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The Tharaka Nithi County Reproductive Health Rights Bill, 2020

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THE THARAKA NITHI COUNTY REPRODUCTIVE HEALTH RIGHTS BILL, 2020

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to provide for Reproductive Health and for connected purposes

ENACTED by the County Assembly of Tharaka Nithi as follows—

Short title

1 This Act may be cited as the Tharaka Nithi County Reproductive Health Act, 2020

Interpretation

2 In this Act unless the context otherwise requires—

“abortifacient” means any drug or device that induces abortion or the destruction of a fetus inside the mother’s womb or the prevention of the fertilized ovum to reach and be implanted in the mother’s womb,

“adolescent” means young people between the ages of ten to nineteen years who are in transition from childhood to adulthood,

“basic emergency obstetric and newborn care” means lifesaving services for emergency maternal and newborn conditions or complications being provided by a health facility or professional to include the following services administration of parenteral oxytocic drugs, administration of dose of parenteral anticonvulsants, administration of parenteral antibiotics, administration of maternal steroids for preterm labor, performance of assisted vaginal deliveries, removal of retained placental products, and manual removal of retained placenta It also includes neonatal interventions which include at the minimum newborn resuscitation, provision of warmth, and referral blood transfusion where possible,

“confidentiality” means to be assured that any personal information shall not be made public and shall remain confidential,

“comprehensive emergency obstetric and newborn care” means lifesaving services for emergency maternal and newborn conditions/complications as in Basic Emergency Obstetric and Newborn Care plus the provision of surgical delivery (caesarian section) and blood bank services, and other highly specialized obstetric interventions It also includes emergency neonatal care which includes at the minimum newborn resuscitation, treatment of neonatal sepsis infection, oxygen support, and antenatal administration of (maternal) steroids for threatened premature delivery,
“County Executive Committee Member” means the County Executive Committee Member responsible for matters of reproductive health,

“Department” means the department established by the County Government which is responsible for reproductive health,

“dignity” means to be treated with respect, consideration and attentiveness,

“discrimination” includes any exclusion, restriction or arbitrary distinctions,

“family planning” means a program which enables couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and to have access to a full range of safe, affordable, effective, non-abortifacient modern natural and artificial methods of planning pregnancy,

“fetal and infant death review” refers to a qualitative and in-depth study of the causes of fetal and infant death with the primary purpose of preventing future deaths through changes or additions to programs, plans and policies,

“gender equality” refers to the principle of equality between women and men and equal rights to enjoy conditions in realizing their full human potentials to contribute to,

benefit from, the results of development, with the State recognizing that all human beings are free and equal in dignity and rights. It entails equality in opportunities, in the allocation of resources or benefits, or in access to services in furtherance of the rights to health and sustainable human development among others without discrimination,

“gender equity” refers to the policies, instruments, programs and actions that address the disadvantaged position of women in society by providing preferential treatment and affirmative action. It entails fairness and justice in the distribution of benefits and responsibilities between women and men, and often requires women-specific projects and programs to end existing inequalities.

Provided that this concept recognizes that while reproductive health involves women and men, it is more critical for women’s health,

“gender perspective” means the beliefs, roles, values and behaviors that cultures and societies evolves for socialization of men and women.

“informed consent” means the possibility and opportunity to make a responsible decision based on full information free from coercion or violence,
"male responsibility" refers to the involvement, commitment, accountability and responsibility of males in all areas of sexual health and reproductive health, as well as the care of reproductive health concerns specific to men,

"maternal death review" refers to a qualitative and in-depth study of the causes of maternal death with the primary purpose of preventing future deaths through changes or additions to programs, plans and policies,

"maternal health" refers to the health of a woman of reproductive age including, but not limited to, during pregnancy, childbirth and the postpartum period,

"modern methods of family planning" refers to safe, effective, non-abortifacient and legal methods, whether natural or artificial, that are registered with the Department, to plan pregnancy,

"natural family planning" refers to a variety of methods used to plan or prevent pregnancy based on identifying the woman’s fertile days,

"privacy" means to have a confidential environment during counseling and services,

"public health care service provider" refers to—

(a) public health care institution, which is duly licensed and accredited and devoted primarily to the maintenance and operation of facilities for health promotion, disease prevention, diagnosis, treatment and care of individuals suffering from illness, disease, injury, disability or deformity, or in need of obstetrical or other medical and nursing care,

(b) public health care professional, who is a doctor of medicine, a nurse or a midwife

(c) public health worker engaged in the delivery of health care services, or

(d) health worker who has undergone training programs under any accredited government and non-governmental organization and who voluntarily renders primarily health care services in the community after having been accredited to function as such by the local health board in accordance with the guideline’s promulgated by the Department of Health,

"poor" means member of a household identified as poor through any relevant system used by the national government in identifying the poor,

"reproductive health" means the 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 this implies—

(a) that people are able to have a responsible, safe, consensual and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so, and

(b) that women and men attain equal relationships in matters related to sexual relations and reproduction,

“reproductive health care” means the access to a full range of methods, facilities, services and supplies that contribute to reproductive health and well-being by addressing reproductive health-related problems and includes sexual health, the purpose of which is the enhancement of life and personal relations

“reproductive health care program” means the systematic and integrated provision of reproductive health care to all citizens prioritizing women, the poor, marginalized and those invulnerable or crisis situations,

“reproductive health rights” means the rights of individuals and couples, to decide freely and responsibly whether or not to have children, the number, spacing and timing of their children, to make other decisions concerning reproduction, free of discrimination, coercion and violence, to have the information and means to do so, and to attain the highest standard of sexual health and reproductive health

Provided, however, that reproductive health rights do not include abortion, and access to abortifacients,

“reproductive health and sexuality education” means a lifelong learning process of providing and acquiring complete, accurate and relevant age- and development-appropriate information and education on reproductive health and sexuality through life skills education and other approaches

“reproductive tract infection” means sexually transmitted infections and other types of infections affecting the reproductive system,

“responsible parenthood” means the will and ability of a parent to respond to the needs and aspirations of the family and children. It is likewise a shared responsibility between parents to determine and achieve the desired number of children, spacing and timing of their children according to their own family life aspirations, taking into account psychological preparedness, health status, sociocultural and economic concerns consistent with their religious convictions,

“sexual health” means a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach
to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free from coercion, discrimination and violence,

“sexually transmitted infection” means any infection that may be acquired or passed on through sexual contact, use of IV, intravenous drug needles, childbirth and breastfeeding,

“skilled birth attendance” means childbirth managed by a skilled health professional including the enabling conditions of necessary equipment and support of a functioning health system, including transport and referral faculties for emergency obstetric care,

“skilled health professional” means a midwife, doctor or nurse, who has been educated and trained in the skills needed to manage normal and complicated pregnancies, childbirth and the immediate postnatal period, and in the identification, management and referral of complications in women and newborns,

“sustainable human development” means the bringing of people, particularly the poor and vulnerable, to the center of development process, the central purpose of which is the creation of an enabling environment in which all can enjoy long, healthy and productive lives, done in the manner that promotes their rights and protects the life opportunities of future generations and the natural ecosystem on which all life depends.

Guiding principles in the implementation of this Act

3 This Act declares the following as guiding principles—

(a) the right to make free and informed decisions, which is central to the exercise of any right, shall not be subjected to any form of coercion and must be fully guaranteed by the State, like the right itself,

(b) respect for protection and fulfillment of reproductive health and rights which seek to promote the rights and welfare of every person particularly couples, adult individuals, women and adolescents,

(c) human resource is among the principal assets of the country, as such, effective and quality reproductive health care services must be given primacy to ensure maternal and child health, the health of the unborn, safe delivery and birth of healthy children, and sound replacement rate, in line with the State’s duty to promote the right to health, responsible parenthood, social justice and full human development,
(d) the provision of ethical and medically safe, legal, accessible, affordable, non-abortifacient, effective and quality reproductive health care services and supplies is essential in the promotion of people’s right to health, especially those of women, the poor, and the marginalized, and shall be incorporated as a component of basic health care,

(e) the County shall promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved for the poor and marginalized as identified through relevant agencies and other government measures of identifying marginalization

Provided that the County shall also provide funding support to promote modern natural methods of family planning, consistent with the needs of acceptors and their religious convictions,

(f) the County shall promote programs that—

(i) enable individuals and couples to have the number of children they desire with due consideration to the health, particularly of women, and the resources available and affordable to them and in accordance with existing laws, public morals and their religious convictions

Provided that no one shall be deprived for economic reasons of the rights to have children,

(ii) achieve equitable allocation and utilization of resources,

(iii) ensure effective partnership among national government, local government units and the private sector in the design, implementation, coordination, integration, monitoring and evaluation of people-centered programs to enhance the quality of life and environmental protection,

(iv) conduct studies to analyze demographic trends including demographic dividends from sound population policies towards sustainable human development in keeping with the principles of gender equality, protection of mothers and children, born and unborn and the promotion and protection of women’s reproductive rights and health, and

(v) conduct scientific studies to determine the safety and efficacy of alternative medicines and methods for reproductive health care development,
(g) the provision of reproductive health care, information and supplies giving priority to poor beneficiaries as identified by the County or relevant State agency and other government measures of identifying marginalization must be the primary responsibility of the National Government consistent with its obligation to respect, protect and promote the right to health and the right to life,

(h) the County shall respect individuals’ preferences and choice of family planning methods that are in accordance with their religious convictions and cultural beliefs, taking into consideration the State’s obligations under various human rights instruments,

(i) active participation by nongovernment organizations, women’s and people’s organizations, civil society, faith-based organizations, the religious sector and communities is crucial to ensure that reproductive health and population and development policies, plans, and programs will address the priority needs of women, the poor, and the marginalized,

(j) while this Act recognizes that abortion is illegal and punishable by law, the government shall ensure that all women needing care for post-abortive complications and all other complications arising from pregnancy, labor and delivery and related issues shall be treated and counseled in a humane, nonjudgmental and compassionate manner in accordance with law and medical ethics,

(k) each family shall have the right to determine its ideal family size

Provided, however, that the County shall equip each parent with the necessary information on all aspects of family life, including reproductive health and responsible parenthood, in order to make that determination,

(l) there shall be no demographic or population targets and the mitigation, promotion and/or stabilization of the population growth rate is incidental to the advancement of reproductive health,

(m) gender equality and women empowerment are central elements of reproductive health and population and development,

(n) the resources of the country must be made to serve the entire population, especially the poor, and allocations thereof must be adequate and effective

Provided, That the life of the unborn is protected,
(o) development is a multi-faceted process that calls for the harmonization and integration of policies, plans, programs and projects that seek to uplift the quality of life of the people, more particularly the poor, the needy and the marginalized, and

(p) that a comprehensive reproductive health program addresses the needs of people throughout their life cycle

PART II—PROMOTION OF REPRODUCTIVE HEALTH CARE RIGHTS

Accepting the need of reproductive healthcare

4. The need for reproductive healthcare shall be accepted in order to—

(a) provide quality reproductive healthcare through short and long term efforts, among others, to professionalize obstetric care, emergency obstetric care and improve reproductive healthcare systems, particularly, in the primary health care sector,

(b) reach the underserved by increasing access to the disadvantaged, hard to reach, and vulnerable including poor women and remote marginalized areas by strengthening primary health units in addition to other responsibilities, the provision of family planning maternal and neonatal healthcare,

(c) provide quality ante-natal care remains the basic method to achieve a decline in maternal mortality and morbidity, and

(d) to meet women’s health needs—

(i) through family planning services for prevention of unsafe and unplanned pregnancies, and

(ii) by observance of World Health Organization standards of antenatal and post natal care thereby reducing incidences such as involuntary miscarriage and increasing access to trained birth attendants

Reproductive healthcare services

5. The facilitation of reproductive healthcare services shall focus on the following—

(a) the full range of services which address maternal mortality and morbidity shall be encouraged,

(b) reproductive health system shall be strengthened so that the competencies of reproductive health providers ensure quality services which encourage choice and are given in an environment of dignity and continuity,
(c) for access and affordability, focus and priority shall be given to the primary health care sector,

(d) it shall be recognized that all persons shall have the benefit of and access to available reproductive healthcare technology, including that relating to infertility, which is safe and free from gender discrimination,

(e) no person shall be subject to medical trials related to reproductive healthcare, without their full, free, informed and written consent,

(f) the county government shall take stringent measures to prevent the testing and dumping of harmful contraceptives and pharmaceutical in the County, whether by domestic entities or foreign entities, or multinational corporation,

(g) all persons must be free to manage their reproductive life having regard to the rights of others, and

(h) no person shall be subjected to forced pregnancy, sterilization, abortion or birth control

**Duties and Responsibilities**

6 (1) The County Government department of health shall serve as the lead agency for the implementation of this Act and shall integrate in their regular operations the following functions—

(a) fully and efficiently implement the reproductive health care program,

(b) ensure people’s access to medically safe, non-abortifacient, legal, quality and affordable reproductive health goods and services, and

(c) perform such other functions necessary to attain the purposes of this Act

(2) The Department, shall—

(a) strengthen the capacities of health regulatory agencies to ensure safe, high quality, accessible and affordable reproductive health services and commodities with the concurrent strengthening and enforcement of regulatory mandates and mechanisms,

(b) facilitate the involvement and participation of Non-governmental organizations and the private sector in reproductive health care service delivery and in the production, distribution and delivery of quality reproductive health and family planning supplies and commodities to make them accessible and affordable to ordinary citizens,
(c) engage the services, skills and proficiencies of experts in natural family planning who shall provide the necessary training for all family planning initiatives,

(d) supervise and provide assistance to health facilities in the delivery of reproductive health care services and in the purchase of family planning goods and supplies, and

(e) furnish health facilities through their respective local health offices, appropriate information and resources to keep the latter updated on current studies and researches relating to family planning, responsible parenthood, breastfeeding and infant nutrition

3 The Department shall issue strict guidelines with respect to the use of contraceptives, taking into consideration the side effects or other harmful effects of their use

4 Corporate citizens shall exercise prudence in advertising its products or services through all forms of media, especially on matters relating to sexuality, further taking into consideration its influence on children and the youth

Certain facts on reproductive health care

7 The acceptance of the following facts is essential for the promotion of reproductive health care rights in the County—

(a) that men and women are subject of reproductive health care, their joint involvement in responsible parenting is essential,

(b) that access to information on reproductive health care is integral in ensuring realization of reproductive health care rights,

(c) male involvement is essential in the attainment of reproductive health care rights, and

(d) the need to develop public awareness that maternal deaths are preventable and the suffering of women and children is avoidable

Promotion of reproductive health care rights

8 The County Government shall promote right to reproductive health care—

(a) by providing reproductive health care information which provides awareness regarding the mental and physical health and wellbeing of individuals and families,

(b) through the exercises of parental responsibilities which assures the rights of parents as educators, and
(c) by taking into consideration the religious and cultural norms and environment

**Gender neutral information**

9 The right to gender neutral information of reproductive healthcare shall be promoted by—

(a) access to information related to reproductive rights and responsibilities within a gender perspective which is free from stereotype, discrimination and retrogressive customs,

(b) by recognition that all couples have the right to information to ensure reproductive life decisions are made with informed consent,

(c) by physical awareness on the prevalence and impact of morbidity and mortality of medical science to prevent this suffering

**Promotion and Protection of Right to Equality**

10 (1) A person shall not discriminate against any person in their reproductive lives, in their access to information or services on the grounds on race colour, sex, creed or any other criteria of discrimination

(2) All women have the right to protection from discrimination in social, domestic or employment spheres by reason of pregnancies or motherhood

(3) All efforts shall be made to promote mutually respectful gender perspectives which assists in responsible parenting and strengthens family relations

(4) The County Governments shall promote the right to be free from ill-treatment by ensuring that persons have the right to protection from rape, sexual assault, sexual abuse, harassment and other forms of gender based violence

**PART III—PROMOTION, FACILITATION AND IMPLEMENTATION OF REPRODUCTIVE HEALTH CARE SERVICES**

**Hiring of Skilled Health Professionals**

11 (1) The county Government shall endeavor to hire an adequate number of nurses, midwives and other skilled health professionals for reproductive health care and skilled birth attendance to achieve an ideal skilled health professional-to-patient ratio

(2) The County Government shall ensure that people in geographically isolated or highly populated and depressed areas are provided with the same level of access to health care
Provided that the Parliament and County Assembly shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

(3) For the purposes of this Act, midwives and nurses shall be allowed to administer lifesaving drugs such as, but not limited to, oxytocin and magnesium sulfate, in accordance with the guidelines set by the Department under emergency conditions and when there are no physicians available.

Provided that they are properly trained and certified to administer these lifesaving drugs.

Health Care Facilities

12 Each health facility, upon its determination of the necessity based on well-supported data provided by its county department of health, shall endeavor to establish or upgrade hospitals and facilities with adequate and qualified personnel, equipment and supplies to be able to provide emergency obstetric and newborn care.

Provided that—

(a) people in geographically isolated or highly populated and depressed areas shall have the same level of access and shall not be neglected by providing other means such as home visits or mobile health care clinics as needed.

(b) the national government shall provide additional and necessary funding and other necessary assistance for the effective implementation of this provision.

Elements of reproductive health

13 The elements of reproductive health care include the following—

(a) family planning information and services which shall include as a first priority making women of reproductive age fully aware of their respective cycles to make them aware of when fertilization is highly probable, as well as highly improbable,

(b) maternal, infant and child health and nutrition, including breastfeeding,

(c) proscription of abortion and management of abortion complications,

(d) adolescent and youth reproductive health guidance and counseling,

(e) prevention, treatment and management of reproductive tract
infections, HIV and AIDS and other sexually transmittable infections (STIs),

(f) elimination of violence against women and children and other forms of sexual and gender-based violence,

(g) education and counseling on sexuality and reproductive health,

(h) treatment of breast and reproductive tract cancers and other gynecological conditions and disorders,

(i) male responsibility and involvement and men’s reproductive health

(j) prevention, treatment and management of infertility and sexual dysfunction,

(k) reproductive health education for the adolescents, and

(l) mental health aspect of reproductive health care

PART IV—DEVELOPMENT OF APPROPRIATE REPRODUCTIVE HEALTH CARE EDUCATION AND PUBLIC AWARENESS

Education and Development of School Curriculums

14 (1) The County Government shall develop appropriate reproductive health education to adolescents

(2) The County Government shall through the relevant departments collect data and prepare reports to be submitted to the Ministry and Departments responsible for education to inform and enrich the school curriculums on reproductive health education

(3) The reproductive health rights education referred to in this section shall be taught by adequately trained teachers informal and non-formal educational system and integrated in relevant subjects

Content of the reproductive education

15 The reproductive health rights education shall included, but not limited to—

(a) values formation,

(b) knowledge and skills in self-protection against discrimination,

(c) sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy,

(d) physical, social and emotional changes in adolescents,

(e) women’s rights and children’s rights,

(f) responsible teenage behavior,

(g) gender and development, and responsible parenthood
Consultation with Stakeholders

16 The flexibility in the formulation and adoption of appropriate reproductive health rights course content, scope and methodology in each educational level or group shall be allowed only after consultations with parents-teachers-community associations, school officials and other interest groups.

Department of Education

17 The Department of Education in the County shall formulate a curriculum which shall be used by public schools and shall be adopted by private schools.

Public Awareness

18 (1) The County Government shall, through the relevant departments, initiate and sustain a heightened county-wide multimedia-campaign to raise the level of public awareness on the protection and promotion of reproductive health and rights including, but not limited to—

- maternal health and nutrition,
- family planning and responsible parenthood information and services,
- adolescent and youth reproductive health,
- guidance and counseling, and
- other elements of reproductive health care provided for in this Act.

(2) Education and information materials to be developed and disseminated for this purpose shall be reviewed regularly to ensure their effectiveness and relevance.

PART V—SEXUAL AND REPRODUCTIVE HEALTH PROGRAMS FOR PERSONS WITH DISABILITIES

Abolition of barriers to reproductive health for persons with disabilities

19 The County Government shall abolish barriers to reproductive health services for persons with disabilities by—

- providing physical access, and resolving transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided,
(b) adapting examination tables and other laboratory procedures to the needs and conditions of persons with disabilities,

(c) increasing access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures,

(d) providing continuing education and inclusion of rights of persons with disabilities among health care providers, and

(e) undertaking activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of persons with disabilities

**Prohibition of any form of discrimination**

**20** (1) A person shall not, in offering services or assistance, where reproductive health matters are concerned, discriminate, in any form or manner, against any person with disability

(2) A person who contravenes subsection (1) commits an offence

**PART VI—MISCELLANEOUS PROVISIONS**

**Financial support**

**21** (1) The County assembly shall ensure that the department of health is adequately resourced to undertake its mandate under this Act

(2) The relevant laws applicable in seeking funds, procurement and related matters shall be applicable

**Development partners etc**

**22** The County Government may enter into agreements with any entity registered and recognized in Kenya in the interest of furthering the objective of this Act

(2) Where any development partner supports the County in the initiative under the Act such support shall—

(a) be entered into in accordance with the relevant applicable laws, and

(b) the support or resources offered shall be declared

(3) The County Government shall prepare reports of any expenditure received and expended under this section and submit the report to the County Assembly
Reporting Requirements

23 (1) Before the end each financial year, the department of health shall submit to the Governor and the County Assembly an annual consolidated report, which shall provide a definitive and comprehensive assessment of the implementation of its programs on reproductive health.

(2) The report referred to in sub section(1) shall include reports of other county government agencies and instrumentalities and recommend priorities for executive and legislative actions.

(3) The report shall be printed and distributed to all relevant county government agencies, the local health facilities, non-governmental organizations and private sector organizations involved in reproductive health programs.

(4) The annual report shall evaluate the content, implementation, and impact of all policies related to reproductive health and family planning to ensure that such policies promote, protect and fulfill women’s reproductive health and rights.

Prohibited Acts

24 (1) Any health care service provider, whether public or private, who—

(a) knowingly withhold information, restrict the dissemination thereof,

(b) intentionally provide incorrect information regarding programs and services on reproductive health, including the right to informed choice and access to a full range of legal, medically-safe, non-abortifacient and effective family planning methods,

(c) refuses to perform legal and medically-safe reproductive health procedures on any person of legal age on the ground of lack of consent or authorization,

(d) refuses to extend quality health care services and information on account of the person’s marital status, gender, age, religious convictions, personal circumstances, or nature of work.

Provided, That the conscientious objection of a health care service provider based on his/her ethical or religious beliefs shall be respected, however, the conscientious objector shall immediately refer the person seeking such care and services to another health care service provider within the same facility or one which is conveniently accessible,

commits an offence and shall upon conviction be liable to imprisonment for a term not exceed one year or to a fine not exceeding one million or to both.
(2) Any public officer, elected or appointed, specifically charged with the duty to implement the provisions of this Act, who, personally or through a subordinate—

(e) prohibits or restricts the delivery of legal and medically-safe reproductive health care services, including family planning,

(f) forces, coerces or induces any person to use such services,

(g) refuses to allocate, approve or release any budget for reproductive health care services or to support reproductive health programs,

(h) does any act that hinders the full implementation of a reproductive health program as mandated by this Act,

commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding two years or a fine nor exceeding two million or to both

(3) Any employer who—

(a) suggests, requires, unduly influences or causes any applicant for employment or an employee to submit himself/herself to sterilization, or

(b) use any modern methods of family planning, or not use such methods as a condition for employment, continued employment, promotion or the provision of employment benefits, commits an offence and shall upon conviction be liable to a fine not exceeding five million in the case of corporate entity and three million for individual employer

(4) Any employer shall not—

(a) discriminate against a pregnant woman or a mother when offering employment opportunity to any person

(b) use the excuse of a pregnancy or the number of children a ground for not hiring or terminating services or employment of any person

(5) A person who contravenes subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding six million, in the case of corporate and three million for individual employer

(6) Any person who shall falsify a Certificate of Compliance issued under this Act commits an offence

(7) Any pharmaceutical company, whether domestic or multinational, or its agents or distributors, which directly or indirectly colludes with national or county government officials, whether appointed or elected, in the distribution, procurement or sale by the National Government or
County Government modern family planning supplies, products and
devices, commits an offence and shall be liable upon conviction
summarily to a fine not below five times the net values of the products and
devices and the licence of such person or entity shall be revoked.

General penalty

25. A person who contravenes any of the provisions of this Act to
which no express penalty has been prescribed, commits an offence and
shall, upon conviction, be liable to—

(a) imprisonment for a term not exceeding five years or a fine not
   exceeding five million, and

(b) if the offender is a public officer, elected or appointed, he or she
   shall also suffer the penalty of suspension not exceeding one
   year or removal and forfeiture of retirement benefits depending
   on the gravity of the offense after due notice and hearing by the
   appropriate body or agency,

(c) if an offender is an alien, after service of sentence, be deported
   immediately without further proceedings by the Immigration
   department, or

(d) if the offender is a pharmaceutical company, its agent and or
   distributor, their license or permit to operate or conduct
   business in the County shall be perpetually revoked, and a fine
   triple the amount involved in the violation shall be imposed.

Legal Liability

26. (1) A person who, has not obtained a relevant qualification
   certificate issued by the County Government, who—

(a) engages in pre-marital medical examination, genetic disease
   diagnosis, prenatal diagnosis or medical technical appraisal,

(b) performs operations for termination of gestation, or

(c) issues relevant medical certificate as stipulated by this Law any
   of the following acts,

   commits an offence and the administrative department of public
   health shall stop such act and give a warning to or impose a fine upon him
   or her in light of the circumstances.

(2) A person who has not obtained relevant qualification certificate
   issued by the State or County performs operations for termination of
   gestation or terminates gestation by other means, thus causing death,
   disability, loss or basic loss of working ability, commits an offence and
   shall be investigated for criminal responsibility according to the provisions
   the existing Criminal Laws.
(3) Where personnel—

(a) engaged in the work of maternal and infant health care, in violation of the stipulations of this Act,

(b) issue fake medical certificates, or

(c) undertake sex identification of the foetus against the consent or regulation prescribed under any written law,

that person commits an offence, and the medical and health institutions or administrative departments of public health shall in light of the circumstances give them prescribed administrative sanctions and where the circumstances are serious, they shall be disqualified for practice of their profession according to law

Consents

27 For purposes of this Act consent includes—

(a) spousal consent in case of married persons provided that, in case of disagreement, the decision of the one undergoing the procedure shall prevail, and

(b) parental consent or that of the person exercising parental authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court

(c) In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures

Emergency cases

28 (1) A hospitals medical facility and medical clinics or any medical practitioner shall not refuse to offer emergency medical attention or to administer appropriate initial medical treatment and support in emergency and serious cases

(2) Consent shall not be required in any emergency or serious cases as is prescribed

Regulations

29 County Executive Committee member may make regulations generally for the better carrying into effect the object and purpose of this Act
MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to give effect to relevant Articles of the Constitution which obligate the State, County Government and other State entities to provide eliminate discrimination against women or gender on any grounds including pregnancy, and to facilitate the realization of the Constitution dictate which provides that every person has a right to the highest attainable standard of health, including the right to health care services, including reproductive health care.

The Bill recognizes the right to make free and informed decisions relating to reproductive health, without any form of coercion.

The Bill further seeks to provide for respect for protection and fulfillment of reproductive health and rights which seek to promote the rights and welfare of every person particularly couples, adult individuals, women and adolescents.

The Bill recognizes that human resource is among the principal assets of the County, as such, effective and quality reproductive health care services must be given primacy to ensure maternal and child health, the health of the unborn, safe delivery and birth of healthy children and sound replacement rate, in line with the State’s duty to promote the right to health, responsible parenthood, social justice and full human development.

The Bill further seeks to provide for ethical and medically safe, legal, accessible, affordable, non-abortifacient, effective and quality reproductive health care services and supplies is essential in the promotion of people’s right to health, especially those of women, the poor, and the marginalized, and shall be incorporated as a component of basic health care.

The Bill obligates the County Government to promote and provide information and access, without bias, to all methods of family planning, including effective natural and modern methods which have been proven medically safe, legal, non-abortifacient, and effective in accordance with scientific and evidence-based medical research standards such as those registered and approved for the poor and marginalized as identified through relevant agencies and other government measures of identifying marginalization.

Part I contains preliminary provisions.

Part II lays down the general principles of the Bill and lays a framework for the promotion of reproductive health rights within the County.

Part III contain provision on promotion, facilitation and implementation of reproductive health rights within the county.
Part IV contains provisions relating to promotion of appropriate reproductive health care education, training and creation of public awareness within the county in so far as reproductive health care rights and issues are concerned.

Part V contains provisions on sexual and reproductive health programs to persons with disabilities the part further provides for the necessity to provide proper health care to all The Bill requires all public health facilities and other facilities employ and retain qualified medical practitioners

Part VI contains miscellaneous provisions

The Bill delegates the power to make regulations to the County Executive Committee Member power to make regulations for the better carrying into effect the objects and purpose of the Act

Statement on the Constitutionality of the Bill

The Bill is constitutional and provides for matters within the competencies of Tharaka Nithi County. It recognizes the policy and constitutional obligation of the State and the National Government. It seeks to provide maternal health care support structure that respects the devolved governance system. It also provides for a framework for cooperation and reciprocity where necessary in the implementation of the Act.

This Bill does concern Tharaka Nithi County Government and is within the County Government jurisdiction set out in Part 2 of the Fourth Schedule to the Constitution.

Dated the 29th February, 2020

NJERU CHARLES NYAGA,
Chairperson Committee on Health Services