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**CARE AND PROTECTION OF OLDER MEMBERS
OF SOCIETY BILL, 2018**

A Bill for

AN ACT of Parliament to give effect to Article 57 of the Constitution; to provide a framework for the care of older members of society; to establish a framework for the empowerment and protection of the elderly and the maintenance of their well-being, safety and security; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. (1) This Act may be cited as the Care and Protection of Older Members of Society Act, 2018. Short title.

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

—
“Authority” means the National Social Assistance Authority established under section 3 of the Social Assistance Act; No. 24 of 2013.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to social development;

“county executive committee member” means the county executive committee member responsible for health;

“home for the older members of society” means any building or premises maintained and used for the reception, protection and temporary care of older members of society in need of care and protection;

“home-based care” means care provided or services rendered at the place where older members of society reside, excluding at a residential facility, by a care giver in order to maintain the older member of society’s maximum level of comfort;

“older member of society” means a person who has attained the age of sixty years.

“rehabilitation” means the process by which older members of society are enabled to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;

“respite care” means a service offered specifically to an older member of society aimed at the provision of temporary care and relief to the elderly;

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

Object and purposes.

- (a) provide a framework that promotes the rights of older members of society as enshrined under the Constitution;
- (b) promote and protect the status, well-being, safety and security of older members of society;
- (c) provide a framework for the registration, establishment and management of service and the establishment and management of residential facilities for older member of society; and
- (d) combat the abuse of older members of society.

4. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles —

Guiding principles

- (a) the respect, protection, promotion and fulfilment of the rights of older members of society as enshrined under Article 57 of the Constitution;
- (b) preservation of the freedom and dignity of every human being;
- (c) the fair and equitable treatment of older members of society;
- (d) the protection of older members of society from discrimination on any ground including age, health status or disability;
- (e) accountability of duty bearers and transparency in the implementation of this Act;
- (f) coordinated public participation in the formulation and implementation of policies and plans related to care and protection of older members of society;
- (g) targeted empowerment and capacity building of older members of society and those involved in their care and protection in order to promote the welfare and protect the rights of older members of society under this Act; and

- (h) that interventions for the care and protection of older members of society are based on objective information and methods and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the management of facilities and care of older members of society.

PART II—CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY

5. Pursuant to Article 57 of the Constitution, every older member of society has the right to —

Rights of older members of society.

- (a) fully participate in the affairs of his or her community and in any position suitable and based on the older member of society’s interests and capabilities;
- (b) take part in activities that enhance the older member of society’s personal development and build capacity to generate income and to take part in activities that advance their economic development;
- (c) access of social and legal services for the enhancement of the protection of the older member of society’s rights under the Constitution of the right to live in dignity and security;
- (d) protection from physical and mental abuse and any form of discrimination and to be free from exploitation;
- (e) take part in activities that promote the older member of society’s social, physical, mental and emotional well-being; and
- (f) receive reasonable care, assistance and protection from their family and the State.

6. (1) The national and county governments shall to the extent of their constitutional mandate promote the care, maintenance and protection of older members of society in Kenya.

Obligations of the national government with respect to the rights of older members of society.

(2) In ensuring that the national government fulfils its obligations under subsection (1), the Authority shall —

- (a) adopt a comprehensive national strategy and plan of action and policies to promote the realisation of

the rights of older members of society under Article 57 of the Constitution and put in place measures designed to improve the general welfare of older members of society;

- (b) collaborate with the county governments in the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of basic services to older members of society;
- (c) facilitate the access to social, financial, legal and other services by older members of society aimed at promoting their care and welfare;
- (d) carry out public sensitization programmes and promote access to information on the care and management of older members of society; and
- (e) maintain a data base on the older members of society in the Republic, on their status and their needs in order to put in place, adequate mechanisms for the provision of services to meet such needs.

(2) In performing its functions under subsection (1), the Authority shall —

- (a) collaborate with the relevant public entities in—
 - (i) putting in place measures to address factors that hinder the realization of the right of older members of society as stipulated under Article 57 of the Constitution; and
 - (ii) establishing mechanisms that ensure that older members of society have access to community and family based care support systems;
- (b) collaborate with the county governments and relevant State and private agencies in carrying out activities for the provision of such social and financial services to older members of society for the support and livelihood of older members of society;
- (c) promote research, data collection, analysis and the sharing and dissemination of information on the welfare of older members of society in the Republic;

- (d) collaborate with the county governments in —
 - (i) establishing a mechanism for older members of society to ensure that the older members of society have access to the highest attainable standards of health and that older members of society participate in the management of their health care needs;
 - (ii) expanding and strengthening community and family based care and support systems for older members of society;
- (e) perform such other functions as may be necessary for the implementation of this Act.

(3) The Authority may, for purposes of subsection (2), conduct inquiries, including public inquiries, into any matter relating to the welfare, care and protection of older members of society.

7. The county governments shall, in fulfilling their mandate under section 6(1), —

- (a) implement the national policy and strategies relating to older members of society within the county;
- (b) formulate and implement county specific programmes for the care and protection of older members of society within the county;
- (c) deliver, in collaboration with the Authority, such social services for the care and protection of older members of society within the county as they may consider appropriate;
- (d) establish residential care centres, social centres and such other facilities for the care of older members of society within the county in accordance with this Act;
- (e) monitor and supervise institutions, organisations and such other persons involved in the delivery of social services to older members of society in the county and coordinate the delivery of such services within the county;
- (f) collaborate with and provide access to information and such technical assistance as may

Obligations of the county government with respect to the rights of older members of society.

be necessary to the Authority and other care givers within the county to ensure the efficient delivery of social services to older members of society within the county; and

- (g) put in place programmes and projects that promote the generation of income by older members of society and that enable older members of society to, as far as possible, lead independent lives.

8. In carrying out their functions under sections 6 and 7, the national and county governments and any other person providing services concerning older members of society shall —

- (a) promote the participation of older members of society in decision making processes at all levels;
- (b) take into account the multi-dimensional needs of older members of society and promote the fulfilment of such needs;
- (c) promote the development and basic care of older members of society in the rural and urban areas;
- (d) establish mechanisms for the prevention of exploitation and abuse of older members of society;
- (e) ensure that older members of society receive priority in the provision of basic services; and
- (f) ensure, as far as is practicable, that services and facilities are accessible to older members of society.

Guiding principles in the delivery of services concerning older members of society.

PART III—CARE OF OLDER MEMBERS OF SOCIETY

9. An older member of society has the right to —

- (a) reside at home for as long as is possible;
- (b) benefit from family and community care and protection in accordance with the society's system of cultural values.

Right to family and community care.

10. (1) Each county government shall establish and implement community based programmes for the care and protection of older members of society residing within the county.

Community based programmes.

(2) Community based programmes established under subsection (1) shall comprise —

- (a) prevention and promotion programmes that seek to promote the independent living of older members of society residing within the county; and
- (b) home based care programmes that ensure that older members of society residing within the county who suffer from any form of physical or mental infirmity and are unable to care for themselves receive care through a comprehensive range of integrated services.

(3) The community based care programmes implemented pursuant to subsection (1) by the county governments shall —

- (a) comprise county specific interventions that address the needs of older members of society within the county;
- (b) promote family and community awareness on the care of older members of society within the county and sensitize them on the care and support of older members of society;
- (c) empower the older members of society economically to enable them sustain themselves;
- (d) include the delivery of spiritual, cultural, medical, civic and social services to older members of society within the county;
- (e) promote the health of older members of society through the provision of nutritious food and basic health services to the citizens;
- (f) promote the skills and capacity of older members of society to sustain their livelihoods;
- (g) encompass the delivery of professional services including the care and rehabilitation of older members of society to promote their independent living; and
- (h) integrate community care and development systems for older members of society.

(4) The county government may put in place such infrastructure, including community centres and facilities, for the purpose of providing community based care and support services under this Act.

11. (1) Home based care programmes established by a county government under section 10(2)(b) shall be implemented with respect to older members of society who

Home based care programmes.

- (a) suffer from any form of physical or mental infirmity;
- (b) are unable to care for themselves;
- (c) are in need of skilled services, case management, and assistance with activities of daily living or instrumental activities of daily living; and
- (d) are isolated and have no family member or care giver who can care for them.

(2) Home based care programmes implemented by the county governments under section 10(1) shall include —

- (a) the physical care of older members of society;
- (b) the provision of professional and lay support for the care of the older members of society;
- (c) rehabilitation programmes including the provision of assisted devices;
- (d) the provision of respite care including assisted living or memory care services for those suffering from physical or mental infirmity;
- (e) the sensitization and counselling of family members, care givers and community members on the conditions associated with ageing and the requirements for the care and protection of Older members of society; and
- (f) health care services to older members of society.

(3) A county government and any person who is registered under this Act may, for the purposes of providing home based care services to older members of society who are resident in the county, establish home care centres within the county.

12. The county executive committee member in each county shall, in delivering home based care, ensure that the appropriate interventions are put in place for the care and support of older members of society and shall —

Delivery of home based care.

- (a) encourage the active participation and involvement of the older members of society;
- (b) ensure the welfare of the older members of society care is catered for;
- (c) ensure respect for the basic human rights of older members of society;
- (d) take a multi-sector approach in the care and support of older members of society;
- (e) adopt measures to ensure the economic sustainability of home care support;
- (f) build and support referral networks or linkages and collaboration among the relevant stakeholders; and
- (g) build capacity to care for older members of society at the level household, community and institution levels.

13. (1) A person shall not abuse or subject an older member of society to any form of physical or mental abuse.

Prohibition of abuse of an older member of society.

(2) Any conduct or lack of appropriate action occurring within a relationship in which there is an expectation of trust which causes harm or distress or is likely to cause harm or distress to an older member of society constitutes abuse under subsection (1).

(3) For the purposes of subsection (1) and (2), “abuse” includes –

- (a) physical abuse which means any act or threat of physical violence towards an older member of society;
- (b) any conduct that violates the sexual integrity of an older member of society;
- (c) psychological abuse which means any pattern of degrading or humiliating conduct towards an older member of society, including –

- (i) repeated insults, ridicule or name calling;
 - (ii) repeated threats to cause emotional pain; and
 - (iii) repeated invasion of an older member of society's privacy, liberty, integrity or security;
- (d) economic abuse including –
- (i) the deprivation of economic and financial resources to which an older member of society is entitled under any law;
 - (ii) the unreasonable deprivation of economic and financial resources which the older member of society requires out of necessity; or
 - (iii) the disposal of household effects or other property that belongs to the older member of society without the older member of society's consent.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding one million or to both such fine and imprisonment.

14. (1) Every medical practitioner, social worker or any other person who examines, attends to or deals with an older member of society and who suspects that an older member of society —

Notification of abuse of an older member of society.

- (a) has been abused; or
- (b) suffers from any injury, shall notify the Authority and the Director of Medical Services of such abuse or injury.

(2) Upon receipt of a notification under subsection (1), the Director of Medical Services shall conduct such investigation as the Director considers necessary and upon establishing that the older member of society has been subjected to any form of abuse, the Director shall inform the Inspector General who shall take such action as is appropriate.

(3) On receipt of a notification under subsection (1), the Director of Medical Services in consultation with the

Authority may, in addition to such action as may be taken by the Inspector General of Police —

- (a) remove of the older member of society from the current place of residence or care and place the older member of society in a hospital, a home for older members of society or such other place as the Director may consider appropriate; and
- (b) arrange, where necessary, that the older member of society receives medical treatment.

(4) Any medical practitioner, social worker or other person shall not be liable for any action or claim for damages in respect of any notification given in good faith in accordance with subsection (1).

(4) Any dentist, medical practitioner, nurse, social worker or other person who fails to comply with subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both such fine and such imprisonment.

15. (1) The Authority shall keep a register of notifications received by it pursuant to section 14(1) containing —

- (a) information relating to the affected older member of society;
- (b) information relating to the person alleged to have abused the older member of society;
- (c) the date of the notification;
- (d) a description of the circumstances regarding each notification;
- (e) the action taken by the relevant authorities; and
- (f) such other information as the Authority shall consider appropriate.

(2) A person who is found guilty of having abused an older member of society and whose name appears in the register kept under subsection (1) shall not —

- (a) operate or be employed in any home for older members of society; or

Register of notifications on abuse of older members of society.

- (b) provide any community-based care and services to an older person.

PART IV— ESTABLISHMENT OF HOMES FOR OLDER MEMBERS OF SOCIETY

16. (1) A county government may establish and maintain residential homes for older members of society for the care and support of older members of society residing within the county.

Establishment of home care centres.

(2) A person shall not establish or manage a home for older members of society unless the home is registered in accordance with the provisions of this Part.

(3) Subsection (2) shall not apply to a person who manages a home that is established by a county government.

17. (1) A person shall not own or operate a home for unless the home is registered in accordance with this Act.

Requirement for registration and licensing.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

18. (1) A person who intends to establish a home shall make an application to the county executive committee member in the form prescribed by the county executive committee member for the registration of the home and the issuance of a licence to operate the home.

Registration and licencing of a home.

(2) Each County Government may enact county specific legislation setting out the –

- (a) criteria for the registration of a home within the respective county;
- (b) information required to be submitted by an applicant for registration;
- (c) process of determination of an application for registration of a home;
- (d) the grounds for the rejection of an application or cancellation of a registration certificate issued under this Act;
- (e) process of application for the renewal of licences, de-registration and revocation of a licence issued to an applicant under this Act;

(f) such other matters as the county government may consider necessary.

(5) Where county legislation has not been enacted, the requirements under the Schedule shall apply.

19. (1) Each home shall have such number of qualified medical practitioners, nurses and social or community health workers as shall be determined by the county executive committee member in accordance with subsection (2).

Personnel in a home.

(2) The number of medical practitioners and social workers in a home shall be based on the number of older members of society cared for or housed in the home and on such other factors as the county executive committee member may, by notice in the *Gazette*, determine.

20. (1) The county executive committee member may refuse to register a home where—

Refusal to register a home.

- (a) the applicant has submitted false or misleading information in the application;
- (b) the application does not comply with the provisions of this Act;
- (c) the managers or personnel do not meet the qualifications required for the care and support of Older members of society prescribed under this Act or under any other written law; or
- (d) the application does not comply with the requirements imposed under this Act or prescribed under the specific county legislation.

(2) The county executive committee member shall notify the applicant of the decision within fourteen days of such refusal.

21. (1) The county executive committee member may, subject to the provisions of section 22, cancel the registration of a home registered under this Act in accordance with legislation enacted pursuant to subsection (4).

Grounds for cancellation of registration.

(2) The county executive committee member shall not cancel the registration of a home under subsection (1) unless the county executive committee member—

- (a) issues to the holder of the registration certificate, a notice of at least fourteen days of the intention to revoke the registration certificate; and

(b) grants the holder of the registration certificate, an opportunity to be heard on the revocation.

(3) The county executive committee member shall cancel the registration certificate and de-register a home which has ceased to be a home or which has been closed down.

(4) A county government may enact county legislation prescribing the grounds for, and the process of, cancelling a registration certificate issued to a person to manage a home under this Act.

(5) Where county legislation has not been enacted, the provisions of the Schedule shall apply.

22. (1) The county executive committee member shall, before cancelling the registration of a home under section 21 issue to the manager of the home a compliance notice in the prescribed form.

Notice of non-compliance.

(2) A compliance notice specified under subsection (1) shall—

- (a) be in writing;
- (b) notify the manager of the home of the non-compliance and the steps the manager is required to take in order to comply;
- (c) inform the manager of the time period within which the manager is required to comply with the notice; and
- (d) contain such other information as the county executive committee member may prescribe.

(3) The county executive committee member may, upon request by the manager and where there are sufficient grounds shown by the manager, extend the period of compliance for such period as he or she may consider necessary to ensure compliance.

23. (1) Where a manager who receives a notice under section 22 fails to comply with such notice, the county executive committee member shall —

Cancellation of registration.

- (a) cancel its certificate of registration;
- (b) notify the manager in writing of—

- (i) the cancellation and the reasons for it; and
 - (ii) the date on which the registration was cancelled; and
- (c) amend the register accordingly.

(2) When the registration of a home has been cancelled, all the rights and benefits that accrue to the home by virtue of being registered under this Act shall cease to accrue to it.

(3) For purposes of this Act, a cancellation of registration takes effect on the date on which the certificate of registration is cancelled by the county executive committee member.

24. (1) A person who is aggrieved by the decision of the county executive committee member under this Part may, within thirty days of being notified of the decision, apply to the Authority for a review of the decision.

Application for review.

(2) An application for review shall be in such form as the Cabinet Secretary may, prescribe.

(3) The Authority shall determine an application under subsection (1) within sixty days of receipt of the application under subsection (1) and may confirm, vary or reverse the decision under review.

25. (1) Where the registration of a home is cancelled under section 23, the manager of the home shall ensure that on the closing down of the home, the older members of society residing in the home are accommodated in another registered home.

Closure of a home.

(2) Where a manager of a home intends to close down the home for any other reason other than the cancellation of the registration of the home, the manager shall –

- (a) inform the county executive committee member of the intention to close down the home and submit a report to the committee member containing information regarding–
 - (i) the older members of society residing in the home;
 - (ii) the personnel and persons employed in the home;

- (iii) any investigations or cases that may have been carried out or instituted against the home or that are pending in relation to the home;
 - (iv) the steps taken regarding the future accommodation of the older members of society residing in the home; and
 - (v) such other information as the county executive committee member may require;
- (b) at least six months before the closing down of that home in writing notify the older members of society of such closure;
 - (c) ensure that prior to closing down of the home, the older members of society residing in the home have been accommodated in another registered home.

(3) The manager of a home shall not close down the home unless the manager has applied for, in the prescribed form, and obtained the approval of the county executive committee member.

(4) The county executive committee member shall, upon receipt of an application to close a home under subsection (3), approve the application for such closure except where -

- (a) the manager fails to comply with subsection (2); or
- (b) such closure would be against public interest.

26. (1) The manager of a home under this Act shall, within three months from the end of each financial year, submit to the county executive committee member and the Authority, a report on the management of the home containing the following information-

- (a) compliance with the standards for service delivery, prescribed in this Act for any other law;
- (b) the number of persons residing in the home;
- (c) compliance with principles of sound management systems;
- (d) compliance with the conditions for continued registration;

Submission of reports on the management of a home.

- (e) such other information as the county executive committee member may prescribe.

(2) When the manager of a home fails to submit a report in accordance with subsection (1), the county executive committee member, in consultation with the Authority may revoke the registration of the home or take such action as the county executive committee member may consider necessary to ensure compliance.

PART V—CARE FOR OLDER MEMBERS OF SOCIETY IN HOMES

27. The manager of a home shall —

Role of management of a home.

- (a) facilitate the interaction between the residents of the home and their families and the public in general;
- (b) ensure the provision of quality service to the home;
- (c) ensure the continuous training of the personnel of the home;
- (d) apply principles of sound financial management and submit quarterly financial reports to the residents or the family members of the residents of the home; and
- (e) monitor activities at the home in order to deal speedily with any incidents of abuse of the residents of the home and takes steps to report such incidents to the appropriate authority.

28. The manager of a home shall ensure that the following services are provided in the home –

Services rendered within a home.

- (a) twenty-four hour care and support services to persons who need special care and attention;
- (b) care and supervision services to persons suffering from any form of physical or mental infirmity;
- (c) rehabilitation services;
- (d) counselling services to residents and family members of older members of society who have been admitted in the home;
- (e) outreach programmes;

- (f) respite care services;
- (g) training of volunteer care givers to deal with older members of society; and
- (h) recreational activities.

29. (1) The management of a home which is established by the county government shall not refuse to admit into the home, an older member of society.

Admission of older member of society into a home.

(2) An older member of society shall not be admitted into a home without the older member of society's consent unless the older member of society suffers from a mental infirmity that renders the older member of society incapable of giving such consent.

(3) Where an older member of society is unable to give his or her consent under subsection (2), the consent of a person authorised to give such consent under any written law or pursuant to a court order shall suffice.

(4) Notwithstanding the provisions of subsection (2), the management of a home shall inform the older member of society of the intended admission where the older member of society is capable of understanding notwithstanding the fact that the older member of society's mental infirmity renders the older member of society incapable of giving the required consent.

30. Every older member of society who is admitted into a home under this Act shall have the right to –

Rights of an older member of society in a home.

- (a) appoint a representative to act on his or her behalf;
- (b) have access to assistance and visitation;
- (c) have access to basic care and services within the home;
- (d) participate in social, religious and community activities of the older member of society's choice; and
- (e) the older member of society's physician of choice where the citizen can afford.

PART VI—MONITORING, EVALUATION AND SAFETY IN HOMES FOR OLDER MEMBERS OF SOCIETY

31. (1) The Authority shall –

Monitoring and evaluation by the Authority.

- (a) monitor and evaluate the implementation and adherence to the service and financial standards prescribed by the cabinet secretary under this Act.
- (b) assess the impact of the programmes implemented by the county governments relating to the welfare of older members of society within the county;
- (c) assess the viability of programmes relating to older members of society and where necessary, review or terminate such programmes;
- (d) identify constraints and possible solutions to the implementation of older member of society programmes;
- (e) put in place mechanisms for accountability and transparency in the implementation of programmes by the National and County Governments under this Act;
- (f) perform such other function as may be necessary for the enhancement of the welfare of older members of society under this Act.

32. (1) In formulating and prior to the implementation of a proposal, policy, programme or project that may affect older members of society, the Authority, county executive committee member, relevant State organ or concerned entity shall carry out an impact assessment to identify, predict, evaluate and mitigate economic, social and other effects of such policy, programme or project.

Impact assessments.

(3) The Authority shall cause to be undertaken an annual impact assessment to determine the impact of policies, programmes and projects implemented for the protection of and the realisation of the rights of older members of society under the Constitution and this Act.

(4) The Authority shall determine the manner in which impact assessments under subsection (1) shall be undertaken including —

- (a) the screening of any proposal, policy, programme or project;
- (b) the undertaking of scoping exercises and examination of alternatives measures for the achievement of the same objectives;

- (c) the undertaking of the impact analysis;
- (d) the identification and implementation of mitigation measures; and
- (e) the undertaking of public consultations.

33. (1) The county executive committee member shall, for purposes of monitoring and evaluating the provision of services by homes registered under this Act, appoint such number of inspectors as the county executive committee member may consider appropriate.

Appointment of inspectors.

(2) An inspector under subsection (1) shall be competitively recruited and appointed by the county public service board.

(3) The county public service board shall, in consultation with the county executive committee member, issue to every inspector appointed under subsection (1) in writing or in such form as the county public service board may determine, a certificate of appointment and authority to act as an inspector.

(4) A person appointed as an inspector under subsection (1) shall—

- (a) hold office subject to such terms and conditions as the county public service board may determine; and
- (b) have all the powers necessary to exercise the duties conferred on an inspector under this Act.

(4) Every person exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation and evidence of identity, and shall produce them to the person in charge of the home concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

(5) For the purposes of this section, inspection, in relation to any home, includes meeting and talking with the older members of society residing in the home.

(6) The county executive committee member shall make regulations for the conduct of inspections of homes under this Act.

34. (1) An inspector may, at any reasonable time, –

Inspection of homes for older members of society.

- (a) visit and inspect a home for older members of society, any place where any older member of society is cared for or accommodated for remuneration, whether by way of money or goods or any place which the inspector believes upon reasonable grounds to be a home for the aged or such a place;
- (b) interview any senior person accommodated in such home or place;
- (c) either with or without the assistance of a medical practitioner, enquire into the welfare of an older member of society; or
- (d) direct any person who has in his possession or custody any book or document relating to such home for the aged or place, to submit such book or document to him for inspection.

(2) An inspector exercising any power under subsection (1) shall, at the request of the manager of the home for the older member of society in question or the person who has control over the place in question as the case may be, produce a certificate issued by the Authority and stating that he is such an officer.

(3) Any person who -

- (a) obstructs or hinders an inspector in the exercise of the inspector's powers under subsection (1);
- (b) refuses to give an inspector, at the inspector's request access to older member of society accommodated in the home; or
- (c) refuses or fails to comply with a direction in terms of subsection (1) (d), commits an offence.

35. (1) An inspector holding a certificate under section 35 may, at any reasonable time, —

Powers of an inspection officer.

- (a) enter and inspect any home for older members of society;

- (b) inspect, photocopy, print out, or copy onto disk any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the home; or
- (c) remove any document specified in paragraph (b), whether in its original form or as an electronic or paper copy.

(2) Where any original documents are removed from a home under subsection (1)(c), the person who removes the documents shall—

- (a) leave, at the home, a list of the documents removed; and
- (b) return the documents, or a copy of them, to the centre as soon as practicable unless to do so would prejudice any investigation being or to be carried out by the county department.

(3) Every written authorisation issued to an inspector under section 33 shall contain—

- (a) a reference to this section;
- (b) the full name of the person authorised; and
- (c) a statement of the powers conferred on that person by this section.

(4) Every person exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation, and evidence of identity, and shall produce them to the person in charge of the home concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

(5) For the purposes of this section, inspection, in relation to any home, includes meeting and talking with the older members of society residing at the home.

36. (1) The management in each home under this Act shall –

Safety standards
in a home.

- (a) maintain premises that meet the requirements of the occupational health, safety regulations and building standards;
- (b) ensure the welfare and safety of the older members of society, medical practitioners and other persons within the home;
- (c) put in place firefighting equipment, first aid and other emergency equipment and medicine as the county executive committee member may prescribe; and
- (d) have a list of the contacts of emergency service providers including hospitals, readily available to all members of staff.

(2) In providing the equipment specified under subsection (1)(c), the management of the home shall ensure that such equipment is accessible during an emergency.

(3) The equipment and medicine under subsection (1) shall be maintained or kept by a centre in such manner as to ensure that it is out of the reach by all except those who require the medication and ensures that the safety of the older members of society is not compromised.

(4) The county executive committee member shall prescribe minimum standards for the health and safety in a home established under this Act.

MISCELLANEOUS PROVISIONS

37. In any matter concerning an older member of society –

- (a) an approach which is conducive to conciliation and problem solving shall be adopted and confrontational approach shall be avoided; and
- (b) delays in any action or decision to be taken in relation to the older member of society shall be avoided as far as possible.

Determination of a matter concerning older member of society.

38. A person who is convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.

General penalty

39. (1) The cabinet secretary may, in consultation with the Authority, make regulations generally for the better carrying out of the provisions of this Act. Regulations.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make Regulations –

- (a) prescribing the minimum standards for registration;
- (b) prescribing the minimum standards for the care and safety of older members of society;
- (c) prescribing the criteria and assessment procedures for the admission of a person into a home;
- (d) prescribing the minimum standards for the establishment and management of a home;
- (e) prescribe the conditions subject to which such registration certificates may be granted or renewed and the fees payable in respect of the grant or renewal of such certificates;
- (f) prescribing the qualifications required to be held by persons managing, employed in or rendering services in an older members of society' home.

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(3) Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to older members of society; and
- (b) in respect of different kinds of registrations.

(4) For the purposes of Article 94(6) of the Constitution –

- (a) the authority of the cabinet secretary and the county executive committee member to make Regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to Regulations made under this Act.

PART VII—TRANSITIONAL PROVISIONS

40. (1) Subject to subsections (2), (3), and (6), every home that, immediately before the commencement of this Act, was registered as an old person’s home shall be deemed to be registered as an older member of society’s home under this Act, and continues to be so licensed for the relevant period of registration subject to such conditions of registration as may be imposed under this Act.

Existing homes.

(2) Despite subsection (1), the county executive committee member may give written notice to the registered owner of a home registered under subsection (1), requiring the manager who operates that centre to apply for registration under section 16 within three months of the date of that notice, and—

- (a) if the manager fails to apply for registration within the specified period, the home ceases to be registered under subsection (1) at the end of that period; or
- (b) if the manager applies for registration within the required period, the centre shall continue to be a registered home under subsection (1) until that application has been determined.

(3) Despite subsection (1), if subsection (4) applies, the county executive committee member may, by written notice to the manager who operates an older member of society’s home that is deemed to be registered under subsection (1), declare that the home is no longer registered under subsection (1) and the notice has effect accordingly.

(4) The county executive committee member may give a notice under subsection (3) only if it is satisfied that the manager or the home—

- (a) has failed to comply with this Act on the requirements of registration; or
- (b) has failed to comply with any conditions for registration.

(5) The county executive committee member may, despite the fact that the home concerned does not meet the minimum requirements for registration prescribed under this Act, issue to the manager operating the home a transitional certificate in such manner as the county

executive committee member may prescribe and subject to such conditions as he or she may impose.

(6) Where the county executive committee member is not satisfied that the conditions specified in a certificate issued under subsection (5) are being complied with, the committee member may, by written notice to the manager operating the home, cancel the certificate of registration.

(7) Every notice under subsection (3) or subsection (6) shall set out the reasons for the action taken.

(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of an older member of society's home in the manner prescribed by the county executive committee member.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to give effect to Article 57 of the Constitution on the right of older persons to –

- (a) fully participate in the affairs of society;
- (b) pursue their personal development;
- (c) live in dignity and respect and be free from abuse; and
- (d) receive reasonable care and assistance from family and the State.

The Bill provides a framework through which the rights articulated under Article 57 of the Constitution can be realised. It recognises the fact that for a long time, older members of society, particularly those who are unable to care for themselves, have often been neglected and are unable to carry on living decent lives. The need for the State to take measures for the care of older members of society is compounded by the fact that the cohesion that existed amongst families and communities in the past is gradually eroding, and the older members of society have no one to turn to look after them when they are unable to look after themselves. It is therefore imperative to set up a system which can provide for the support of these older members of society to enable them live decent lives, a right which is inherent and which is expressed under Article 57 of the Constitution.

The Bill therefore provides the necessary legal framework for the establishment of a system for the care and maintenance of older members of society as follows –

Part I of the Bill deals with the preliminaries of the Bill including the short title, interpretation of words used in the Bill, the objects and purposes of the Bill and the principles to guide those who are to implement the Act.

Part II of the Bill breaks down the specific rights conferred on older members of society pursuant to Article 57 of the Constitution. It also specifically sets out the duties of the national and county governments with respect to the realisation of the rights of older members of society as conferred under Article 57 and the principles that are to guide them ensuring that such rights are realised.

Part III of the Bill provides for the care of older members of society. In particular, it provides for the establishment and implementation of community and home based care programmes for older members of society by the national and county government. This Part also prohibits the abuse of older members of society and defines which acts constitute abuse.

It also sets out the procedure for the reporting of cases of abuse of older members of society and the action to be taken by concerned parties.

Part IV outlines the process for the registration of homes for older members of society. It sets out the procedure for the making of an application for registration, the conditions required to be met prior to registration as well as the circumstances that may lead to, and the manner in which, the registration of a home may be cancelled. It also confers on a person whose application has been rejected the right to apply for a review. This Part also imposes an obligation on the manager of a home to submit reports to the county executive committee member and the Authority on matters relating to the management of the home.

Part V sets out the role of managers in the management of a home and the services required to be rendered with respect to an older member of society admitted in the home. It also compels homes established by a county government to admit an older member of society who qualifies for admission and sets out the rights of an older member of society in the home with respect to the services delivered to the older member of society.

Part VI provides for the monitoring and evaluation of homes for older members of society. This Part aims at ensuring that the homes of older members of society meet the safety standards, thereby guaranteeing the safety of the older members of society residing in the home. This Part also provides for the appointment of inspectors and confers on such inspectors, the powers necessary to ensure that the managers of homes for older members of society meet the requirements set out in this Act.

Part VII of the Bill deals with the miscellaneous provisions including the manner in which matters concerning older members of society are to be resolved, taking into account the unique needs of such persons. It also provides for the non-money status of the Bill, the general penalty and the power of the Cabinet Secretary to make Regulations under the Act.

Part VIII of the Bill makes provision for transition of existing homes that are currently registered which are deemed to be registered under the Act. These homes are however required to re-register under this Act within a period of three months failing which such homes shall automatically cease to be registered.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalising the Act in

order to implement the objectives set out in clause 3 of the Bill. The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

This Bill is expected to provide a framework through which county governments are to put in place mechanisms for the implementation of policies and programmes necessary for the realisation of the rights of older members of society under the Constitution. In particular, the counties are expected to establish homes and implement programmes within the county for the care of older members of society. The county governments, through the respective county executive committee members are responsible for the registration of homes for older members of society and are expected to ensure, through continuous monitoring, that such homes meet the minimum safety standards under the Act.

The county governments therefore have a responsibility to ensure that older members of society within their respective counties who are unable to care for themselves are cared for. It would therefore fall upon the county to ensure that systems are in place, at the societal level so support such persons within the county.

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

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

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

Dated the 31st May, 2018.

AARON CHERUIYOT,
Senator.