022**

No. 3 of 2022

Date of Assent: 23rd May, 2022

Date of Commencement: See Section 1

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THE SAMBURU COUNTY HEALTH FACILITIES IMPROVEMENT FUND ACT, 2022

AN ACT of the County Assembly of Samburu to establish the Samburu County Health Facilities Improvement Fund, to provide for the additional funding for the management of health systems and public facilities improvement in the county, to enable sustainable operations of health facilities, and for connected purposes

ENACTED by the County Assembly of Samburu, as Follows—

PART I— PRELIMINARY

Short title and Commencement

1. This Act may be cited as Samburu County Health Facilities Improvement Fund Act, 2022 and shall come into operation upon publication in the *Kenya Gazette*.

Interpretation

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

“Administrator of the Fund” means the person designated by the County Executive Committee Member for Finance in accordance with Section 116 of the Public Finance Management Act, 2012;

“Fund Committee” means the Samburu County Health Facilities Improvement Fund Committee established under section 5;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to Health;

“Financial year” means the period of twelve months beginning 1st July ending on the 30th June of the subsequent year;

“Fund” means the Samburu County Health Facilities Improvement Fund established under section 4;

“Hospital” means gazetted County or Sub-county hospital;

“Health facility” means any other gazetted health establishment other than a hospital, which provides health services and include health centres, mobile clinics and dispensaries;

“User charges” means cost-sharing charges.

Object of the Act

3. The object of the Act is to—

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- (a) provide for a framework to allow the Health sector and health facilities retain monies received in accordance with provisions of section 109 (2)(b) read with section 116(1) of the Public Finance Management Act, 2012;
- (b) establish a Samburu County Health Facilities Improvement Fund;
- (c) provide for the establishment and appointment of the fund committee;
- (d) provide the establishment, functions and roles of hospitals boards and health facilities committees;
- (e) provide for a framework for performance based financing of health service in the County in order to—
 - (i) sustainably operate, maintain, equip, rehabilitate health facilities and procure emergency medical supplies and utilities in hospitals and health facilities in the county;
 - (ii) enhance participation of relevant stakeholders and host communities in the planning and management of hospitals and health facilities located in their jurisdiction;
 - (iii) create incentives for hospitals and health facilities to sustainably generate resources;
 - (iv) provide funding for the day to day operations of hospitals and health facilities;
 - (v) provide for financing of rehabilitative, preventive and promotional healthcare services;
 - (vi) provide immediate funds for health related emergencies and disaster; and
 - (vii) ensure that the 70% of the funds is used for curative and 30% of the funds is used for preventive and promotive health care services respectively.

PART II—SAMBURU COUNTY HEALTH FACILITIES IMPROVEMENT FUND

Establishment of the Fund

4. (1) The County Executive Committee Member for Finance shall within Thirty days after *Gazettement* of this Act establish the Samburu County Health Facilities Improvement Fund.

(2) The following monies shall be paid into the Fund—

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- (a) monies that may be appropriated by the County Assembly for operations of health facilities except money provided in the budget for purchase of medical commodities as well as conditional allocations by national government;
 - (b) monies received by the fund as contributions, gifts or grants from any lawful source
 - (c) monies earned or received as user charges;
 - (d) income generated from the proceeds of the Fund;
 - (e) income generated from Public Health and Environmental Health Facilities Improvement;
 - (f) funds from the free maternity service allocated to the County; and
 - (g) funds received as reimbursement from National Hospital Insurance Fund.
- (3) (a) All monies due to the fund shall be received and paid to the Fund in full and shall be collected and accounted through the established accounting system.
 - (b) This Act shall exempt all monies raised or received directly by county health facilities from being paid into County Revenue Fund.
 - (c) The County Receiver of Revenue may designate a collector of revenue for purpose of collecting and accounting for revenue.
 - (d) The revenue exempted from payment into the County Revenue Fund shall be received and accounted as Appropriation in Aid (AIA).
- (4) (a) The budget estimates for the fund shall be submitted together with the estimates of the Department after approval by the Fund Committee to county treasury for consolidation.
 - (b) The budget estimates shall comprise separate expenditure plans for all health facilities which raise or receive revenue from their services.
 - (c) Budget estimates of the fund shall indicate expenditure net of Appropriation-in-Aid (AIA) and shall be approved by the County Assembly.
- (5) (a) The Fund Committee shall authorize payments out of the fund on the basis of quarterly budgets approved by Hospitals Boards and Health Facilities Committees;

- (b) The Fund Committee shall ensure the amount payable to each Hospital and or Health facility shall be at least the amount of collections from that Facility.
- (c) Notwithstanding the provisions of paragraph (b) above, the Fund Committee shall ensure equitable sharing of monies appropriated by the county assembly for operational needs of the hospitals and health facilities.

Establishment of the Fund Committee

5. (1) There is established the Samburu County Health Facilities Improvement Fund Committee.

(2) The Committee shall consist of—

- (a) Executive Committee Member who shall be the Chairperson;
- (b) the Chief Officer for the time being responsible for Health Services who shall be the secretary and administrator of the Fund;
- (c) the Chief Officer of the County department for the time being responsible for Finance or his representative duly nominated in writing;
- (d) Chief Officer for the time being responsible for matters relating to water and sanitation;
- (e) the Chief Executive Officer of the County Referral Hospital;
- (f) County Director of Medical services;
- (g) County Director of Preventive and Promotive Health services;
- (h) County Director responsible for Health Planning and Administration;
- (i) the County Pharmacist.

(3) The Fund Committee shall execute its functions through the administrator of the Fund.

(4) The Executive Committee Member may provide such public officers as may be necessary for the effective functioning of the Committee.

(5) The quorum at any meeting of the fund committee shall be two thirds of the members and the committee shall meet quarterly each financial year.

(6) The Fund Committee may convene special meetings to discuss emerging issues.

(7) The County Executive Committee Member may make regulations generally to give full effect to this section.

Functions of the committee

6. The Fund Committee shall—

- (a) provide overall design and oversight of the Fund;
- (b) receive, consider, verify and approve funding to hospitals and health facilities as provided by the Hospital boards and health facilities committees;
- (c) ensure equitable distribution of resources to the hospitals and health facilities;
- (d) review and approve disbursements or utilization of the Fund;
- (e) advise the County Executive Committee Member on the appropriate guidelines and procedures for better management of the Fund;
- (f) receive reports on the performance of the Fund from the hospitals boards and health facilities committees;
- (g) develop relevant guidelines and review them as the need arises, to guide the operations and implementation of the Fund;
- (h) develop and facilitate sectoral linkage on the Fund;
- (i) monitor and evaluate programs and activities under the Fund;
- (j) prepare an annual report on the operations and performance of the Fund to the County Executive Committee Member;
- (k) oversee the management and administration of the Fund; and
- (l) put in place necessary mechanisms for sanctions and their enforcements in case of mismanagement of funds.

(2) The Fund Committee may co-opt any person whose knowledge and skills are considered necessary for the effective discharge of its responsibilities.

(3) The Fund committee may, for the effective discharge of its functions, establish sub-committees.

Delegation of Powers or Functions

7. (1) The Fund Committee may, where appropriate and in writing, delegate any power or assign any duty conferred on it under this Act to the

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Administrator of the Fund, the County Executive Committee Member, hospitals boards or health facilities committees.

(2) A delegation or assignment under subsection (1) shall not prevent the committee from exercising the power in question.

(3) A delegation under this section—

- (a) shall be subject to any conditions the Fund committee may impose;
- (b) shall not divest the Fund Committee of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or amended by the committee.

Conduct of Business

8. (1) The conduct and regulation of the business and affairs of the fund committee shall be as set out in the Schedule and shall be in accordance with this Act.

(2) Except as provided in the Schedule, the fund committee may regulate its own procedures.

PART III— ADMINISTRATION OF THE FUND

Capital of the Fund

9. The initial capital of the Fund shall be such amount of money as may be appropriated by County Assembly in the financial year.

Expenditure on the Fund

10. (1) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the administrator of the Fund, and approved by the Fund committee at the beginning of the financial year to which they relate.

(2) Any revision of the approved annual work programme, and of any cost estimate, shall be referred to the Fund Committee for approval.

Administration of the Fund

11. (1) The Executive Committee Member for finance shall designate an administrator of the Fund in accordance with section 116 of the Public Finance Management Act, 2012.

(2) The administrator of the Fund shall—

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- (a) open and operate bank accounts with a bank to be approved by the County Treasury;
- (b) supervise and control the administration of the Fund;
- (c) consult with the County Executive Committee Member and the Fund Committee on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;
- (f) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015;
- (g) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Fund Committee for gazettelement by the 21st of every fourth month;
- (h) prepare, sign and transmit to the Fund Committee and County Treasury 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 treasury may from time to time direct, in accordance with the provisions of the Public Finance Management Act, 2012;
- (i) furnish such additional information as may be required that is proper and sufficient for the purpose of examination and audit by the County Head of Audit and Auditor-General in accordance with the provisions of the Public Audit Act;
- (j) develop the criteria for the allocation of funds for approval by the Fund Committee;
- (k) prepare in consultation with the hospitals boards and health facilities committees a schedule of annual distribution of resources to hospitals and health facilities;

- (l) prepare in consultation with the Fund Committee, impose conditions on the use of expenditure authorized by him or on his behalf and may impose any reasonable prohibition, restriction or other requirement concerning such use of expenditure;
 - (m) institute prudent measures for the proper utilization for monies deposited in the Funds using suitable internal controls and appropriate mechanism for accountability including audit of accounts by internal auditors;
 - (n) 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.
- (3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Role of the County Executive Committee Member

12. The County Executive Committee member shall facilitate, and oversee the operations of the Fund committee in the implementation of the Fund and in particular shall—

- (a) develop policy measures relating to the Fund;
- (b) give guidelines on the fund allocation formula for distribution to hospitals and health facilities;
- (c) make regulations to give effect to the objects of the Fund; and
- (d) performance of any other functions assigned to him under this Act or any other written law.

Disbursement of Funds

13. The funds shall be disbursed under the following conditions—
- (a) all disbursement from the Fund shall be approved and minuted by the Fund Committee;
 - (b) the record of the amounts received by each hospital and health facility and the record of expenditure of amounts so received shall be submitted to the Committee within sixty days after the close of the relevant financial year, together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received;
 - (c) the committee may impose reasonable requirements, including restrictions, on a particular hospital or health facility and such

restrictions or requirements shall be reported together with the monthly returns to be submitted to the Executive Committee Member.

Winding-up of the Fund

14. In the event of winding up of the Fund, the cash balances shall be transferred to the County Revenue Fund while other assets of the Fund shall be transferred to the Department for the time being responsible for matters relating to Health.

PART IV—HOSPITAL BOARDS AND HEALTH FACILITIES COMMITTEES

Establishment of the Hospital Boards and Health Facilities Committees

15. There is established the Hospital Boards and Health Facilities Committees appointed by the County Executive Committee Member responsible for matters relating to Health, which shall perform and exercise the duties, functions and powers specified in this Act.

Functions of the Hospital Boards and Health Facilities Committees

16. The hospital Boards and health facilities committees shall—
- (a) be responsible for the supervision of the funds allocated to the respective hospitals and health facilities;
 - (b) open and operate bank accounts at a bank(s) to be approved by the County Executive Members responsible for matters related to finance in the County;
 - (c) recommend activities to be included in the hospital work plans based on the County Health Sector Strategic Plan;
 - (d) prepare and present to the Fund Committee budget estimates and plans for consideration and approval;
 - (e) established and maintain a hospital and health facility quality improvement program;
 - (f) review the hospital and health facility quality assessment reports and make recommendation to Fund Committee;
 - (g) cause to be kept books of accounts and records of accounts of the income, expenditure, assets and liabilities of the hospital and health facilities as prescribed by the Administrator of the Fund;

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- (h) cause to be prepared and submitted to the administrator of the fund monthly, quarterly and annual financial reports as prescribed; and
- (i) cause to be kept a permanent records of all its deliberations.

Constitution of the Hospital Boards

17. (1) The Boards shall consist of—

- (a) a non-executive Chairpersons appointed by the Executive Committee Member in charge of Health;
- (b) the Chief Executive Officer in the case of County Referral Hospital, Hospital Administrators in the case of the Sub-County Hospitals, and in-charges of Health Facilities for dispensaries and health centres, who shall be the Secretaries to the Boards and Committees;
- (c) six other members for each Hospital Board and Facilities Committees appointed by the Executive Committee Member in charge Health.

(2). Members of the board under paragraphs (a) and (c) above shall hold office for a term of 3 years from the date of their appointment and shall be eligible for reappointment for a further and final term of 3 years.

(3). Persons appointed to the board under paragraphs (a) and (c) above shall of be mixed expertise and experience for the purpose of providing policy direction and guidance.

Vacancy of Office for Chairperson or Member

18. (1) Subject to the provisions of this Act, the office of chairperson or member of the Board shall become vacant if the chairperson or member—

- (i) resigns by notice in writing addressed to the Executive Committee Member;
- (ii) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (iii) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (iv) is guilty of gross misconduct;
- (v) is absent without the permission of the chairperson for three consecutive meetings;

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- (vi) fails to meet the requirements of Chapter Six of the Constitution;
- (vii) is convicted of an offence and sentenced to imprisonment for a period of six months or more; or
- (viii) dies.

(2) Where the office of chairperson or member of the Board or committee becomes vacant, the Executive Committee Member, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

Allowances for Board Members

19. The chairperson and members of the Board shall be paid such allowances as the Executive Committee Member shall determine in line with the salaries and remuneration commission guidelines

Chief Executive Officer of the County Referral Hospital

20. (1) There shall be the Chief Executive Officer of the Samburu County Referral Hospital recruited through a competitive process by the County Public Service Board and who shall serve for a period of five years, which term may be renewable once.

(2) The Chief Executive Officer shall be the Chief Executive Officer and secretary to the County Hospital Board and shall be responsible for the day to day management of the affairs of the hospital.

Meetings of the Hospitals Boards and Health Facilities Committees

21. (1) The Hospitals Boards and Health Facilities committees shall meet quarterly in every year and shall maintain records of its deliberations.

(2) Special meetings may be convened where necessary.

(3) Relevant copies of deliberations and records in (1) above should be forwarded to the Fund committee not more than one month after the meetings.

(4) The quorum of the board shall be at least two thirds of members.

Submission and approval of budgets

22. (1) the administrator of the Fund will prepare a schedule to the County Treasury indicating the additional funds the treasury needs to disburse to the health facilities to finance their budgets.

(2) The schedule referred to in subsection (5) shall be accompanied by an authority to incur expenditure.

(3) The approved funds shall be disbursed to the hospital or health facilities not more than fourteen days after appropriate documentation have been submitted to the County Treasury.

(4) All the spending units shall prepare monthly, quarterly and annual financial reports in a prescribed format to the County Facilities Improvement Committee.

PART V—FINANCE AND AUDIT

Annual Estimates

23. (1) At least three months before the commencement of each financial year, the Administrator of the fund shall cause to be prepared estimates of the revenue and expenditure of the fund committee, hospitals and health facilities for that year.

(2) The annual estimates shall make provision for all the estimated expenditure for the financial year concerned and, in particular, shall provide for the—

- (a) maintenance of the operations of the hospitals and health facilities)
- (b) funding of training, research and development of activities of the Boards and committees;
- (c) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the chief officer may think fit; and
- (d) any other expenditure necessary or purposes of this Act.

(3) The annual estimates shall be approved by Committee before the commencement of the financial year to which they relate and shall be submitted to the Executive Committee Member for tabling in County Assembly.

Accounts and Audit

24. (1) The Administrator of the fund shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities under this Act.

(2) Within a period of three months after the end of each financial year, the Administrator of the fund shall submit to the Auditor-General the books accounts in respect of that year together with a—

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

(3) The annual accounts 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.

PART VI — MISCELLANEOUS PROVISIONS

Bank Accounts

25. (1) Each Hospital Board and or health facility committee shall cause a bank account to be opened funds disbursed to it under this Act.

(2) The account shall be opened and maintained at a commercial bank approved by the Executive Committee Member in charge of Finance;

(3) The signatory to the accounts of the Fund maintained by the Fund Committee shall be the Fund Administrator, Chief Officer in-charge of Finance and one other senior person among the Fund Committee members appointed by the Executive Committee Member.

(4) The signatory to the accounts of the fund in health facilities shall be the Chief Executive Officer in the case of the County Referral Hospital, Administrator in regard to Sub County hospital, and chairperson in the case of dispensary or health centre and two other persons appointed by the hospital board and health facilities committees respectively.

(5) The bank signing instructions shall be such that the—

- (a) signature of the Fund Administrator shall be mandatory for the Fund maintained by the Fund Committee, and the Signature of the Chief Executive Officer or Hospital Administrator in the case of County Referral Hospital and Sub-County Hospitals shall be mandatory;
- (b) signature of the chairman of the dispensary or health centre shall be mandatory.

Reports

26. (1) The Fund Committee shall prepare an annual report, which shall be submitted, to the County Assembly for consideration.

(2) The report shall provide among others for—

- (a) the performance of the Fund against the set targets;
- (b) challenges faced in the implementation of this Act and mitigation measures taken;

- (c) any other matter as may be directed by the County Executive Committee or the County Assembly.

Protection from Personal Liability

27. Nothing done by the Administrator of the fund, chairperson, member of the committee or by any person working under the instructions of the Committee shall, if done in good faith for the purpose of executing the powers, functions or duties of the committee under this Act, render such member or officer personally liable for any action, claim or demand.

Offences and Penalty

28. A person who contravenes any of the provisions in this Act commits a crime and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding six months, or both.

Regulations

29. The Executive Committee Member may, in consultation with the Fund Committee, make regulations generally for the better carrying out of the objects of this Act.

Repeal

30. This Act Repeals Section 42 of the Samburu County Health Services Act, 2018.

SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE FUND COMMITTEE

Committee Meetings

1. (1) The Fund committee shall have quarterly meetings in every financial year.

(2) Notwithstanding the provisions of sub 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 Fund Committee.

(3) Unless three quarters of the total members of the Fund committee otherwise agree, at least seven days' written notice of every meeting of the Fund Committee shall be given to every member.

(4) The chairperson shall preside at every meeting of the 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 thereof, have all the powers of the chairperson.

(5) Unless a unanimous decision is reached, a decision on any matter before the 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 sub paragraph (5), no proceedings of the committee shall be invalid by reason only of a vacancy among the members thereof.

Conflict of Interest

2. (1) If a member is directly or indirectly interested in an outcome of any decision of the committee or other matter before the committee and is present at a meeting of the 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:

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 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.

(2) A member of the 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 committee.

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

(4) 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.

(5) Upon the 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 committee and the member with the conflict of interest shall not vote on this determination.

(6) Where the committee determines that the conflict is likely to interfere significantly with the member's proper and effective performance, the members shall resign unless the member has eliminated the conflict to the satisfaction of the committee within thirty days.

(7) The annual report of the Fund Committee shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

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

(9) A member of the Fund Committee who fails to declare conflict of interest where such is the case commits an offence of misconduct.

Code of Conduct

3. The fund committee and any officer acting under this act shall comply with PFM Act the code of conduct governing public officers and provisions of Chapter Six of the Kenya Constitution.

Minutes of the Meetings

4. The Fund Committee shall cause minutes of all resolutions and proceedings of meetings of the committee to be entered in books kept for that purpose.