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THE DIABETES MANAGEMENT BILL, 2014

A Bill for

AN ACT of Parliament to provide for the prevention, treatment and control of diabetes and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Diabetes Management Act, 2013.

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

"Board" means the Board of management Co established under section 6;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to health;

"Council" means the National Diabetes Council established under section 4;

"Register" means the Diabetes Register established under section 15;

3. The objects and purposes of this Act are to—

(a) promote public awareness about the causes, consequences, means of prevention, treatment and control of diabetes in Kenya;

(b) positively and proactively address and seek to eradicate conditions that cause and aggravate the spread of diabetes;

(c) promote and ensure early screening and diagnosis and treatment of diabetes;

(d) ensure reporting of all newly detected diabetes cases for effective planning purposes;

PART II—THE NATIONAL DIABETES MANAGEMENT COUNCIL

4. (1) There is hereby established a Council to be known as the National Diabetes Management Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—
(a) suing and being sued;
(b) acquiring, holding, charging and disposing of movable and immovable property;
(c) borrowing and lending money; and
(d) doing or performing all such other things or acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act

5. The functions of the Council shall be to—

(a) encourage and secure the establishment of diabetes treatment and care centres for the welfare and treatment of persons with diabetes in all counties of the Republic;
(b) encourage and secure the establishment of diabetes treatment and care centres for the welfare and treatment of persons with diabetes in all counties of the Republic;
(c) develop programs for awareness creation on the causes and methods of treatment of diabetes;
(d) encourage and secure provision of standard diagnostic equipment to all district hospitals in the country;
(e) advice the Cabinet Secretary on matters relating to the treatment and care of persons with diabetes and to advise on the relative priorities to be given to the implementation of specific measures;
(f) conduct research on the prevention, control and treatment of diabetes;
(g) prescribe the limits of the amount of sugar that can be added to processed food products;
(h) regulate use of saturated fats in cooking oils in liaison with the relevant government institutions;
(i) liaise with institutions and organizations of higher learning to undertake research on matters relevant to diabetes prevention, control and treatment;
(j) disseminate research findings;
(k) administer the diabetes register; and
(l) regulate the quality of insulin provided to diabetes patient in liaison with the relevant government agencies;

6. (1) The Council shall be administered by a board to be known as the Board of Trustees of the Council.

(2) The Board shall consist of the following persons appointed by the Cabinet Secretary-

(a) the Chairperson;

(b) the Principal Secretary for the time being responsible for matters relating to health or his designated alternate not being below the level of Deputy Secretary;

(c) the Principal Secretary for the time being responsible for matters relating to finance or his designate alternate not being below the level of Deputy Secretary;

(d) one person nominated by the registered diabetes associations in such manner as may be prescribed;

(e) the Secretary of the National Council for Science and Technology or his designated alternate not being below the level of Deputy Secretary;

(f) one person nominated by the Media Owners Association in such manner as may be prescribed;

(g) one prominent philanthropist or industrialist of good standing;

(h) one person nominated by the universities teaching medicine in such manner as may be prescribed;

(i) one person nominated by institutions conducting medical research in such manner as may be prescribed;

(j) the Attorney-General or his representative who shall be an ex-officio member; and

(k) the Chief Executive Officer who shall be an ex-officio member and Secretary to the Board.

(3) A person shall not be appointed under subsection (2) (a) unless such person is a registered medical practitioner and is a recognized medical specialist of not
less than ten years experience in leadership at national institutional level.

7. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

8. (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of the subsection (1), the Board shall have power to —

(a) control, supervise and administer the assets of the Council in such manner as best promotes the purpose for which the Board is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;

(d) open such banking accounts for the funds of the Board as may be necessary;

(e) invest any funds of the Council not immediately required for its purposes in the manner provided in section 19;

(f) establish such directorates, departments and regional centres of the Council to deal with such specific matters as may be necessary; and

(g) undertake any activity necessary for the fulfilment of any of the functions of the Council.

(3) Without prejudice to the generality of paragraph (f) of subsection (2), the Board shall decentralize its services to all counties of the Republic.

9. The Board shall pay its members and staff such remuneration or allowances as it may determine upon the advice of the Salaries and Remuneration Commission.

10. (1) There shall be a Chief Executive Officer of the Council who shall be competitively appointed by the Board, and whose terms and conditions of service shall be
determined by the Board, upon the advice of the Salaries and Remuneration Commission;

(2) A person shall not be appointed under this section unless such person has-

(a) a masters degree in matters relating to Diabetes from a recognized university; and

(b) at least ten years post qualification managerial working experience.

(3) The Chief Executive Officer shall-

(a) be the secretary to the Board; and

(b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Council.

11. The Council may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

12. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act or under any other written law.

13. (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

14. (1) The common seal of the Council shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.
(2) The affixing of the common seal of the Council shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Council when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III — THE DIABETES REGISTER

15. (1) The Council shall cause to be kept and maintained a register containing the particulars specified under subsection (2).

(2) The Register shall contain particulars on—

(a) the frequency, type and geographical location of which due notification has been given pursuant to section 16;

(b) institutions, associations and organizations, including those controlled and managed by the national and county governments, that provide care and treatment services to persons with diabetes;

(c) the age of the patient who has been diagnosed with diabetes;

(d) such other matters as the Board may prescribe.

(3) All particulars under sub-section (2) and changes in such particulars shall be entered in the Register by the Chief Executive Officer as soon as is practicable after receiving notification thereof.

(4) The Chief Executive Officer may supply a copy of any entry in the Register upon payment of such fee as the Board may prescribe.
16. (1) Every medical institution shall, as soon as is reasonably practical, after making a diagnosis of diabetes on a person, deliver a notification to the Council for purposes of section 15 (2) (a).

(2) A notification under subsection (1) shall—

(a) be in such form as may be prescribed;

(b) specify the type and geographical location of the diabetes;

(c) specify the stage of the ailment and the duration that the patient has been undergoing treatment, if any for the symptoms of the diabetes before diagnosis;

(d) not disclose the name of the person with diabetes unless with the consent of the person or his guardian where such person is a minor;

(e) be given not later than fourteen days after the diagnosis;

(3) The Council may establish offices in the counties where such notifications shall be deposited.

(4) Any person who contravenes the provision of this section commits an offence and shall be liable on conviction to a sentence of imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings or to both.

17. The Board may, at any time, direct that correction be made in respect of any entry which has been incorrectly or fraudulently made.

PART IV—EDUCATION AND AWARENESS

18.(1) The national government and county governments shall promote public awareness about the causes, consequences, means of prevention, treatment and control of diabetes through a comprehensive nation-wide and within the counties education and information campaigns conducted through the relevant departments, authorities and other agencies of the national and county governments.

(2) The education and information campaigns referred to in subsection (1) shall be carried out in all schools and
other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Kenya.

(3) The national government in collaboration with the Council shall provide training, sensitization and awareness programmes on the prevention, treatment, palliative care and control of diabetes for—

(a) employees of all national government departments, authorities and other agencies; and

(b) employees of private and informal sectors;

(c) community and social workers; and

(d) media professionals, educators, and other stakeholders involved in the dissemination of information to the public on diabetes prevention, treatment and control.

(4) In conducting the education and information campaign referred to in this section, the national government shall ensure the involvement and participation of individuals and groups affected by diabetes.

(5) For the purposes of this section, the national government in collaboration with the Council shall ensure training of healthcare providers on proper information dissemination and education on diabetes prevention and treatment.

19. (1) The Council shall liaise with the national government department responsible for public health to ensure that education and information dissemination on the prevention and treatment of diabetes and the care of persons with diabetes including palliative care, shall form part of health care services by healthcare providers.

(2) For the purposes of subsection (1), the national government department responsible for public health in collaboration with the Council shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on Diabetes prevention control and palliative care.

20. Every county government, in collaboration with the Council, shall conduct an educational and information
campaign on diabetes prevention, treatment and control within its area of jurisdiction in the manner contemplated under sections 18 and 19.

21. Every city or urban area, in collaboration with the Council, shall conduct an educational and information campaign on Diabetes prevention, treatment and control within its area of jurisdiction.

PART V - FINANCIAL PROVISIONS

22. (1) The funds of the Council shall comprise of

(a) grants, gifts or donations that the Council may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions.

(b) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law;

(c) all monies from any other lawful source provided for or donated or lent to the Board; and

(d) such sums as may be appropriated by Parliament for the purposes of the Council.

(2) The funds of the Council and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes for which the Council is established.

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

24. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that financial year.

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

(a) payment of salaries, allowances and other charges in respect of the staff of the Council;
(b) payment of pensions, gratuities and other charges in respect of former staff of the Council;

(c) proper maintenance of the buildings and grounds of the Council;

(d) maintenance, repair and replacement of the equipment and other property of the Council;

(e) payment of allowances of the members of the Council and the members of the Board; and

(f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

25. (1) The Council shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Council.

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

(a) a statement of income and expenditure during that financial year; and

(b) a statement of the assets and liabilities of the Council on the last day of that financial year.

(3) The accounts of the Council shall be audited and reported upon in accordance with the Public Audit Act, 2003.

26. The Board may invest any of the funds of the Council in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.
PART VI- PROVISIONS ON DELEGATED POWERS

27. The Council may, with the approval of the Cabinet Secretary, make regulations generally for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations—

(a) prescribing the manner and conduct of promoting public awareness about the causes, consequences, means of prevention, treatment and control of diabetes;

(b) prescribing the manner of undertaking early screening and diagnosis and treatment of diabetes; and

(c) prescribing the manner of conducting research on prevention, control and treatment of diabetes.

SCHEDULE—PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL (s. 7)

1. The chairperson or a member of the Board other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

2. A member, other than an ex officio member, may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without the Board’s permission;

(ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
(iv) ceases to be a registered person under this Act;
or
(v) is otherwise unable or unfit to discharge his functions.

Meetings.

3. (1) The Board shall, at its first meeting, elect a vice-chairperson from amongst its members.

(2) The Board 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.

(3) Notwithstanding subparagraph (2), the chairperson of the Board may convene a special meeting of the Board at any time for the transaction of the business of the Board, upon requisition in writing by at least five members of the Board.

(4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days’ written notice of every meeting of the Board shall be given to every member of the Board.

(5) The quorum for the conduct of the business of the Board shall be seven members.

(6) The chairperson or in his absence, the vice-chairperson, shall preside at every meeting of the Board but the members present shall elect one of their number to preside whenever the chairperson and vice-chairperson are absent, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of
other persons at its meetings, and may make standing orders in respect thereof.

4. (1) A member who has an interest in any contract, or other matter, present at a meeting shall, at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof 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.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.
MEMORANDUM OF OBJECTS AND REASONS

Diabetes is a leading cause of death and suffering in Kenya. Information from the International Federation of Diabetes (IDF) indicates that in 2011 Kenya was ranked as the 5th country in Africa with the highest number of people reported to be suffering from diabetes, a figure approximated at 720,000. However, a greater number of people are affected as many cases have not been detected.

Though diabetes is treatable, it is not curable and in most instances where it is diagnosed late, it results in severe consequences like amputation, high blood pressure and loss of sight etc. Management of diabetes not only affects the patient but also drains the friends and relatives of the patient hence adverse effects on the economy.

The principal object of this Bill is therefore to establish a legal framework to provide for prevention, treatment and control of diabetes.

The Bill further seeks to reduce the prevalence of type 2 diabetes by addressing the lifestyle that people live, regulating the quality and type of products that people consume and promoting awareness about the causes, methods of prevention and cure for diabetes.

The Bill further seeks to encourage data collection on diabetes by making it mandatory for hospitals to report new cases on detection, a fact that will help the government in healthcare planning.

PROVISIONS ON DELEGATED POWERS

This law when enacted will confer on the Council and other organs of the Council to be specified in the Act, the authority to make provisions having the force of law in Kenya in terms of Article 94 (6) of the Constitution of Kenya, 2010.

The Council with the approval of the Cabinet Secretary for instance is given authority by section 27 of this Act to make Regulation. The purpose and objectives of making these regulations include the following:

(a) to promote public awareness about the causes, consequences, means of prevention, treatment and control of diabetes in Kenya;

(b) to positively and proactively address and seek to eradicate conditions that cause and aggravate the spread of diabetes;

(c) to promote and ensure early screening and diagnosis and treatment of diabetes;

(d) to ensure reporting of all newly detected diabetes cases for effective planning purposes;
LIMITS OF THE DELEGATED AUTHORITY

The regulations made under this Act by the Cabinet Secretary will be limited to bringing into effect provisions of this Act and will therefore facilitate the promotion of public awareness about the causes prevention and control of diabetes as well as positively and proactively address and seek to eradicate conditions that cause and aggravate the spread of diabetes.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

Dated the 22nd April, 2014

RACHEL NYAMAI,
Chairperson Committee on Health.