



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 17 of 2018)

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

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

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**THE 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

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

Interpretation. 2. In this Act—

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

“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; and

“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.

Object.

3. The object of this Act is to—

- (a) provide a framework that promotes the rights of older members of society as enshrined under the Constitution;
- (b) promote and protect the status, dignity, 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.

Guiding principles.

4. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following 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 older member of society;
- (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 – RIGHTS AND ENTITLEMENTS OF OLDER MEMBERS OF SOCIETY

Rights of older members of society.

- 5. An older member of society has the right to enjoy the rights conferred under the Constitution and in particular shall not be unfairly denied the right to—
 - (a) participate in community life in a position appropriate to their interests and capabilities;
 - (b) participate in intergenerational programmes;
 - (c) establish and participate in associations of older members of society;
 - (d) participate in activities that enhance their income generating capacity;

- (e) access opportunities that promote their optimal level of social, physical, mental and emotional wellbeing;
- (f) fully participate in the affairs of the society;
- (g) pursue their personal development;
- (h) manage their own property;
- (i) live in dignity and respect and be free from abuse; and
- (j) receive reasonable care and assistance from their family and the State.

Right to Legal Capacity.

6. (1) An older member of society has a right to legal capacity and the right to access support necessary to exercise that legal capacity.

(2) An express or implied disqualification on the grounds of age prescribed in a law, custom or practice shall not deprive an older member of society the right to legal capacity.

Right to Equality and Non-Discrimination.

7. (1) An older member of society is entitled to equal protection and equal benefit of the law.

(2) An affirmative action measure aimed to achieve equality of older members of society shall not constitute discrimination.

(3) An older member of society shall live in dignity and security, free from exploitation and physical or mental abuse and be treated fairly.

Right to Documents of Registration.

8. (1) An older member of society has a right to be issued with a passport, national identity card, certificate of birth and any other document of registration or identification irrespective of their age.

(2) Where a birth certificate is not issued, the older member of society shall use alternative document including a national identity card to serve the purpose.

Right to
Protection and
Safety in
Situations of Risk
and Humanitarian
Emergencies.

9. (1) An older member of society has a right to suitable and specialised protection and safety in a situation of risk, including a situation of armed conflict, humanitarian emergency and the occurrence of a natural disaster.

(2) An institution whether public or private shall maintain an inventory of all older members of society and shall submit the inventory quarterly to the national government, county government and other agencies responsible for disaster management.

(3) The national government and each county government shall be responsible for emergency management and shall take appropriate measures to ensure the inclusion of older members of society in every scheme, program, mission as well as its disaster management system during the occurrence of any disaster emergency, for the safety and protection of such persons.

Right to
Education.

10. (1) The national government and each county government shall ensure that older members of society have access to educational, cultural, spiritual and recreational resources.

(2) The Ministry responsible for education shall develop programmes and structures for the education and training of older members of society.

Right to Health.

11. (1) The national government and each county government shall take appropriate measures to ensure that an older member of society who is not covered in an existing medical scheme gets affordable, accessible, adequate and quality free medical care.

(2) Medical assessment reports for older members of society shall be free of charge in public health institutions.

(3) An older member of society shall not be compelled to undergo any test as a precondition to or for continued enjoyment of provision of health cover.

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Right to Admission into Public and Private Premises, and Public Transport.

- 12.** (1) A person shall not, on the ground of old age be denied-
- (a) admission into a premise to which members of the public are ordinarily admitted; or
 - (b) the provision of a service or amenity to which members of the public are entitled.
- (2) The proprietor of a premise referred to in subsection (1) (a) shall not have the right, on the ground of a person's age, to reserve the right of admission to the premises against an older member of society.

Right to Sports, Recreation, Leisure and Culture.

- 13.** (1) An older member of society has a right to participate in sports, recreation, leisure and cultural activities including national and international sports events.
- (2) Public and private institution with sporting, recreation, leisure and cultural activities shall ensure that the activities are sensitive to the needs of older members of society.
- (3) An older member of society is entitled to the use, free of charge, of recreational or sports facilities owned or operated by the government during social, sporting or recreational activities.
- (4) The national and county governments shall provide older members of society with a suitable environment for sports, recreation and leisure, including training support and medical personnel.
- (5) Sub section (4) shall not apply in cases where there is exclusive private hire of such facilities.

Right of Access to Justice.

- 14.** (1) Law enforcement agencies shall take into consideration the age of an older member of society on arrest, detention, trial or confinement.
- (2) A suit involving an older member of society shall be disposed off expeditiously having due regard to their age and suffering.

Obligations of the national government with respect to the

- 15.** (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

rights of older
members of
society.

Kenya.

(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.

(3) 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 periodic 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.

(4) 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.

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

16. The county governments shall, in fulfilling their mandate under section 15(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 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.

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

17. In carrying out their functions under sections 15 and 16, 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.

PART III —CARE OF OLDER MEMBERS OF SOCIETY

Right to family and community care.

- 18.** An older member of society has the right to —
- (a) reside at home for as long as is possible; and
 - (b) benefit from family and community care and protection in accordance with the society's system of cultural values.

Community based programmes.

- 19.** (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.
- (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.

Home based care programmes.

- 20.** (1) Home based care programmes established by a county government under section 19(2)(b) shall be implemented with respect to older members of society who —
- (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 19(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.

Delivery of home based care.

21. 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 —

- (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.

Prohibition of
abuse of an older
member of
society.

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

(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.

(4) 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.

Notification of abuse of an older member of society.

23. (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 —

- (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).

(5) 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.

Register of notifications on abuse of older members of society.

24. (1) The Authority shall keep a register of notifications received by it pursuant to section 23(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
- (b) provide any community-based care and services to an older person.

PART IV - ESTABLISHMENT OF HOMES FOR OLDER MEMBERS OF SOCIETY

Establishment of
home care
centres.

25. (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.

(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.

Requirement for
registration and
licensing.

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

(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.

Registration and
licencing of a
home.

27. (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.

(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.

Personnel in a
home.

28. (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).

(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.

Refusal to register
a home.

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

- (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.

Grounds for
cancellation of
registration.

30. (1) The county executive committee member may, subject to the provisions of section 31, cancel the registration of a home registered under this Act in accordance with legislation enacted pursuant to subsection (4).

(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.

Notice of non-compliance.

31. (1) The county executive committee member shall, before cancelling the registration of a home under section 30 issue to the manager of the home a compliance notice in the prescribed form.

(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.

Cancellation of registration.

32. (1) Where a manager who receives a notice under section 31 fails to comply with such notice, the county executive committee member shall —

- (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.

Application for review.

33. (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.

(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.

Closure of a home.

34. (1) Where the registration of a home is cancelled under section 32, 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.

(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

(iv) 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.

Submission of reports on the management of a home.

35. (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;
- (e) the number of older members of society who have died in the home within the year and the cause of death;
- (f) the number of accidents in the home and complaints reported in relation to older members of society; and
- (g) 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

Role of
management of a
home.

- 36.** The manager of a home shall —
- (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 county executive committee member and residents or the family members of the residents of the home;
 - (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; and

- (f) facilitate the enjoyment of all the rights of older members of society as conferred under the Constitution.

Services rendered within a home.

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

Admission of older member of society into a home.

38. (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.

(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.

Rights of an older member of society in a home.

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

- (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;
- (e) the older member of society's physician of choice where they can afford; and
- (f) the right of expression on matters regarding their welfare.

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

Monitoring and evaluation by the Authority.

40. The Authority shall –

- (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.

Impact
assessments.

41. (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.

(2) 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.

(3) 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.

Appointment of
inspectors.

42. (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.

(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.

(5) 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.

(6) 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.

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

Inspection of
homes for older
members of
society.

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

- (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.

Powers of an
inspection officer.

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

- (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 42 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.

Safety standards
in a home.

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

- (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

Determination of a matter concerning older member of society.

46. 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.

General penalty

47. 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.

Regulations.

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

(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.

(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

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(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

Existing homes.

49. (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.

(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 25 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.

The Care and Protection of Older Members of Society Bill, 2018

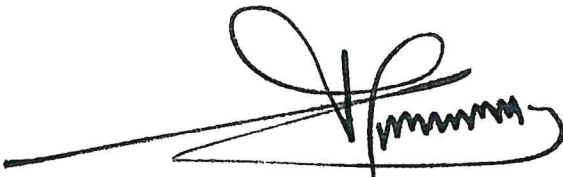
(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of an older member of society's home in the manner prescribed by the county executive committee member.

The Care and Protection of Older Members of Society Bill, 2018

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 12th June, 2019.


Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.


Speaker of the Senate

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