

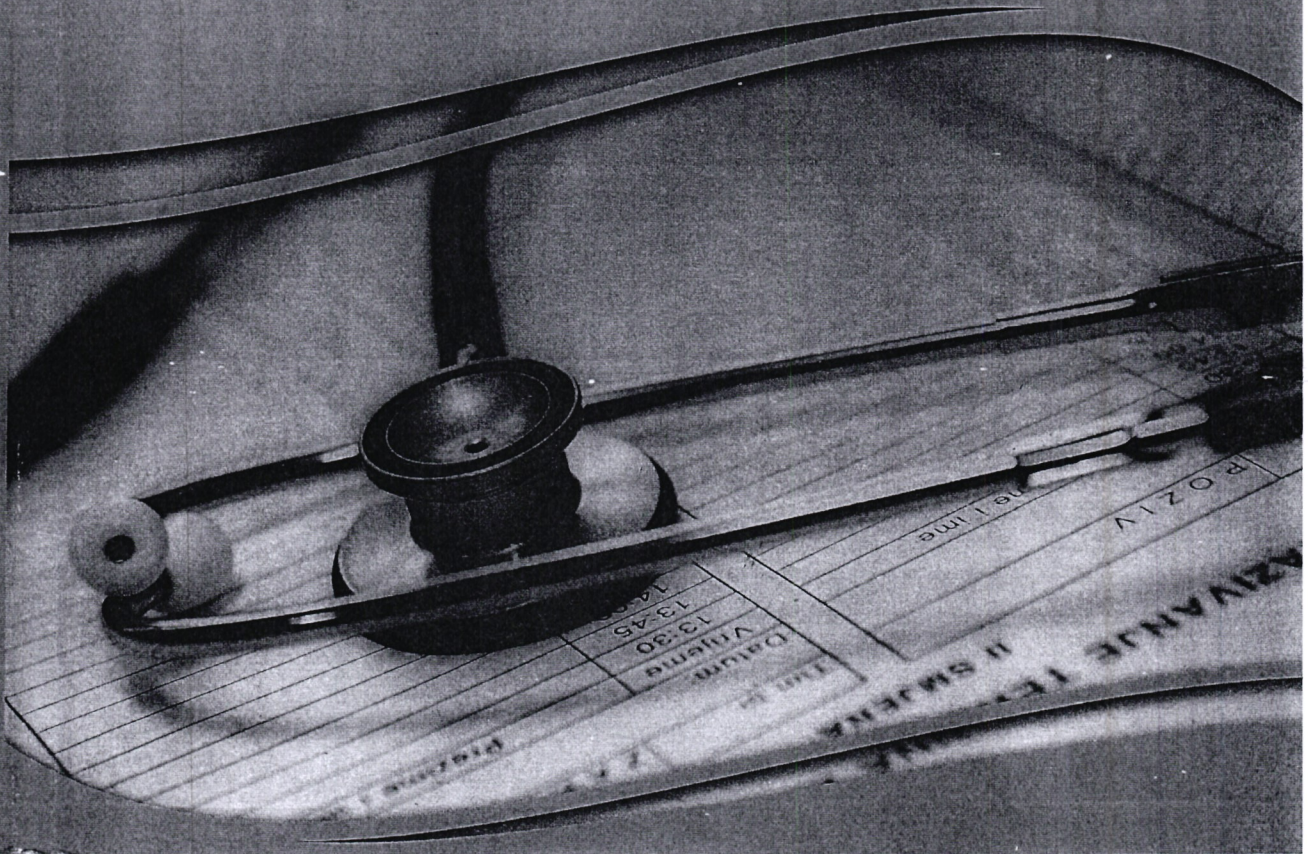


Council of Governors




**REPORT ON  
THE AUDIT OF NATIONAL  
AND  
COUNTY POLICY AND LEGISLATION IN  
THE HEALTH SECTOR**

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REPORT ON  
THE AUDIT OF NATIONAL  
AND  
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SECTOR

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**The Council of Governors (CoG)**

Delta Corner, 2nd Floor, Opp PWC Chiromo Road, Off Waiyaki Way

P.O Box 40401 - 00100 Nairobi, Kenya

Email: [info@cog.go.ke](mailto:info@cog.go.ke)

Phone: +254 (020) 2403313/4

Mobile: +254729777281

<http://www.cog.go.ke>

**Kenya Law Reform Commission (KLRC)**

Address: Reinsurance Plaza, 3rd Floor, Taifa Road

P.O. Box 34999-00100 Nairobi, Kenya

Email: [info@klrc.go.ke](mailto:info@klrc.go.ke)

Phone: (+254) 0799030716, (+254) 20 2241201

Fax: (+254) 20 2225786

Twitter: [klrcKE](#) Facebook: Kenya Law Reform Commission

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identifies the gaps and challenges with these instruments of governance. It further outlines recommendations for harmonization and alignment which will inform the success of counties in implementing devolution and will ensure the achievement of the collective aspirations of Kenyans, given the critical role of devolution in our current dispensation. The publication of this Report is a culmination of a highly participatory and consultative process in line with the constitutional requirements of public and stakeholder participation and engagement.

Through this Report, the Commission and CoG will spearhead and undertake the proposed policy and legislative reforms in partnership with the relevant sector Ministries, Departments and Agencies (MDAs). The successful implementation of the Report therefore calls for a coherent and cross-sectoral approach and a coordinated response across all levels of government, private sector and other non-state actors. Towards this end, all MDAs at both levels of government are expected to work closely together to make the proposed recommendations a reality. Finally, in publishing this Report, the Commission and CoG reaffirm their unwavering commitment and support to ensure conformity with the Constitution and respect for devolution.

I would like to thank all those who contributed to the development of the Report and subsequent finalization in one way or the other.

Thank you very much.

*Mbage Ng'ang'a*

Chairman KLRC



## Acknowledgements

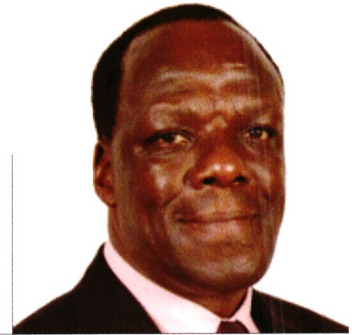
The development and finalization of this Report benefited from the contribution of various institutions and individuals. Various stakeholders including Ministries, Departments and Agencies (MDAs) at both levels of Government, the Private Sector, Non-State Actors, Parliament and the Office of the Attorney-General were consulted and their views considered. The stakeholders interacted with the Draft Report and gave their practical position on the issues raised. We sincerely thank them all for their invaluable contribution.

The audit process that culminated into development and publication of this Report was made possible through the generous financial support of the United States International Development (USAID) through the Agile and Harmonized Assistance to devolved Institutions (AHADI) and the Danish International Development Agency (DANIDA) through the International Development Law Organization (IDLO), the United Nations Development Programme and the World Bank. We are forever grateful to Ms. Waceke Wachira, USAID-AHADI Chief of Party and Mr. Romualdo Mavedzenge, IDLO Kenya Country Director, and their respective committed teams for their patience especially during those times when processes slowed down.

We acknowledge the excellent work done by the core technical committee comprising Ms. Joan Onyango (KLRC), Ms. Rosemary Njaramba (CoG), Ms. Zipporah Muthama (CoG), Mr. Justice Gatuyu (KLRC), Ms. Mukami Kibaara (CoG) and Ms. Christabel Wekesa (KLRC) which laid the foundation for the development of this Report. The Technical Committee incorporated the Office of the Attorney General & Department of Justice, Senate, IGRTC and Ministry of Devolution and ASALs whose input we sincerely appreciate. It is through their enthusiasm, hard work and commitment that we credit the accomplishment of this mission. We especially thank the staff of KLRC and COG (the joint secretariat of the Technical Committee) for their dedication and tireless efforts in ensuring successful completion of this Report. Special mention must go to the KLRC Chairman, Mr. Mbage Ng'ang'a who at various points was personally involved in the audit process.

We commend Dr. Conrad Bosire and the team of sector consultants namely: Catherine Mumma and Rhodah Njuguna for the exhaustive research in the policy and legal

## Foreword by Chairman, Council of Governors



In the year 2010, Kenya promulgated a new Constitution which introduced a two tier system of governance: the National Government and forty-seven (47) County Governments. The Fourth Schedule of the Constitution assigns thirty-five (35) functions to the National Government under part one (1) and fourteen (14) functions to County Governments under part two (2). Devolved functions primarily focus on service delivery to the citizens. County Governments have been bestowed with both legislative and executive authority to facilitate the performance of their functions and exercise of their powers.

It is however worth noting that despite the strides made in the country with respect to the devolved system of governance, existing and in force are still National laws that were enacted before the promulgation of the Constitution. Some of these laws undermine devolution by dint of the structures they had created and the powers they had conferred on various institutions, thereby impeding devolution's full implementation. On this premise, CoG and KLRC initiated the legal and policy audit aimed at scrutinizing National and County policies and laws with a view to establishing their alignment to the Constitution, specifically the devolved system of governance.

The study reveals that there are a myriad of National laws and policies that are not in tandem with the Constitution. Some of the key recommendations highlighted in the report are that some National laws need to be repealed while others require amendments in order to ensure conformity with the Constitution. For stakeholders to improve the policy and legislative environment that devolution operates in, they should read the report and collaborate in its implementation. This will ensure that both the National and County laws and policies conform to the letter and spirit of the Constitution, eventually leading to improved service delivery to the people of Kenya.

Thank you!

*H.E. Hon. FCPA Wycliffe Ambetsa Oparanya, EGH, CGJ*  
Chairman, Council of Governors



## Foreword by the Attorney General



This Report is the product of a study commissioned by the Council of Governors (CoG) and the Kenya Law Reform Commission (KLRC) across seven sectors, the key objectives of which were to audit the county government policies and legislation with the view of analysing their compliance with the Constitution, to audit all the national policy and legislation with a view of ascertaining the extent to which they conform to the devolved system of governance and to identify gaps and challenges and make recommendations for harmonization and alignment.

The sectors prioritized were Agriculture, Health, Natural Resource Management, Land and Physical Planning, Urban Development, Trade and Investment and Public Finance Management.

At this point in time, and while Kenya is still in transition from the old constitutional order to the new constitutional dispensation, it is clear from the Report that there are significant challenges around the extent of compliance with the laid down constitutional, legal and policy frameworks with respect to governance at both levels of government that need to be addressed. The Report provides the general trends that need to be tackled in the quest for compliance with the constitutional framework. Some of the notable findings include ambiguities in legislation, persistence of the old order in terms of laws, policies and practices across all sectors under review, inadequate consultation and cooperation between the two levels of government that can support and facilitate holistic development of laws and policies and a dearth of capacity to facilitate effective development of laws and policies that are clear, coherent, comprehensive and compliant with applicable constitutional provisions.

The Report has been enriched by the generous, earnest and thoughtful insights by sector experts through a peer review process. Further, the involvement of the stakeholders in reviewing the initial reports provided invaluable input in exploring together the serious topics that surround our common governance goal in addition to extensive discussion with the national and county government officials, civil society organizations, and representatives of the community-based organizations and networks that deal with sectoral governance issues.

As stated above, I wish to reiterate that this Report presents a comprehensive audit of the national and county legislation and policy approach and reveals the gaps and challenges that need immediate attention in the process of developing sufficient and responsive laws and policies that will actualize the devolved system of governance and the country's economic blue print, Vision 2030.

I wish to take this opportunity to sincerely thank the members of the team for their meritorious and sincere effort in writing this enlightening Report. My heartfelt gratitude also goes to the stakeholders and sector experts for their tireless efforts and enriching contribution and co-operation which led to the successful completion of the Report.

*P. Kihara Kariuki*

**Attorney-General**

## Foreword By Chairperson, Kenya Law Reform Commission



**D**evolution is one of the hallmarks of the Constitution of Kenya, 2010. Devolution has not only improved the economic and social welfare of people in many places, (some of which were traditionally marginalised), but has, to a great extent, increased the democratic space in our country, since the people are now part of the decision-making processes. As a country, we have indeed overcome several challenges and milestones in a bid to make the devolution dream a reality.

The Kenya Law Reform Commission (KLRC) is established by the Kenya Law Reform Commission Act, No. 19 of 2013 and is mandated to keep under review all the law and recommend its reform by undertaking research and comparative studies relating to law reform as well as related legislative impact assessments. The Commission also provides advice, technical assistance and information to the national and county governments with regard to the reform or amendment of any branch of law. The execution of this mandate includes undertaking a detailed audit of all the existing pieces of legislation, policies and administrative procedures and harmonizing them with the Constitution.

The Council of Governors (CoG) conducted a baseline survey which revealed that most of the laws in respect of key devolved functions were largely not compliant with the Constitution of Kenya, and key devolution Articles including Articles 173, 174 and the Fourth Schedule to the Constitution which demarcates the functions to be undertaken by the national and county governments. As a consequence of the survey findings, the Commission in partnership with COG undertook an audit of the national and county policies and law across seven devolved sectors. The purpose of the audit was to analyse national and county policies and legislation to determine their compliance with the Constitution with particular reference to devolution.

The Audit Report is one among the initiatives that we hope will help policymakers and relevant institutions in their efforts to entrench devolution. The Report focuses on seven devolved sectors namely: Health, Public Finance Management, Agriculture, Trade and Investments, Land and Physical Planning, Urban Development and Natural Resource Management as provided in the Fourth Schedule to the Constitution.

The Report documents the findings of the audit process in the identified seven sectors. It provides an analysis of the national and county policies and legislation and

frameworks. They worked tirelessly with the technical committee to constantly revise, edit and improve the contents of this publication. It is through this effort that we have this comprehensive Report.

Finally, we are indebted to the people of Kenya for according us the opportunity to serve and being the reason we continue to evaluate ourselves as a Country.

Thank you!

*Ms. Jacqueline Mogeni, MBS*  
CEO, Council of Governors

*Mr. Joash Dache, MBS*  
CEO/Secretary, KLRC

## Council of County Governors

The Council of Governors (CoG) is a non-partisan organisation established under Section 19 of the Intergovernmental Relations Act (IGRA 2012). The Council of Governors comprises of the Governors of the forty-seven Counties. Main functions are the promotion of visionary leadership; sharing of best practices and; offer a collective voice on policy issues; promote inter-county consultations; encourage and initiate information sharing on the performance of county governments with regard to the execution of their functions; collective consultation on matters of interest to county governments.

CoG provides a mechanism for consultation amongst county governments, share information on performance of the counties in execution of their functions, facilitate capacity building for Governors, and consider reports from other intergovernmental forums on national and county interests amongst other functions. The vision of the Council of Governors is to have prosperous and democratic counties delivering services to every Kenyan.

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## Kenya Law Reform Commission

The Kenya Law Reform Commission (the Commission) is established by the Kenya Law Reform Commission Act, No. 19 of 2013 (the Act). Presidential assent was given on 14 January 2013 and the Act came into force on 25th January 2013. The Commission has a statutory and ongoing role of reviewing all the law of Kenya to ensure that it is modernized, relevant and harmonized with the Constitution of Kenya. Following the promulgation of the Constitution in 2010, the Commission has an additional mandate of preparing new legislation to give effect to the Constitution. The third mandate is found in the County Governments Act, No. 17 of 2012 which requires the Commission to assist the county governments in the development of their laws. This is also a requirement found in the Act.

The Act grants the Commission a body corporate status and the necessary autonomy to enable it discharge its mandate as envisaged under the Act. The Commission is wholly funded by the Government but welcomes support from its partners.

Before the enactment of the Act, the Commission operated as a Department within the Office of the Attorney-General before being moved administratively to the Ministry of Justice, National Cohesion and Constitutional Affairs in 2003.

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## Abbreviations

AHADI	Agile and Harmonized Assistance for Devolved Institutions
CARA	County Allocation of Revenue Act
CoG	Council of Governors
KLRC	Kenya Law Reform Commission
SAGA	Semi Autonomous Government Agency
CIC	Commission for the Implementation of the Constitution
NFNSP	National Food Nutrition Security Policy
KHSSIP	Kenya Health Sector Strategic Investment Plan
CS	Cabinet Secretary
IDLO	International Development Law Organization
IGR	Intergovernmental Relations
IGRA	Intergovernmental Relations Act
IGRTC	Intergovernmental Relations Technical Committee
KARLO	Kenya Agricultural Research and Livestock Organization
KLRC	Kenya Law Reform Commission
NACADA	National Authority for the Campaign Against Drug Abuse
UNDP	United Nations development Programme
MDA	Ministries Departments Agencies

# HEALTH SECTOR

## 1. Introduction

The devolved system of government substantially altered the structures and institutional arrangements for the provision of health services in the country. The Fourth Schedule, which allocates responsibilities between the two levels of government, vested the county governments with a core role of providing basic health services while national health policies, standard setting, technical support for capacity needs and national level health services (referred to as national health referral services) were retained at the national level. Prior to 2010, the local authorities played a dismal role in public health services with only 3 to 4 larger municipalities (out of the 175 former local authorities) offering some basic health services.

More importantly, the Constitution recognised, for the first time in Kenya's constitutional history, the fundamental right to health. Article 43(1) provides that "every person has a right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care". Along with the right to health, the Constitution provides for the right to accessible and adequate housing, clean and safe water, and social security, among other social and economic rights. All of these rights support the broad realisation of the right to health.

The recognition of the right to health translates the provision of those rights to a duty of the national government and the county governments levels, in accordance with the framework that is set out under the Fourth Schedule to the Constitution and the relevant Transitional Authority gazette notice that unbundles the functions in the Fourth schedule. Furthermore, even before the promulgation of the Constitution, the Country had committed itself to various regional and international human rights instruments that required state parties to implement and facilitate the realisation of the right to health. Article

2(6) of the Constitution provides that “any treaty or convention ratified by Kenya shall form part of Kenya under this Constitution”. Accordingly, realisation of the right to health is not only a constitutional imperative but also a realisation of Kenya’s external commitments to realise the right to health.

**Table 1: Regional and International Instruments on the Right to Health**

Provisions of International Instruments	Key Focus
<p><b>Article 12</b> The International Covenant on Economic, Social and Cultural Rights (ICESCR)</p>	<p>» Recognizes the right of everyone to the highest attainable standard of physical and mental health.</p>
<p><b>Article 5</b> The International Convention on the Elimination of racial Discrimination (ICERD)</p>	<p>» Provides for non-discrimination in the enjoyment of rights including the right to public health.</p>
<p><b>Articles 10 and 12</b> United Nations Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)</p>	<p>» Shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.</p>
<p>The African Charter on Human and People rights (Banjul Charter)</p>	<p>» Provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.</p>
<p><b>Article 14</b> The African Charter on the Rights and Welfare of the Child (ACRWC)</p>	<p>» Provides that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.</p>
<p><b>Article 24</b> UN Convention on the Rights of the Child (CRC)</p>	<p>» Recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.</p>
<p><b>Article 25</b> UN Convention on the Rights of Persons with Disability (CRPD)</p>	<p>» Provides for the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.</p>

Implementation of the health sector reforms, in view of the new constitutional framework, requires the alignment of laws and policies to the current constitutional order. As a result, there is a need for new laws at the county level and revised or new laws at the national level. Additionally, the redistribution of functions between the two levels affects the restructuring of institutions in the health sector. This audit reviews the laws and other legal instruments establishing these institutions to ensure that to the extent that they carry out functions that have been devolved, they will need to be restructured to ensure compliance with the constitution.

The Constitution of Kenya 2010 is, therefore the primary standard for guiding the audit of the policies and legislation on Health; it is expected that the actual drafting of the revised/ amended policies and laws following the recommendations from this audit, will take on board the other relevant technical issues concerning the sector.

To guide the implementation of laws and policies, the Transition Authority developed a framework for understanding, in a greater detail, the functions transferred to counties. This is contained in a gazette notice that was published in August 2013. The details of the various functions are provided in the table below.

*Table 2: County government functions in the Health Sector*

No	Function	Content of functions
	County health facilities	<ul style="list-style-type: none"> <li>» County hospitals</li> <li>» Sub-county hospitals</li> <li>» Rural health centres</li> <li>» Dispensaries</li> <li>» Rural health training and demonstration centres,</li> <li>» Rehabilitation and maintenance of county health facilities including:               <ul style="list-style-type: none"> <li>» maintenance of vehicles,</li> <li>» medical equipment and machinery,</li> <li>» Inspection and licensing of medical premises including reporting.</li> </ul> </li> </ul>

No	Function	Content of functions
	County health pharmacies	<p>Specifications, quantification, storage, distribution, dispensing and rational use of medical commodities</p> <p>Provided that until alternative intergovernmental arrangements are made, all counties shall procure medical commodities from the Kenya Medical Supplies Authority except where a particular commodity required by a county government is not available at the Kenya Medical Supplies Authority;</p>
	Ambulance services	<ul style="list-style-type: none"> <li>» Emergency response</li> <li>» Patient referral system</li> </ul>
	Promotion of primary healthcare	<ul style="list-style-type: none"> <li>» health education,</li> <li>» health promotion,</li> <li>» community health services,</li> <li>» reproductive health,</li> <li>» child health,</li> <li>» tuberculosis, HIV, malaria,</li> <li>» school health program,</li> <li>» environmental health,</li> <li>» maternal health care,</li> <li>» immunization,</li> <li>» disease surveillance,</li> <li>» outreach services,</li> <li>» referral,</li> <li>» nutrition,</li> <li>» occupation safety,</li> <li>» food and water quality and safety,</li> <li>» disease screening,</li> <li>» hygiene and sanitation,</li> <li>» disease prevention and control,</li> <li>» ophthalmic services,</li> <li>» clinical services,</li> <li>» rehabilitation,</li> </ul>

No	Function	Content of functions
		<ul style="list-style-type: none"> <li>» mental health,</li> <li>» laboratory services,</li> <li>» oral health,</li> <li>» disaster preparedness and disease outbreak services.</li> <li>» planning and monitoring,</li> <li>» health information system (data collection, collation, analysis and reporting),</li> <li>» supportive supervision,</li> <li>» patient and health facility records and inventories;</li> </ul>
	Licensing and control of undertakings that sell food to the public	<ul style="list-style-type: none"> <li>» food safety and control;</li> </ul>
	Enforcement of waste management policies, standards and regulations	<ul style="list-style-type: none"> <li>» refuse removal (garbage):</li> <li>» provision of waste collection bins,</li> <li>» segregation of waste at source,</li> <li>» licensing of waste transportation;</li> <li>» refuse dumps including: <ul style="list-style-type: none"> <li>» zoning waste operation areas,</li> </ul> </li> </ul>
		<ul style="list-style-type: none"> <li>» conducting environmental impact assessment for the siting of dumps,</li> <li>» fencing of dumps,</li> <li>» controlling fires,</li> <li>» monitoring waste.</li> </ul>
	Veterinary services	<ul style="list-style-type: none"> <li>» coordinate and oversee veterinary services including clinical services</li> <li>» artificial insemination,</li> <li>» reproductive health management</li> </ul>

## 2. National policies

The national government under the new constitution is charged with the responsibility of policies and strategies definition while counties are responsible for the implementation of the same to guide the health service delivery. Aligning policies to the new constitution is vital to guide the two levels of governments in achieving national priorities in order to avoiding policy implementation failure. Policies defines the action plan and identifies the responsibilities of each level of government in order to achieve the policy set objectives. Thus, failure to articulate the policies in relation to the implementation level creates confusion and duplication of functions leading to wasted resources.

Policies also define the resources both financial and human, required to implement the policy. Hence when a policy does not articulate the process of provision and the role of the level of government that is responsible, the priorities are not well financed or supported with necessary human resources for their implementation.

In addition, policy implementation may rely on development of new systems to facilitate the implementation of the planned priorities and unlock the foreseen progress accruing from the policy implementation. Furthermore, coordination between the two levels of government allows smooth implementation, follow up, and common understanding. When such systems are not put in place due to lack of policy or strategy clarity, the two levels of government do not have an idea of what the other is doing. This makes monitoring of achievements accruing from policies and strategies from a national level impossible. If results of a policy or strategy cannot be confirmed, then the policy is deemed failed.

The purpose of audit of the policies and strategies in the health sector has been to confirm the extent to which the policies are aligned to the new constitution and identifying areas that need to be addressed ensure the policies and strategies are aligned to achieve the set objectives thus avoiding policy/strategies failure. The audit examined the following policy documents.

## National policies

- » Kenya Health Policy, 2014-2030
- » Kenya National e-Health Policy, 2016-2030
- » Health Information Systems Policy
- » The National Food and Nutrition Security Policy (NFNSP) - Kenya
- » Mental Health Policy, 2015 – 2030
- » HIV and AIDS Policy, (2009)
- » National Reproductive Health Policy: Enhancing Reproductive Health Status for all Kenyans, (2007)
- » Kenya Adolescent Reproductive Health and policy, 2015
- » National Maternal, Infant and Young Child Nutrition, Policy Guidelines, 2013

## Strategies

- » Transforming Health: Accelerating Attainment of Universal Health Coverage: Kenya Health Sector Strategic and investment Plan (KHSSPI) July, 2013 –2017
- » The Kenya National Strategic Plan on Tuberculosis, Leprosy and Lung Diseases, 2015 – 2018
- » Tobacco Control and Prevention Strategy Towards Tobacco Free Kenya, 2012 – 2017
- » Kenya National Strategy for the Prevention and Control of Non-Communicable Diseases, 2015 – 2020
- » The National Cancer Control Strategy, 2017 – 2022
- » Health Sector Human Resources Strategy, 2014-2018
- » Kenya Health Sector Referral Strategy, 2014–2018

Detailed recommendations are provided in the tables. However generally, a number of policies require complete overhaul because they are out-dated. A number need to be reviewed to clearly define the role of counties as the implementing agencies. All policies and strategies require a plan for dissemination and domestication at county level to address the specific need of each county.

Table 2: Review of the applicable Health Sector Policies tabulated in a matrix

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
1.	<p><b>Kenya Health Policy, 2014-2030</b></p> <p><b>Objective:</b></p> <ol style="list-style-type: none"> <li>1. Eliminate communicable conditions</li> <li>2. Halt and reverse the rising burden of non-communicable conditions</li> <li>3. Reduce the burden of violence and injuries</li> <li>4. Provide essential healthcare</li> <li>5. Minimize exposure to health risk factors</li> <li>6. Strengthen collaboration with private and other health-related sectors</li> </ol>	<p>» The policy complies with Devolution as it identifies the mandate of each level of government.</p> <p>» However, it is not possible to confirm the level of implementation.</p> <p>» There is also need to confirm the extent to which counties are aware of the policy and if they are using it.</p> <p>» Also, it is important to establish the number of counties that have domesticated the policy to meet their unique needs and set up their priorities and investments.</p>	<p>» There are residue functions still under national government especially under the national parastatals and Sagas that need to be addressed.</p> <p>» Such institutions include NACC, NHIF, all human resource responsible for registering and regulating human resource for health</p> <p>» Except for KEMSA, all parastatals under the national government are not devolution compliant but they are undertaking county functions. Such organizations include NACC, the Kenya Blood Bank, Kenya Poisons Board, all bodies that register and regulate health workers.</p> <p>» The policy is fully operationalized at national level</p> <p>» Poor dissemination of the policy at county levels mean poor implementation due to lack of in depth understanding of objectives and orientation.</p>	<p>» Need to review the policy at midterm to allow adjusting changes that have resulted due to deepening of devolution.</p> <p>» Identify all parastatals that are undertaking county functions in contravention of the constitution and have them change to be inter-governmental institutions. Such parastatals include NHIF, NACC etc.</p> <p>» All residue functions that are county functions that are performed at national levels need to be devolved.</p>

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
2.	<p><b>Kenya National eHealth Policy, 2016-2030</b></p> <p><b>Towards attainment of the highest standard of health through adoption and use of ICT</b></p> <p><b>Objective:</b></p> <ul style="list-style-type: none"> <li>» To create an enabling environment for the</li> <li>» Sustainable</li> <li>» Adoption,</li> <li>» Implementation and</li> </ul>	<ul style="list-style-type: none"> <li>» The development of the policy included participation of both national and county governments. Participation of the counties is key because 95% of health care is provided at the county levels that would benefit from elaborate eHealth systems to improve health services.</li> <li>» Given that eHealth policy cannot be implemented in isolation, this document is anchored on the policy frameworks provided by the Kenya Health Policy (2014-2030), Health Information Policy (2014-2030), and the ICT Policy 2006.</li> </ul>	<ul style="list-style-type: none"> <li>» It is not clear the number of counties that are aware of this policy and that have customized the policy to address issues that are unique to the counties</li> <li>» The policy proposes a universal health care with counties participating. This calls for reforming the NHIF to make it compliant with devolution but this is yet to be done.</li> <li>» The policy is new as it was finalized in 2016.</li> <li>» To operationalize this policy and achieve intended objectives will require heavy investment both by the national and county levels.</li> <li>» Need to define the role of fund raising because the level responsible is not clear. The policy seems to allocate this responsibility to national government yet counties also need to raise funds for county functions including for establishment of eHealth systems.</li> </ul>	<ul style="list-style-type: none"> <li>» This being a new policy, there should be emphasis on dissemination so that counties can be clear on their roles and responsibilities especially on regulations of the systems that are already operational</li> </ul>

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
	<ul style="list-style-type: none"> <li>» Efficient use of e-health products and services at all levels of health-care delivery in Kenya.</li> </ul>	<ul style="list-style-type: none"> <li>» Currently, over 35 counties have at least one eHealth project with Nairobi, Mombasa and Kisumu Counties taking the lion share of the projects. Comparatively, Peri-Urban Regions like Busia, Kakamega and Vihiga have a good number of eHealth projects while Counties in Arid and Semi-Arid Regions such as Turkana, Wajir, Garissa, Samburu, Marsabit and Mandera have the least number of eHealth systems and interventions.</li> <li>» Over 35 counties are implementing have eHealth but the ownership and implementation of the interventions/ projects are by donor partners and Non-Governmental Organisations (NGOs) raising the issue of ownership and sustainability.</li> <li>» The policy is meant to provide a regulatory framework that provides guidance on ownership of eHealth projects. This policy will minimize duplication and fragmentation of these interventions while</li> </ul>	<p>The national government is lying cables establishing connectivity across towns including to hospital facilities. The role of the county in this regard will need to be clarified as it is not clear.</p>	

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
		<p>increasing acceptability and sustainability of eHealth conventional healthcare sector.</p> <ul style="list-style-type: none"> <li>» The policy includes institutional structures that include counties showing their role in the implementation of the policy. The national government role includes capacity development and standards.</li> </ul>		
3.	<p>Health Information Systems Policy</p> <p><b>Guides:</b></p> <p>The Health sector in</p> <ol style="list-style-type: none"> <li>1. Developing and</li> <li>2. Implementing an information system capable of producing quality data and information.</li> <li>3. To capture data that shows trends on the performance and progress towards achieving the health sector's objectives.</li> <li>4 supports the availability of reliable and relevant health information, for planning and</li> </ol>	<p>The policy is compliant to the extent that there exists a system that collects and collates the health information system.</p> <ul style="list-style-type: none"> <li>» One system provides for standardization across the country with defined country indicators that generally show the health sector performance.</li> <li>» However, this does not allow for counties specific indicators that would mirrors counties priorities</li> </ul>	<ul style="list-style-type: none"> <li>» Health information is collected from the lowest to the highest health facilities. Health facilities are divided between the National and County governments in accordance with each level of government mandate.</li> <li>» Currently data is collected from dispensaries health centers, sub-county hospitals, county referral hospitals. The data is fed into the HIS and transmitted to the national <i>Ministry of Health</i>.</li> <li>» The record officers are county officers but it is not clear which level of government is</li> </ul>	<ul style="list-style-type: none"> <li>» Need to review the policy to align it to devolution. This will allow a two tier <i>Health Information System (HIS)</i></li> <li>» The two-tier would have overall indicators to demonstrate country's performance and progress on key health parameters that would also allow comparison with international health goals that the country has signed to:</li> <li>» The second tier/level would include county indicators to allow counties capture county specific data on priorities thus</li> </ul>

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	<p>evidence-based decision on resource allocation for improved quality of health services countrywide.</p>		<p>responsible for building their capacity, career development etc.</p> <ul style="list-style-type: none"> <li>» The policy is inconsistent to the following extent: <ul style="list-style-type: none"> <li>» The policy was developed before devolution with limited consultation of counties.</li> <li>» The Health Information Management Systems that existed before the current policy changed only in name to HIS. The system of data collection did not change: data is primarily collected at facility level and uploaded to the electronic system and transmitted to MOH with no management at county level. The indicators are the nationally defined indicators and there is no way of measuring county-specific indicators if a county wanted to gather more detailed information through the same information system.</li> <li>» MOH has retained the management role of the data collected from the counties.</li> </ul> </li> </ul>	<p>providing evidence for county decision making.</p> <ul style="list-style-type: none"> <li>» A review would allocate responsibility on the management including analysis and use of the data and information collected at both levels of the government.</li> <li>» Clarify the responsibility of each level on resource mobilization for system strengthening including human resource.</li> </ul>

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			<p>» The national has dictated the national indicators on which data is collected and countries cannot add any specific indicators that they would apply to their priorities or vary in terms of depth of the data collected.</p> <p>» The MOH allocated itself the role of resource mobiliser for systems strengthening both for the human resource and the technology development. Counties thus have to take what the MOH prescribes. While this allows for standardized technological development across the country, it is not clear the level that is responsible for data collection tools- data collection is still done manually at county level facilities.</p>	

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
4-	<p><b>The National Food and Nutrition Security Policy (NFNSP)</b></p> <p><b>Objective:</b></p> <ol style="list-style-type: none"> <li>To achieve good nutrition for optimum health of all Kenyans.</li> <li>To increase the quantity and quality of food available, accessible and affordable to all Kenyans at all times.</li> <li>To protect vulnerable populations using innovative and cost-effective safety nets linked to long-term development.</li> </ol>	<p>» The policy is fully compliant with the constitution where agriculture sector is concerned. From an agriculture perspective, counties are responding with various interventions that will ensure they are food secure.</p> <p>» From a health perspective, the operationalization is weak. The National Nutrition Action is centralized and all projects/interventions are vertically managed from the national level.</p> <p>» The Policy is still very relevant and there are many sub-policies development addressing specific areas of intervention like the food fortification, breast milk substitutes. There are also guidelines developed under the strategic objectives that need to be disseminated and availed to counties for implementation.</p> <p>» The National Food and Nutrition Security Policy developed in 2011 is domiciled in Ministry of Agriculture but the Nutrition</p>	<p>» Policy is compliant. Problem is the Health National Nutrition Action Plan whose management requires to be devolved to allow counties to control the management of the implementation of their functions e.g. <i>quantification, procurement of the nutrition commodities.</i></p>	<p>» The policy is still very relevant to the nutrition sector hence no need for review.</p> <p>» The Action Plan operationalizing the policy at health sector need to let counties control their functions. The current <i>Action Plan (2012-2017)</i> is contrary to the constitution and is implemented with little consultation / participation of counties.</p> <p>» County involvement in developing future NNAP is emphasized. MOH must also let counties undertake those functions that are part of county functions. For example, planning for nutrition commodities and procurement of the same is a county function.</p>

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		<p>part is implemented by a number of Ministries including <i>Ministry of Health</i> for the specific nutrition interventions. At county level, the implementation of nutrition also takes a multi-sectoral approach that includes <i>Ministries of Agriculture, Health, Education, Water and Social Protection</i>.</p> <p>» The policy is operationalized both at national and county levels through the <i>National Nutrition Action Plan</i> that is implemented through the <i>13 Strategic Objectives</i></p> <p>» Because nutrition has in the past taken an emergency perspective, counties that have emergency interventions especially the <i>ASAL and Semi-ASAL Counties</i> have greater operationalized policy by making nutrition a priority and increased investments unlike counties limited or no need for emergency response.</p>		

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5.	<p>Kenya Mental Health Policy, 2015-2030</p> <p><b>Towards Attaining the Highest Standard of Mental Health</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>To strengthen effective leadership and governance for mental health.</li> <li>To ensure access to comprehensive, integrated and high quality, promotive, preventive, curative and rehabilitative mental health care services at all levels of healthcare.</li> <li>To implement strategies for promotion of mental health, prevention of mental disorders and substance use disorders.</li> <li>To strengthen mental health systems.</li> </ol>	<p>The policy has limited compliance with constitution.</p> <p>The policy mentions the counties only once in reference to confirming the policy will be implemented at county health facilities. It does not elaborate on the how.</p> <p>Organization of mental health services should be in accordance with <b>Schedule 4</b> of the Kenyan <b>Constitution</b>: The National Government shall be responsible for health policy, the national referral health facilities, capacity building and technical assistance to the counties and disaster management.</p> <p>The <b>County Health Services</b> shall be responsible for county mental health facilities, promotion and provision of comprehensive mental health care services at all levels, emergency services and an effective mental health referral system.</p>	<p>Compliant to the extent it is applicable to services provide by the national government.</p> <p>County hospitals provided mental health services. But this is not recognized because the major referral hospital for mental health services is under the National Government where all specialists also operate from.</p> <p>The <b>Board of Mental Health</b> that the policy entrusts with the provision of the overall oversight in mental health is a national SAGA hence has no oversight over county mental health services.</p> <p>The policy is operationalized at National level because the largest Mental health facility is under the national Government.</p> <p>The level of implementation at county level is unknown. It is not also clear whether there has been dissemination of the policy and related guidelines at county level.</p>	<p>The policy need to recognize that the bulk of mental health services are provided by both counties government.</p> <p>The policy mentions counties in passing but does not elaborate how the objectives would be implemented at county level or the collaboration between the two levels of governments would be enhanced.</p> <p>Kenya currently has inadequate data and information on the prevalence of <i>Mental Health, Neurological and Substance Use (MNS)</i> in Kenya. There is need to include key indicators for mental health to facilitate tracking services and prevalence levels.</p> <p>Need to integrate mental health with primary health care in order to broaden services, improve access to the services and reduce stigma.</p> <p>In order to achieve the objectives of this policy, a multi sectoral approach will be necessary. The key ministries include: Education, labour,</p>

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		<p>The direct relationship between the national mental health services and the county mental health services shall be determined through the operational guidelines developed for this policy.</p>		<p>security, correctional services, children services, planning, finance, legal justice system, industrialization, agriculture.</p> <p>» The policy proposes the amendment of the <i>Mental Health Legislation</i> to establish <i>County Mental Health Councils</i> that shall give oversight to mental health at county levels. There is need for broad based discussion to agree on functionality and implementation of the proposed councils vis-à-vis established county oversight roles on health provision.</p> <p>» Poor financing of mental health has contributed to lack of services. There is need to have a budget dedicated to mental health both at National and County levels. Availability of data mentioned above will facilitate evidence based planning and investments including for HR.</p> <p>» Counties need to confirm viability of establishing community health financing</p>

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
6.	<p><b>HIV and AIDS Policy, (2009)</b></p> <p><b>Objective:</b></p> <ol style="list-style-type: none"> <li>1. Setting Minimum Internal Requirements (MIR) for managing HIV and AIDS in the workplace;</li> <li>2. Establishing and promoting programmes to ensure non-discrimination and non-stigmatization of the infected;</li> </ol>	<p>Not compliant. It focuses on the ministry instead of addressing issues of HIV at Workplace in general and especially at county levels.</p> <p>Policy was developed before the new Constitution and devolution.</p>	<p>The entire policy is not compliant to constitution. It is implemented at national levels across all ministries even though it focus was the Ministry of Gender, Children and Social Development</p>	<p>programmes to support mental health services</p> <ul style="list-style-type: none"> <li>» Public private partnerships and voluntary private sector participation in provision of mental health services and financing need to be encouraged.</li> <li>» Engage sectors that have mental health components to make targeted budgetary allocation to mental health services and programmes</li> <li>» Develop a National strategic program on substance use prevention, treatment, care and rehabilitation.</li> </ul>
			<p>(1) Need to review the policy to take into consideration changes and developments that have occurred since 2009 to address HIV/AIDS at workplace both at national and county levels.</p>	

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	<p>3. Contributing to national efforts to minimize the spread and mitigate against the impact of HIV and AIDS;</p> <p>4. Ensuring adequate allocation of resources to HIV and AIDS interventions;</p> <p>5. Guiding human resource managers and employees on their rights and obligations regarding HIV and AIDS.</p>			
7.	<p><b>National Reproductive Health Policy</b></p> <p><b>Enhancing Reproductive Health Status for all Kenyans, (2007)</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>1. Reduce maternal, perinatal and neonatal morbidity and mortality</li> <li>2. Reduce unmet family planning needs</li> <li>3. Improve sexual and reproductive health of adolescents and youth</li> </ol>	<p>» Although the policy was developed before the 2010 constitution, and devolution, it is compliant with the constitution because functions that it impacts on are devolved.</p> <p>» The policy is operationalized at both levels of government.</p> <p>» Some counties however, have expressed reluctance to push for the use of contraception, a key part of the policy due to need to increase specific communities' population.</p>	<p>» The only portion of the policy that is not compliant is in regard to procurement of reproductive health commodities and management of funds for maternal health. It is however worth noting that majority of these commodities are procured using donor funding.</p> <p>» Funds management provided under maternal health services - that for the bulk of reproductive health at county level need to be provided under the county shareable revenue.</p> <p>» Currently the funds are provided under the NHIF- a break from</p>	<p>» The policy is relevant under the current dispensation especially in relation to issues of maternal and new born health that are of high priority to both national and county governments.</p> <p>» However, there is need to review the policy to incorporate changes under the general health policy and management of the reproductive health services at county level. Stewardship of the reproductive health should be aligned to each level of government mandate and responsibilities.</p>

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	<p>4. Promote gender equity and equality in matters of reproductive health, including access to appropriate services</p> <p>5. Contribute to reduction of the HIV/AIDS burden and improvement of the RH status of infected and affected persons</p> <p>6. Reduce the burden of reproductive tract infections (RTIs) and improve access to, and quality of, RTI services</p> <p>7. Reduce the magnitude of infertility and increase access to efficient and effective investigative services for enhanced management of infertile individuals and couples</p> <p>8. Reduce morbidity and mortality associated with the common cancers of the reproductive organs in men and women</p> <p>9. Address RH-related needs of the elderly</p> <p>10. Address the special RH-related needs of people with disabilities</p>		<p>the conditional grants that has not been successful for the last five years.</p> <p>» NHIF is a national parastatal with no mandate to manage county funds.</p> <p>» There has been limited consultation with counties over the changes in management of the funds.</p>	<p>» A review of the policy will also help in defining the systems for the management of the maternity funds currently placed under – NHIF. Due to the high priority across the two levels of government, reproductive health attracts huge levels of funding hence need to define the management of funds across the two levels of government to allow counties have stronger control of the funds funding their services.</p>

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
8.	<p><b>National Adolescent Sexual and Reproductive Health Policy NASRHP (2015)</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>Promote adolescent sexual reproductive health and rights;</li> <li>Contribute to increased access to ASRH information and age appropriate comprehensive sexuality education (AACSE);</li> <li>Contribute to reduction of STIs burden, including HPV and HIV as well as improvement of appropriate response for infected adolescents;</li> <li>Reduce early and unintended pregnancies;</li> <li>Reduction of harmful traditional practices;</li> <li>Reduce drug and substance abuse;</li> <li>Reduce Sexual and Gender-Based Violence (SGBV) incidences amongst adolescents to improve response; and</li> </ol>	<ul style="list-style-type: none"> <li>The new policy was finalized in 2015 and is operational at national level.</li> <li>It is not clear the extent to which counties have operationalized the policy however, implementation framework foresees each level taking responsibility of its mandate under the following tiers: <ul style="list-style-type: none"> <li><b>Tier 1</b> – Community Health Services</li> <li><b>Tier 2</b> – Primary Care Services</li> <li><b>Tier 3</b> – County Referral Services</li> <li><b>Tier 4</b> – National Referral Services</li> </ul> </li> </ul> <p>The policy provides an explanation on the tiers with Tiers 1 to 3 to be provided by the County while Tier 4 is under national government.</p> <p>Facilities operated by NGOs, FBOs and private for-profit sector shall follow the same classification depending on their level of resources and capacity.</p>	<ul style="list-style-type: none"> <li>The implementation framework proposes a tier system instead of the known county and national government service delivery system. However, the tiers reflect the different levels of service delivery thus aligning to devolution.</li> <li>Nevertheless, the classification of service delivery into tiers is likely to cause confusion there is need to unpack these tiers and use the known terminologies that are follow the functions of each level.</li> </ul>	<ul style="list-style-type: none"> <li>The policy was finalized in 2015. The implementation framework need to use the devolution system terminologies instead of tiers in explaining the different levels where service is delivered to avoid confusion.</li> <li>There is need for concerted effort to disseminate the policy to county levels, facilitate domestication of the same at county level to ensure its implementation.</li> <li>Advocate for the development of Action Plan to facilitate and guide the counties in the implementation of policy</li> </ul>

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
8.	Address the special SRHR-related needs of marginalized and vulnerable adolescents.			
9	<p><b>National Maternal, Infant and Young Child Nutrition Policy Guidelines, 2013</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>To protect, promote and support exclusive breastfeeding for the first six months of a child's life and continued breastfeeding up to two years or beyond.</li> <li>To promote the timely introduction of appropriate, safe and adequate complementary foods at 6 months while continuing breastfeeding</li> <li>Support e-MTCT services while promoting optimal YCF in HIV-exposed children for overall child survival</li> <li>Enhance optimal MIYCN in other exceptionally difficult circumstances</li> </ol>	<p>The policy is compliant with the constitution and in its implementation framework, the policy clearly defines responsibility of each levels of the government.</p> <p><b>a) National Level</b></p> <ul style="list-style-type: none"> <li>Provide leadership, guidance and coordination to all stakeholders providing MIYCN services.</li> <li>Give effect to the principles and regulatory framework of the <b>Breast Milk Substitutes (Regulation and Control) Act, 2012.</b></li> </ul> <p><b>b) County level</b></p> <ul style="list-style-type: none"> <li>Engage and provide oversight to CBOs, FBOs and NGOs operating in the community –strengthen coordination.</li> <li>Monitor the implementation of the policy across all health care levels.</li> </ul>	<p>To ensure standardized implementation across all counties, there is need to focus on dissemination of both the policy and guidelines and standards.</p> <p>There is also need to integrate the interventions of this policy with other programmes focusing on child health to achieve efficient and effective implementation.</p>	<p>Need to disseminate the policy beyond the 23 ASAL and Semi-ASAL Counties.</p> <p>Need also to disseminate the guidelines and standards especially on breast milk substitutes.</p> <p>Seek to integrate the provision of this policy with maternal and child health for effective implementation.</p>

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	<p>5. To strengthen and accelerate family, community and health care support and mechanisms to achieve optimal MIYCN</p> <p>6. To support and enhance the provision of enabling environment for working mothers, fathers and other care-giver, both in formal and informal employment to provide optimal infant and young child nutrition</p> <p>7. To strengthen research, monitoring and evaluation systems to support policy guidance for MIYCN</p>			

**Table 5: A Review of the Applicable Health-Sector Strategies Tabulated in a Matrix**

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
1.	<p><b>Transforming Health</b></p> <p><b>Accelerating Attainment of Universal Health Coverage</b></p> <p>Kenya Health Sector Strategic and Investment Plan (KHSSIP), July, 2013-2017</p> <p><b>Focus areas:</b></p> <ol style="list-style-type: none"> <li>1. Increasing the numbers of KEPH interventions being provided across the Country (introduction of interventions as and where needed)</li> <li>2. Increasing the coverages of populations using the different KEPH interventions (scale up of intervention use)</li> <li>3. Reducing the household financial burden incurred at the point of access and utilization of KEPH services (reduce catastrophic health expenditures)</li> </ol>	<ul style="list-style-type: none"> <li>» The strategy is compliant with constitution.</li> <li>» The implementation framework spells out each levels of government responsibilities.</li> <li>» The strategy is operationalized at both levels of governance. However, the implementation of the strategy has been wanting as MOH has continued implementing county activities.</li> <li>» For example, the maternity funds have been managed and disbursed by National MOH. The experience has been negative as counties have faced serious delays in disbursing the funds impacting negatively on service delivery.</li> <li>» It is not clear how far the strategy has been disseminated to counties and aligned to counties' health investment plans. Some counties have moved ahead to establish</li> </ul>	<ul style="list-style-type: none"> <li>» The non-compliance comes with details of implementing the strategy especially under the UHC.</li> <li>» For UHC to succeed, counties need to understand the different methodologies and approaches that would ensure sustainability of UHC. What is its impact on counties expenditure framework- who pays for what? Time it would take for Counties to improve quality of care etc.</li> </ul>	<ul style="list-style-type: none"> <li>» The strategy has followed up on various investment areas identified in the MTP II. Since this strategy is coming to an end, it will be important that a new one is developed jointly with counties with a framework that ensures MOH does not continue to undertaking county functions unless there is clear inter-governmental agreement.</li> <li>» For activities delegated by either level of government, an inter-governmental agreement need to be drawn in accordance to inter-governmental relations Act.</li> </ul>

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
		<p>financing schemes that cover their communities. Makuani is an example that is rolling a health care coverage for the poor.</p> <p>» An example on unilateral decision from the planned investments areas under this strategy include the recently decision to have the maternity funds managed by NHIF. While the decision is better than MOH managing the funds, there is need to ensure NHIF is an inter-governmental institution with counties, which are largest beneficiaries of NHIF services, being members of its board to ensure they are part/influence the decision making process that impact on health services delivery at county level.</p>		
2.	<p><b>The Kenya National Strategic Plan on Tuberculosis, Leprosy and Lung Diseases, 2015 – 2018</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>1. Sustain the gains made over the past decade, in the context of a newly devolved health system</li> </ol>	<p>» The strategy is fully compliant with the constitution.</p> <p>» The strategy is meant to provide a smooth transition of TB management and control to county level in accordance with the constitution.</p>	<p>» The strategy is compliant. What need to be established is whether implementation has been undertaken as part of county functions egg inclusion of TB funds in county budgets, quantification and procurement of the nutrition commodities.</p>	<p>» The strategy is ending in 2018.</p> <p>» There is need to start the process of developing a new strategy to ensure there is continuity in management of TB and Leprosy control programmes.</p>

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	<ol style="list-style-type: none"> <li>2. Intensify efforts to find the “missing” cases of TB, Leprosy and lung disease</li> <li>3. Reduce transmission of TB and Leprosy</li> <li>4. Prevent active disease and morbidity</li> <li>5. Enhance the quality of care for chronic diseases</li> </ol>	<ul style="list-style-type: none"> <li>» The strategy identifies approaches for both national and county level in accordance with each level of government’s defined functions.</li> <li>» The strategy implemented between 2014 and 2018 has prioritized smooth transition to the county-based systems of governance for the TB and Leprosy control programmes. This is to ensure gains made so far are not reversed as counties take up the responsibility of implementing TB and Leprosy control programmes.</li> <li>» The Strategy provide a number of approaches including articulating and documenting responsibilities for all TB activities between the two levels of government.</li> </ul>	<ul style="list-style-type: none"> <li>» Like the on- going strategy, the recommended strategy will need to include: <ul style="list-style-type: none"> <li>» Definition of financial and human resource commitments, including technical assistance and necessary commodity management support from central MOH</li> <li>» Ensure the county and sub-county structures can support all designated activities: e.g. identify a TB and Leprosy focal point for each level, take inventory and address any capacity building needs; and develop on-the-job tools and disseminate existing guidance to promote national standards.</li> <li>» Ensure inclusion of TB and Leprosy within county health plans</li> <li>» Stakeholders mapping at all levels and all stakeholders are engaged in county planning</li> <li>» Establish County-based centres of excellence, based on strong performance</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>» More importantly ensure continued case notification and procurement of essential commodities for TB management especially of the MDR TB by county facilities.</li> </ul>

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
			<ul style="list-style-type: none"> <li>» Develop and implement a technical assistance and quality assurance plan through a cascade from central to community levels.</li> <li>» The nature of technical assistance from central to county level must be expanded to build capacity for planning, advocacy, budgeting, quality assurance of labs and facilities, and data monitoring</li> <li>» Ensure county ownership and designated funding of supportive supervision to sub-counties, health facilities, laboratories and community-based treatment partners.</li> <li>» Promote the establishment of inter-agency coordinating committees to assist with planning, budgeting, implementing and monitoring activities. The ICCs include all partners, such as the private sector, MCH programme, CSOs and communities, at county and sub-county levels.</li> </ul>	

No	Name of Policy / Law	Issues: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
			<p>» Re-profile National MOH staff to ensure in-house capacity for:</p> <ul style="list-style-type: none"> <li>i). High-level policy formulation to include TB in emerging health system strategies, plans, and demand-side financing modalities including national health insurance and social protection programmes;</li> <li>ii). Coordination of health system structures for comprehensive program implementation by 47 counties; and</li> <li>iii). Continued technical leadership and support to counties. Additional skills, particularly related to economics and statistics, are required at the Program level to enhance planning and monitoring.</li> </ul>	

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
3.	<p><b>Tobacco Control and Prevention Strategy</b></p> <p><b>Towards Tobacco Free Kenya, 2012 - 2017</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>1. To develop policy, regulations and guidelines for tobacco control</li> <li>2. To advise and guide in the carrying out of research on tobacco control and development activities</li> <li>3. To mobilize and map out resource for Tobacco Control Activities</li> <li>4. To Strengthen the infrastructure and capacity of TCB</li> <li>5. To Monitor &amp; Evaluate the Activities on Tobacco Control Initiated by the Board</li> </ol>	<p>The strategy is not compliant.</p> <p>The strategy provides for a Tobacco Board to advise the Cabinet Secretary for Health. This Board does not include counties or provided advise on impact of tobacco use on health.</p> <p>This is in spite of the fact that health issues arising from tobacco use are mostly felt at county level because majority of health facilities are under county management.</p>	<p>The entire strategy is not compliant to the constitution.</p> <p>The strategy was developed before devolution.</p> <p>It's operationalized at the National level and no evidence of implementation at county level.</p>	<p>Need to review the strategy since tobacco use impacts on county health provision hence need to develop a new strategy with county strong participation to ensure county issues are addressed.</p>

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
4.	<p>Kenya National Strategy for the Prevention and Control of Non-Communicable Diseases, 2015 – 2020</p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>1. Risk factor reduction</li> <li>2. Strengthening and re-orientation of the health care systems to address NCDs</li> <li>3. Advocacy and community mobilization</li> <li>4. Health promotion</li> <li>5. Research</li> <li>6. Surveillance and the creation of networks and partnerships for disease control across various sectors</li> </ol>	<ul style="list-style-type: none"> <li>» The strategy is compliant with constitution.</li> <li>» The strategic implementation framework spells out each level of government's responsibilities.</li> <li>» The strategy is operationalized at both levels of governance.</li> <li>» As soon as counties came into being, attempts have been made to increase accessibility and affordability of services for NCDs especially diabetes and cardiovascular diseases.</li> <li>» A lot of counties have upgraded county referral hospitals and procured equipment that would improve quality of services through improved diagnosis and investigative procedures. The leased health equipment undertaken by the National government on behalf of counties is an example of attempts to improve services for NCDs at county facilities.</li> </ul>	<ul style="list-style-type: none"> <li>» The strategy has well elaborated objectives including actions that need to be taken to achieve each objective.</li> <li>» Under each objective, the role of each level of government is expounded.</li> <li>» Already counties are strengthening their service delivery systems by hiring more health workers and equipping county hospitals with the leased equipment for health.</li> <li>» Regarding integration with other programmes and existing frameworks, some counties have embraced the community strategy and engaged community health worker. Also, counties have established maternal, child, adolescent programmes that can be integrated with the NCD interventions.</li> </ul>	<ul style="list-style-type: none"> <li>» The Strategy is relevant to both counties and national government.</li> <li>» Emphasis should be on intensified dissemination so that counties are aware and use the strategy to ensure objectives of the strategy are included in the CIDPs to facilitate county prioritizing, planning and budgeting for the NCD prevention and control activities.</li> </ul>

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
5.	<p><b>The National Cancer Control Strategy (NCCS), 2017-2022</b></p> <p><b>Areas of Focus:</b></p> <ol style="list-style-type: none"> <li>1. Prevention, early detection and cancer screening</li> <li>2. Cancer diagnosis, registration and surveillance</li> <li>3. Cancer treatment, palliative care and survivorship</li> <li>4. Coordination, partnership and financing for cancer control</li> <li>5. Monitoring, Evaluation and Research.</li> </ol>	<ul style="list-style-type: none"> <li>» The strategy is compliant with constitution.</li> <li>» The strategy is operationalized at both levels of governance</li> <li>» It has clearly defined areas of operation for both levels of governments and other relevant stakeholders that are expected to enhance services for the control of cancer.</li> </ul>	<ul style="list-style-type: none"> <li>» It will be important to establish the levels of dissemination and extent to which the strategy is under implementation at county level.</li> </ul>	<ul style="list-style-type: none"> <li>» Cancer Prevention and Control is still relatively new area of intervention. Capacity is still limited both at national and counties levels.</li> <li>» The current strategy based on the Health policy is very new and relevant with clearly defined roles for each level of government.</li> <li>» All levels with responsibilities need to concentrate efforts on implementation of the strategy in order to reduce number of people developing cancer every year.</li> </ul>
6.	<p><b>Health Sector Human Resources Strategy, 2014 – 2018</b></p> <p><b>Objectives:</b></p> <ol style="list-style-type: none"> <li>1. Align the development of HRH Strategy to the <b>Kenya Health Sector Strategic and Investment Plan, 2013-2017, Public Service Commission Act, 2012</b> and other evidence based HRH proposals, reports and assessments</li> </ol>	<ul style="list-style-type: none"> <li>» The strategy is fully compliant with the constitution.</li> <li>» Implementation has been problematic due to many strikes that have faced the health sector since devolution</li> <li>» The strategy has been operationalized both at the National and County levels.</li> <li>» However, since devolution started in 2013, the health sector</li> </ul>	<ul style="list-style-type: none"> <li>» Though the strategy is compliant, there are issues with implementation.</li> <li>» The counties have not been able to implement it fully due to counties limited <i>human resource development and management capacity</i>.</li> <li>» Most of the county Boards are still weak and lack necessary capacity to manage and develop</li> </ul>	<ul style="list-style-type: none"> <li>» The strategy is ending in 2018.</li> <li>» There is need to start the process of developing a new strategy to ensure there is continuity in addressing HRH issues in a systematic and consistent manner.</li> <li>» A clear strategy will create confidence in county systems and build county public service board capacity to manage and develop county HRH</li> </ul>

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
2.	<p>Articulate future HRH investments areas, HRH coordination mechanism in the National HRH Strategic plan</p> <p>Outline implementation framework for identified HRH priorities, budgetary estimates, resource mobilization plan, monitoring and evaluation plan and tools, and the implementation structures to support implementation of the identified priorities</p>	<p>has faced serious labour issues with health staff going on strike many times demanding for better pay, training, standardized treatment of staff especially at county level, demands for health workers' commission and demand to return management of all HR to the national government including those at county facilities.</p> <p>These issues are as a result of insecurity enhanced by chaotic transition of health functions to counties including human resource working in county hospitals and administrative units.</p>	<p>county human resources adequately.</p> <p>Thirdly, the recently passed health law included clauses that are not aligned to the constitution, creating more confusion.</p> <p>Thus, the above issues need to be addressed when developing the new strategy after 2018.</p>	
7.	<p><b>Kenya Health Sector Referral Strategy, 2014 – 2018</b></p> <p><b>Objective:</b></p> <ol style="list-style-type: none"> <li>Referral Strategy deals with the management of four key movements</li> </ol>	<p>Not compliant. It does not define the roles of different levels of government especially at implementation level.</p> <p>The development of this strategy had started before the onset of devolution. However, it was finalized immediately</p>	<p>The entire strategy is not compliant to constitution. There is need to develop a new one that takes into consideration both levels of government's responsibilities.</p>	<p>The strategy is due to end in 2018 and there will be need for counties to be involved in the development of the next strategy because referral will impact on county health services.</p>

No	Name of Policy / Law	ISSUES: Making the Argument Where is the Problem or Inconsistency?	Rationale / Concern: How to Ameliorate the Problem?	Recommendations
	<ol style="list-style-type: none"> <li>2. Patients/client movement</li> <li>3. Expertise movement</li> <li>4. Specimen movement for investigative purposes</li> <li>5. Movement if patient information for diagnostic purposes</li> </ol>	<p>after the transfer of functions to counties and it is noteworthy that it was not revised to factor explicitly county role in the referral system to strengthen the health services.</p> <p>» The referral system has been operationalized but not in the manner described by the Strategy.</p> <p>» The national government facilities particularly the National Kenyatta Hospital has complained of referrals sent from county facilities for services that could be undertaken at county level. This has been quoted as one major reason for congestion at the Tertiary facility impacting negatively on the ability of Kenyatta to provided quality services.</p>		<p>» Referrals system has direct impact on county facilities' ability to offer quality services if referral is not streamlined and prudently implemented.</p>

### 3. National Legislation

A total 25 national laws and regulations in the health sector were reviewed. The audit reviewed the sector legislation in accordance with the Constitutional framework, and specifically the fourth schedule where health responsibilities are distributed between the two levels of government. The audit highlights any sections that are unconstitutional, obsolete or requiring alignment to the constitution. The laws reviewed are as listed below:

- » **Health Act (Act No. 21 of 2017)**
- » Kenya Medical Supplies Authority Act (Act No. 20 of 2013)
- » HIV/AIDS Prevention and Control Act (Act No 14 of 2006)
- » Pharmacy and Poisons Board Act.
- » Public Health Act (*This one interphases with the Health Act*)
- » Mental Health Act (Cap 248)
- » Anatomy Act (Cap 249)
- » Narcotic Drugs and Psychotropic Substances Act (Act No. 4 of 1994).
- » Public Health Officers (Training, Registration and Licensing) Act (Act no. 12 of 2013)
- » Kenya Medical Training College Act (Cap 261)
- » National Authority for the Campaign Against Alcohol and Drug Abuse Act (Act No. 14 of 2012)
- » The Alcoholic Drinks Control Act (Act No. 4 of 2012)
- » Human Tissues Act (Cap 252)
- » Counsellors and Psychologists Act (Act No. 14 of 2014).
- » Clinical Officers (Training, Registration and Licensing) Act (Cap 260)
- » Health Records and Information Managers Act (Act No. of 15 of 2016)
- » Malaria Prevention Act (Cap 246)
- » Clinical Officers (Training, registration and Licensing) Act (Act No. 20 of 2017)
- » National Health Insurance Fund Act (Act No. 9 of 1998)

## Regulations

- » Pharmacy and Poisons Board Rules (Legal Notice No. 86 of 1957 as amended by L.N. 443/1957, L.N. 332/1958, L.N. 426/1958, L.N. 498/1958, L.N. 550/1959, L.N. 114/1960, L.N. 587/1961, L.N. 242/1963, L.N. 631/1963, L.N. 92/1964, L.N. 365/1964, L.N. 115/1968, L.N. 125/1969, L.N. 248/1969, L.N. 41/1971, L.N. 120/1984, L.N. 52/1984, L.N. 51/1985, L.N. 61/2002, L.N. 91/2004 and L.N. 191/2010)
- » Pharmacy and Poisons (Conduct of Inquiries) Rules (Legal Notice No. 52 of 1985)
- » Pharmacy and Poisons (Registration of Drugs) Rules (Legal Notice No. 147 of 1981 as amended by L.N. 142/1991 and L.N. 192/2010)
- » Pharmacy and Poisons (Control of Drugs) Rules (Legal Notice No. 180 of 1969 as amended by L.N. 247/1969, L.N. 228/1974)
- » Mental Health Act (Board Meetings) Regulations, 2000
- » Narcotic Drugs and Psychotropic Substances (Control) Restraint and Forfeiture) Regulations, 1997 (L.N. 547/1997)
- » Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006 (L.N. 16/2006)

Table 3: Review of the relevant national laws/ Subsidiary legislation and legal notices in a tabulated matrix

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
1.	Health Act Act No 21 of 2017	<p><b>Section 6</b> on reproductive health rights could have incorporated more of the reproductive health rights provided in the international treaties like the <b>Maputo Protocol</b> as is required by <b>Article 21 of the Constitution</b>.</p> <p><b>Section 6(1)(c)</b> has classified difficult conditions occurring during pregnancy like ectopic, abdominal and molar pregnancy or any other condition that makes the life of the mother or child to be threatened as comprising 'notifiable condition'.</p>	<p>When read together with <b>Sections 17</b> of the <b>Public Health Act</b> that defines notifiable diseases as those that are contagious diseases this will stigmatize women.</p> <p>It will discourage health professionals from providing emergency treatment to women with pregnancy related complications.</p> <p>The section is inconsistent with <b>Article 28</b> of the Constitution and related treaty provisions on the right to dignity and <b>Section 5(2)</b> of the Act, which provides that every person has the right to be treated with dignity, respect and have her/his privacy respected.</p>	<p>Include the treaty provisions on reproductive health rights from ICESCR and Maputo Protocol.</p> <p>Repeal as this facilitates the violation of pregnant women's rights to the right to privacy and to non-discrimination. The clause only services to stigmatise women with difficult pregnancies.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 6(2)</b> requires that conditions anticipated under <b>section 6(1)(c)</b> be carried out by “<b>a health professional who has been trained to manage pregnancy-related complications in women and who has obtained a license from the recognized regulatory authorities to carry out that procedure</b>”.</p> <p><b>Section 7(3)</b> provides that every medical institution that fails to provide emergency medical treatment <b>while having ability to do commits an offence</b>.</p>	<p>This provision is discriminatory for requiring a special license that is not required of other medical procedures. It will sentence so many women because of creating special qualification for those who handle them. The provision also limits the right to access reproductive health care for many women.</p> <p>This provision violates <b>Article 43 (2)</b> of the Constitution that provides that “no person shall be denied emergency medical treatment”. Right to emergency medical treatment cannot be qualified in law and made subject to the ability to provide. The clause may facilitate a claw back.</p>	<p>Review to remove the requirement for special license for people handling pregnancies.</p> <p>Rephrase to ensure clarity and to avoid the possible interpretation that will see many women not attended.</p>
		<p><b>Section 15(1)(c)</b> is vague to the extent that it mandates the national government to “ensure the implementation of the right to health specified in the Bill of Rights...”.</p>	<p>Service delivery is at the core of the implementation of the right to health and is largely a county function; the role of the national government is to develop national policies, manage national referral services, set standards to guide implementation and give technical support. There is need for clarity through review or during implementation of this provision to ensure respect for the</p>	<p>Amend to rephrase so that every medical institution will have responsibility to either provide the treatment or refer and facilitate transfer as necessary; they must not turn away any case</p>
				<p><b>Section 15</b> (Duties of National Government) may require clarity on the role of the national government in ensuring implementation of the right to health to ensure respect for the principle of separation of powers.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p>principle of separation of powers and the functional assignment between the 2 levels of government.</p>	
		<p><b>Section 18</b> (Directorates) provides for the formation of directorates and details the matters that the directorates should deal with, some of which include county functions e.g. pharmaceutical services.</p>	<p>It is essential therefore for the section to be un-bundled to ensure that the function focuses on the national government functions of standard setting and not implementation of services that are the preserve of county governments.</p>	<p>This provision should limit the roles of the directorates to functions of the national government as provided in the <b>Fourth Schedule</b> to the <b>Constitution</b>.</p>
		<p><b>Section 20</b> of the Act provides for the role of county governments in implementing national health policies and standards</p>	<p>The section is silent on the legislative authority of county governments to ensure that counties develop county laws, policies and administrative procedures that give effect to the right to health.</p>	<p>The provision should include the duty of county governments to enact own laws as provided by <b>Article 185</b> of the <b>Constitution</b> and <b>Section 22</b> of the <b>County Government Act</b>.</p>
	<p><b>Section 45</b> establishes the Kenya Health Professions Oversight Authority mandated with among other functions joint inspection with other regulatory bodies.</p> <p><b>Section 60</b> obligates inspection, monitoring and evaluation of standards of performance to respective bodies provided they are not in conflict with functions of the Authority.</p>	<p>The existence of many bodies performing almost similar functions creates an environment of conflict and duplication of functions/roles hence imprudent use of resources.</p>		<p>Regulation of professionals should be limited to one body to avoid duplication of roles. This includes repealing of the myriad of regulatory bodies enlisted in <b>Section 60</b>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 62</b> of the Act provides for the enactment of Act for: Health Products and Health Technologies.</p>		<p>There is need to advocate for the development and enactment of this law.</p>
		<p><b>Section 67(2)</b> and <b>(3)</b> (<i>Procurement of Health Products and Technologies</i>) includes the classes of products that shall be procured by KEMSA and provides that KEMSA may be a first point of call for procurement of health products at county referral level respectively.</p>	<p>Reference to KEMSA in the Act indirectly applies undue pressure upon counties to procure from KEMSA without due regard for counties to be able to procure on their own.</p>	<p>Counties should be enabled to procure health products and technologies from other organizations apart from Kenya Medical Supplies Authority (<b>KEMSA</b>), however there is need for standards to be set to ensure that the medical supplies that are purchased through KEMSA or otherwise meet the required standards.</p> <p>There is a need to implement the same.</p>
		<p><b>Section 67</b> of the Act mandates the national government with providing guidelines for procurement, distribution and management of health products and technologies.</p>		
		<p><b>Section 70</b> makes an amendment to only one section of the Public <b>Health Act</b>.</p>	<p>The section is silent on provisions of other sections of the Act which have either become obsolete or are unconstitutional to the extent that some of the provisions assign functions to the National Government that have since been devolved to the County Government by the <b>Fourth Schedule</b> to the Constitution including <b>Sections 7</b> which establishes district health management boards;</p>	<p>Review and amend the whole of <b>Cap 242 (Public Health Act)</b> and not merely one provision of the Act.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p><b>Section 15</b> which requires the Minister to be consulted over municipal council by-laws; <b>Part XIII</b> on cemeteries and <b>Section 151</b> among others.</p>	
		<p><b>Section 75</b> provides for the establishment of a different regulatory body to regulate the practice of traditional medicine and alternative medicine.</p>	<p><b>Section 62</b> provides for the establishment of a single regulatory body for regulation of health products and technologies. The establishment of two bodies undertaking functions that can be undertaken by one body is a misuse of resources contrary to <b>Article 201</b> of the <b>Constitution</b> and is likely to cause conflicts among the two organizations.</p>	<p>Regulation of traditional and alternative medicine should be restricted to the single regulatory body regulating health products and health technologies established in section 62.</p>
		<p><b>Section 80(3)</b> provides that the Cabinet Secretary shall regulate the criteria for approval of organ transplant facilities.</p>		<p>There is need for the Cabinet Secretary to be advised to provide regulations.</p>
		<p><b>Section 85(1)</b> provides for the enactment of an act of parliament to establish the Kenya Blood Transfusion Service.</p>		<p>This law should be enacted.</p>
	<p><b>Section 86(f)</b> provides that the department of health shall ensure progressive financial access to universal health coverage by taking measures that include ... ensuring that all pharmaceutical and non-pharmaceutical products correspond to Kenya Medical Supplies Authority market prices.</p>		<p>The Act should limit the role of KEMSA to research and providing guidance to the Cabinet Secretary which would be in line with <b>Section 4(1)(d)</b> of the KEMSA Act which mandates the Authority to collect information and provide regular reports to the national and county governments on the status and cost-effectiveness of</p>	<p>The National Government through the Ministry should be the body with the mandate to constantly guide on market price standards for pharmaceutical products, limiting the role of KEMSA to research and providing guidance to the Cabinet Secretary on the market price standards.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			procurement and the value of prescribed essential medical supplies.	
		<p><b>Section 100(3)</b> provides for enactment of legislation to give effect to Section 100 on the research or experimentation on minors for therapeutic and non-therapeutic purposes.</p> <p><b>Section 104</b> provides for enactment of legislation on E-legislation</p>		This legislation should be enacted.
		<p><b>Section 105(3)</b> provides that the Cabinet Secretary shall prescribe policy guidelines on integrated comprehensive health information management system.</p> <p>The act fails to recognize and provide for health as a consumer right.</p>		This legislation should be enacted.
				These policy guidelines should be formulated.
			<p><b>Article 46</b> of the <b>Constitution</b> provides that consumers have the right to the protection of their health.</p>	Amend the Act or provide for the need for regulations to addresses <b>Article 46</b> of the <b>Constitution</b> on the health rights of consumers
		The Act is silent on the issue of establishment and operation of morgues.	County governments are mandated with the role of establishing and maintaining cemeteries/morgues. However, the role of setting standards is that of National Government for which	Amend the Act to include a provision that mandates the National Government in consultation with County Governments to set standards on Morgues.

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
2.	<p><b>Kenya Medical Supplies Authority Act</b></p> <p><b>Act No 20 of 2013</b></p>	<p>The open-ended exercise of the right to demonstrate, strike, picket by health worker without limitation has caused unnecessary loss of lives and will continue doing so if it is not limited.</p> <p><b>Section 4(1)(b)</b> provides for the establishment of a network of storage packaging and distribution facilities for the provision of drugs and medical supplies to health institutions.</p> <p><b>Section 4(1)(c)</b> of the Act is silent on the mode of partnership between KEMSA and the counties.</p>	<p>Health services are essential services that are central to the protection of the right to life. A limitation of the right to picket and strike for health workers will assist in ensuring that lifesaving services are provided during strikes.</p> <p>There is need to provide for consultation with county government to ensure the storage networks are not rendered nonfunctional by the counties if they are not in agreement.</p>	<p>The Act should incorporate limitations on the right to demonstrate in line with <b>Article 24</b> of the constitution to protect the right to life.</p> <p>Prudent use of resources should be a key consideration in the establishment of storage networks.</p>
		<p><b>Section 4(1)(d)</b> provides for the authority to collect information and provide regular reports to the national and county governments on the status and cost effectiveness of procurement and distribution and value of prescribed essential medical supplies delivered to health facilities, stock status and any other aspect of supply system status.</p>	<p>There is need for clarity on the provision to ensure that the Authority is not undertaking a county function with regards to stock status but the same is limited to stock available in KEMSA stores.</p>	<p>There may be need for regulations to guide on partnerships between KEMSA and the counties and the establishment of framework with County Governments for purposes of providing services in procurement, warehousing, distribution of drugs and medical supplies.</p> <p>The provision should ensure compliance with the principles of devolution</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 6(2)(g)</b> provides among the powers of KEMSA board is to incorporate, develop and operate a division or subsidiary of the Authority for procurement, storage and supply of medical supplies to health facilities and institutions.</p>	<p>This is inconsistent with <b>Section 67(3)</b> of the <b>Health Act</b> which provides that KEMSA shall endeavor to establish branches within each county at such locations as it may determine. The provision should ensure consistency whether it is branches or subsidiaries that are being established to provide consultation with county government to avoid competition with the counties.</p>	<p>The powers should be consistent with the <b>Health Bill, 2017</b>.</p>
	<p><b>HIV/AIDS Prevention and Control Act No 14 of 2006</b></p>	<p>The Act uses terminologies that no longer apply in the current constitutional dispensation. For example, the use of the term “Minister”.</p>	<p>Review of the Act will ensure that certain terminologies such as “Minister” is changed to “Cabinet Secretary” and that the definition of “partner” complies with the <b>Constitution article 27</b> in compliance with the <b>Constitution</b> and will ensure that the Act is not in conflict with the <b>Health Act 2017</b>.</p>	<p>The Act requires review to amend various terminologies including Minister which no longer exists as per the Constitution.</p>
	<p><b>Section 4</b> provides for the role of the Government in promoting public awareness in HIV and AIDS education and information through a comprehensive nationwide educational and information campaign.</p>		<p>Emphasis should be drawn upon this being a function of the National Government with collaboration from the County Government in view of Article 6 and the <b>Fourth Schedule</b> of the <b>Constitution</b> to ensure separation of power as well as coordination and cooperation of the different levels of government.</p>	<p>The section may require amendment to ensure separation of power in line with the <b>Fourth Schedule</b> to the <b>Constitution</b>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 6</b> provides that HIV and AIDS education and information dissemination shall form part of the delivery of healthcare services by healthcare providers and the Government shall ensure training of healthcare providers'.</p> <p><b>Section 11 (2)</b> mandates the Minister with ensuring provision of protective equipment to healthcare providers.</p>	<p>Healthcare service provision is a function of County governments hence the need to amend the provision to ensure clarity.</p>	<p>There is need to clarify on the role of each level of government in accordance with the <b>Fourth Schedule</b> of the <b>Constitution</b> to ensure separation of powers.</p>
		<p><b>Section 11 (3)</b> mandates the Minister with ensuring provision of post exposure prophylaxis to healthcare providers.</p>	<p>Provision of protective equipment for healthcare providers depends on the function (national or county) being performed by the healthcare provider. The role of providing protective equipment is a role of county government and would vest in national government only where it relates to National Referral hospitals.</p> <p>Provision of post exposure prophylaxis for healthcare providers and other personnel depends on the function (national or county) being performed by the healthcare provider. The role of providing protective equipment is a role of county government and would vest in national government where it relates to National Referral hospitals.</p>	<p>There is need for this provision to be clarified to ensure that the role of each government level is effectively undertaken</p>
				<p>There is need for clarity to ensure that the role of each government level is effectively undertaken.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 15</b> mandates the Minister to ensure that facilities for HIV testing are made available.</p>	<p>Provision of HIV testing is a shared function of both county and national governments and not solely vested upon the Minister.</p>	<p>HIV testing is a shared function and <b>Section 15</b> should reflect the same.</p>
	<p><b>Section 16 (1) and (2)</b> mandates the Minister to approve testing centres and healthcare providers for testing purposes.</p>		<p>HIV testing is part of service delivery that is primarily carried out at the county health facilities but is also carried out at the national referral facilities and is therefore a shared function and approval of testing centres and healthcare providers is not only a preserve of the Minister. The Minister or in this regard the Cabinet Secretary cannot purport to approve health facilities and healthcare providers for the county governments but can do so for the national government.</p>	<p>Amend to align to the functional assignment in the constitution.</p>
	<p><b>Section 19</b> mandates the government to take steps to ensure available resources and access to healthcare services including essential medicines by persons with HIV.</p>		<p>Access to essential healthcare services including access to essential medicines for persons with HIV or AIDS is a function which is shared between both the national and county government.</p>	<p>Amend to reflect the responsibility as being of the national and county governments.</p>
	<p>The Constitutional court declared <b>Section 24</b> to be unconstitutional in <b>AIDs Law Project Vs Attorney General and 3 Others [2015] eKLR Petition 97 of 2010</b>.</p>		<p>The Section was found by the court to be unconstitutional for being vague and lacking in certainty</p>	<p>Repeal the Section.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
	Pharmacy and Poisons Board Act	<p><b>Section 4(5)</b> provides that minutes from meetings of the Board shall be entered into a minute book and, at the next board meeting be submitted to be passed as correct and confirmed by the Chairman of the Board.</p> <p><b>Section 14</b> provides that appeals on decisions of the Board not to register a person as a pharmacist or to deregister a pharmacist should be made to the Supreme Court.</p>	<p>The decisions of the Board have a direct impact on the laws passed by the counties. Thus, these minutes should be circulated to the counties as soon as they are confirmed.</p> <p>There is only one supreme court in Kenya thus requiring persons to appeal to the Supreme Court does not guarantee the provision of proximate and easily accessible services in accordance with <b>Article 174 (f) of the Constitution.</b></p>	<p>Amend to provide that, once passed as correct and confirmed as correct, the minutes of the meetings of the Board shall be circulated to the county assemblies and executives in addition to being entered into the minute book.</p> <p>Amend to provide that appeals against a direction of the Board to delete a name from the register should be made to the High Court.</p> <p><b>Sections 15 and 16</b> should also be amended such that all mentions of the supreme court are replaced with High Court</p>
		<p><b>Sections 27 (1) and (2)</b> provide that the decision to issue, renew or revoke licences lies with the Board.</p>	<p>In light of the transfer of county pharmacies to the counties, this function is now a county function. However, the National Government still has the power to set the standards for the issuance of licences thus it should issue regulations to guide the counties.</p>	<p>Amend to provide that the decision to issue, renew or revoke licences shall lie with the county governments which shall be guided by the guidelines created by the cabinet Secretary in consultation with the Board.</p>
		<p><b>Section 28 (1), (3) and (4)</b> provide that applications for licences to deal in poisons by persons who carry on agricultural, horticultural or mining businesses shall be made to the Board</p>	<p>This function has been transferred to the counties thus the applications should be made to the counties. The National Government now has the function of determining the criteria that shall be used</p>	<p>Amend to provide that applications by persons carrying on mining, agricultural or horticultural businesses for licenses to deal in poisons shall be submitted to the County governments who, guided</p>

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		<p>who shall then decide whether to issue, renew or revoke these licenses.</p>	<p>when granting, renewing or revoking a licence. Thus, it should guide the counties on the criteria to be used.</p>	<p>by the guidelines prescribed by Cabinet Secretary after consultation with the Board, shall determine whether such licences should be issued, renewed or revoked.</p>
		<p><b>Section 32 (1), (2) and (5)</b> empower the Board to receive applications for licenses to sell Part II poisons and to decide whether to issue, renew or revoke these licences.</p>	<p>The Act should recognise the transfer of this function to the county government and the role of the national government to give guidance to the counties on how to perform their functions.</p>	<p>Amend to provide that applications for a licence to sell <b>Part II</b> poisons shall be made to the county governments who shall, in accordance with the guidelines set out by the Cabinet Secretary after consultation with the Board, decide whether they shall be issued, renewed or revoked.</p>
		<p><b>Section 44</b> of the Act is silent on the issuing of rules and guidelines by the Cabinet Secretary to guide the county governments.</p>		<p>This section should include a provision for the Cabinet Secretary to issue guidelines to guide the counties on the criteria for granting, renewing or revoking the various licences provided for by the Act.</p>
5.	<p><b>Pharmacy and Poisons Board Rules</b> (Legal Notice No 86 of 1957 as amended by L.N. 443/1957, L.N. 332/1958, L.N. 426/1958, L.N. 498/1958,</p>	<p>The <b>Section 3(4)</b> provides that where the Board denies an application for a license to import, the applicant may appeal the decision to the Minister.  <b>Section 4 (3)</b> provides that where the Board denies an application for a license to export drugs or poisons, the applicant may appeal the decision to the Minister.</p>	<p><b>Article 152</b> of the Constitution provides that the Cabinet shall now consist of Cabinet Secretaries Not Ministers.  <b>Article 152</b> of the <b>Constitution</b> provides that the Cabinet shall now consist of Cabinet Secretaries Not Ministers. The Section should therefore be amended to reflect this.</p>	<p>Amend to remove the word “minister” and replace it with “Cabinet Secretary”.  Amend to remove the word “minister” and replace it with “Cabinet Secretary”.</p>

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	<p>L.N. 550/1959, L.N. 114/1960, L.N. 587/1961, L.N. 242/1963, L.N. 631/1963,  L.N. 92/1964, L.N. 365/1964, L.N. 115/1968, L.N. 125/1969, L.N. 248/1969, L.N. 41/1971, L.N. 120/1984, No. 52/1984, L.N. 51/1985, L.N. 61/2002, L.N. 91/2004 and L.N. 191/2010).</p>	<p><b>Section 14 (5)</b> provides that the person in hospitals who is charged with the inspection of the storage of poisons as well as the records regarding the issue, use and dispensing of poisons shall submit their reports on these matters to the registrar of the Pharmacy and Poisons Board.</p>	<p>County hospitals and pharmacies have been transferred to the county governments. It is therefore the duty of the county governments to monitor the issuing, use, and storage of poisons in county hospitals and ensure that poisons are being handled in a manner that is consistent with the law.</p> <p>However, because of the technical nature of this function, the counties shall need to appoint a qualified person to ensure that the <b>Pharmacy and Poisons Act</b> and its regulations are being followed.</p>	<p>Amend to provide that the person in hospitals tasked with carrying out the inspection of the storage of poisons and the records regarding the issue, use and dispensing of poisons shall submit their reports to the person in charge of the hospital and the county government.</p> <p>Also, amend to provide that the Counties, in consultation with the Board, should appoint county representatives to aid in the monitoring of the issuing, use and storage of poisons and drugs on hospitals and pharmacies</p>
6.	<p><b>Pharmacy and Poisons (Conduct of Inquiries) Rules (Legal Notice No 52 of 1985)</b></p>	<p>The Rules currently provides that the Board, shall hear complaints against registered pharmacists and make determinations based on the evidence presented. The Board is comprised only of professionals in the pharmaceutical industry- it is not a requirement that a Board member have legal experience.</p>	<p>To ensure that disciplinary hearings are conducted in a manner that adheres to the <b>Bill of Rights</b> as provided in <b>Chapter 4</b> of the <b>Constitution</b> and other principles of justice, a lawyer/advocate may be useful during disciplinary hearings to guide the Board.</p>	<p>Consider amending to include that the Board one lawyer.</p> <p>Also, procedures should be put in place for the appointment and removal of such an advocate.</p>

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7.	Pharmacy and Poisons (Registration of Drugs) Rules (Legal Notice No. 147 of 1981 as amended by L.N. 142/1991 and L.N. 192/2010)	No amendment required	These rules provide the procedure and standards for the registration of drugs. This function is still a national government function thus no amendment is required.	
8.	Pharmacy and Poisons (Control of Drugs) Rules (Legal Notice No 180 of 1969 as amended by L.N. 247/1969, L.N. 228/1974)	No amendment required	The Rules stipulate that no person shall import possess, distribute, sell or purchase <b>Part I</b> drugs without authorisation and, where a person is authorised to import possess, distribute, sell or purchase <b>Part I</b> drugs, they shall do so in accordance with the Act. These rules provide guidance on the handling of <b>Part 1</b> drugs thus do not require to be amended.	
9.	Public Health Act	<b>Section 2</b> defines a magistrate as a magistrate empowered to hold a subordinate court of the first, second or third class.	The division of magistrate's courts into classes was done away with by <b>Section 5</b> of the <b>Magistrates' Courts Act, 2015</b> . The Act should therefore be amended to reflect the new divisions of subordinate courts.	Delete and restructure to align to the laws on the structures of the judiciary.  Delete Other references in the Act to subordinate courts of a certain class. These include <b>Section 124 (5)</b> , <b>Section 126C (3)</b> and <b>Section 126D (5)</b> and <b>(6)</b> .

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		<p><b>Section 2</b> defines the Minister as the minister for the time being responsible for health</p>	<p><b>Article 152</b> of the <b>Constitution</b> provides that the Cabinet shall now consist of Cabinet Secretaries. The Section should therefore be amended to reflect this.</p>	<p>Amend to remove the words “the Minister” in all the instances they appear and replace them with “the Cabinet Secretary”.</p> <p>This amendment should be made throughout the Act.</p>
		<p><b>Section 2</b> defines the drainage authority as the Ministry of Works or any other authority the Minister may appoint.</p>	<p>The term drainage authority is not used in the Act.</p>	<p>Delete section.</p>
		<p><b>Section 2</b> currently provides that health authorities, in municipalities are the municipal councils.</p> <p>The section also provides that the health authority, in areas that are not municipal areas is the Minister.</p>	<p>The function of health has been devolved to the counties.</p>	<p>Delete since the Health Act addresses health as a devolved function.</p>
		<p><b>Section 2</b> defines a medical officer of health as the Director of Medical Services, the duly appointed medical officer of a municipality and, with regards to any other area, a medical officer of health appointed for the area by the minister.</p>	<p>The <b>Health Act (Act No 21 of 2017)</b>, in <b>section 16 - 17</b>, establishes the office of the Director General of Medical Services. Also, <b>Section 19</b> of the created the <b>Health Act (Act No 21 of 2017)</b> establishes the office of County Director of Health which is charged with, among others, being the technical advisor to the county government on health matters.</p>	<p>Delete as this is it is addressed differently in the <b>Health Act</b>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 3</b> provides that there shall be a Central Board of Health which shall consist of Director of Medical Services, a sanitary engineer, a secretary, and six other persons, three of whom shall be medical practitioners.</p>	<p><b>Section 16 and 17 of the Health Act (Act No. 21 of 2017)</b> replaced the office of the Director of Medical Services with that of the Director General of Medical Services.</p> <p>Furthermore, the <b>Health Act (Act No. 21 of 2017)</b> sets out the structure of the National Health System and County Health System.</p>	Delete section.
		<p><b>Section 7B(1)</b> establishes District Health Management Boards which are mandated with overseeing the running of government health institutions in the districts.</p>	The function of overseeing county health facilities has been transferred to the counties and the sub-county entities are likely to be established by way of regulations under the health Act or by County legislation.	Delete Section
		<p><b>Section 9(1)</b> provides for the appointment of the Director of Medical Services, the deputy Director of Medical Services, assistant directors of medical services, medical officers of health, assistant medical officers of health, medical officers, pathologists, health inspectors, port health officers and such other officers.</p> <p><b>Section 9(2)</b> empowers municipal councils to appoint medical officers for the municipality with the approval of the Minister of health and the Minister for local government.</p>	Human resources for the national and county government is now done by the governments at either level and cannot be prescribed in detail by this Act. It is an issue that is addressed in the <b>Health Act</b> .	Delete this section
			The section refers to the defunct municipal councils.	Delete this section.

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 10</b> establishes the medical department whose functions include to preventing and guarding against the introduction of infectious disease into Kenya from outside; promoting the public health and preventing, limiting or suppressing of infectious, communicable or preventable disease within Kenya; and advising and directing local authorities in regard to matters affecting the public.</p> <p><b>Section 11</b> empowers the Minister to cause inquiries to be made into any matter concerning public health in any place.</p>	<p>Section is premised on the old structures of the centralised government. The functional assignment between the two levels of government under devolution is addressed in <b>Sections 15</b> and <b>20</b> of the <b>Health Act (Act No.21 of 2017)</b>.</p>	Delete.
		<p><b>Section 14</b> provides for the procedure to be adopted when a complaint is made to the Central Board about the public health being endangered as a result of the municipal council's failure to perform its duty.</p>	<p>Public health has been devolved to the counties which includes looking into public health concerns which arise at the county level.</p>	<p>Amend to specify the public health issues which fall under the mandate of the county governments and those which fall under the mandate of the national government.</p>
		<p>This section empowers the Minister in charge of local government to approve by-laws made by municipal councils, which affect public health. The Minister in charge of local government shall obtain the agreement of the Minister responsible for health before approving the by-laws.</p>	<p>This procedure and the structure no longer exists under devolved governance.</p>	Delete this section
			<p>The Procedure is no longer relevant under devolved governance.</p>	Delete

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		<p><b>Section 16</b> provides that where there is a conflict between the Act and any other Act, the provisions of the Public Health Act will prevail.</p>	<p>The <b>Health Act (Act No.21 of 2017)</b> is the main act relating to health and the provisions of the Public Health Act are not aligned to the constitution, this provision does not make sense.</p>	Delete this section.
		<p><b>Section 32</b> provides that municipal councils shall build or contract for the use of hospitals or other places of reception. This shall be done with the permission of the Central Board of Health.</p>	Section refers to non-existent structures.	Delete this section.
		<p><b>Section 33</b> provides that the cost of maintenance of a patient who is not a pauper shall be considered a debt owed by the patient to the municipal council.</p>	This section is unclear given that Health is now a human right. It might need to be reviewed in view of the recognition of health as a right.	Amend to clarify this section in light of <b>Article 43</b> of the <b>Constitution</b> . The amendment should address the issue of retention by hospitals of patients who have outstanding bills. This clause is best situated in the <b>Health Act</b> .
		<p><b>Section 34</b> empowers municipal councils to contract third parties for the temporary supply of medicine and medical assistance.</p>	This section is obsolete and not aligned to devolved governance	Delete this section.
		<p><b>Section 36</b> empowers the Minister to make rules for the handling of threats of epidemic, endemic or infectious diseases.</p>	Section is situated in a centralised governance system.	Amend to provide that the counties shall make laws and rules for the handling of outbreak of infectious diseases and the national government shall formulate policies to guide the counties. This section is best situated in the <b>Health Act</b> .

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		<p><b>Section 51</b> empowers the Minister to order the examination of a person if, as a result of report from a medical officer, he believes the person is suffering from a venereal disease.</p>	<p>This section may be in breach of health and human rights standards of patient care and may not be necessary in the modern day.</p>	<p>Delete this section.</p>
		<p><b>Section 67</b> provides that where a person from a sea vessel is suffering from an infectious disease and, on the orders of the port health official is removed to a hospital or place of isolation, the national government may recover the expenses incurred in the treatment said person from the masters of vessels from which person came.</p>	<p>The section may amount to a violation of rights. Communicable diseases are not managed in such a punitive manner.</p>	<p>Delete and redraft to provide ways of managing communicable diseases in line with the policies formulated under <b>Section 69 (1)(f) of the Health Act</b></p>
		<p><b>Section 77</b> empowers the Minister to set up asylums for the detention of persons with Leprosy.</p>	<p>Leprosy is now eliminated in Kenya.</p>	<p>Delete this section.</p>
		<p><b>Section 78</b> provides that it is an offence for one person to fail to report to the nearest magistrate another person who they suspect has Leprosy.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 79</b> empowers magistrates to order police officers to detain persons suspected of having Leprosy until such persons are examined in accordance with the Act.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>

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		<b>Section 80</b> provides for the procedure to be followed to ensure the examination of a person suspected of having Leprosy.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 81</b> provides that where a person suspected to have Leprosy is examined and found to not have it, they shall be discharged from their detention.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 82</b> provides for the procedure to be followed where, after an examination, there is doubt as to whether a person suspected to have Leprosy actually has the disease.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 83</b> requires that the interim reception order and the reports of the medical practitioners which led to the issuance of the order should be submitted to the Minister.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 84</b> provides for the procedure to be followed when a person wants to voluntarily submit themselves for examination for Leprosy.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 85</b> empowers the Minister to issue detention orders where he is satisfied that the person detained under an interim reception order is affected with Leprosy	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.

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		<p><b>Section 86</b> requires that where the minister is not satisfied that an inmate has Leprosy, they shall forward the order and medical reports to the <i>Director of Medical Services</i>. Where the director is satisfied, they shall direct the Minister to issue a detention order. Where the director is not satisfied, they shall order the superintendent to release the person.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 87</b> empowers the Minister to make orders for the release of persons detained in asylums where there is sufficient reason.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 88 (1)</b> provides that the minister shall appoint superintendents of asylums. The superintendents shall be under the supervision and direction of the <i>Director of Medical Services</i>.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 88 (2)</b> provides that medical officers, attendants, guards and other officers in asylums shall be appointed by the <i>Director of Medical Services</i>.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 89</b> provides for the duties of superintendents of leprosy asylums.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<b>Section 90</b> prohibits people with Leprosy who are in asylums from interacting with the outside world.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 91</b> prohibits persons in asylums from leaving unless they are discharged in accordance with the provisions of the Act. It also allows for the arrest without a warrant of persons who leave asylums without being discharged.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 92</b> provides for the visitation of persons in Leprosy asylums by friends, relatives and legal advisors.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 93</b> provides that the cost of erecting and establishing asylums shall be provided by parliament.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.
		<b>Section 94</b> provides that superintendents of asylums can, with the permission of the Minister, recover the expenses of maintaining an inmate from that inmate.  It also empowers a superintendent of an asylum to enter into agreements with inmates or their representatives for the erection of buildings for the inmate. The superintendents would enter these agreements on behalf of the government.	Leprosy is now eliminated in Kenya. This section no longer relevant.	Delete this section.

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		<p><b>Section 95</b> allows the high court to appoint a manager for the property of a person who is detained in asylum. Applications for such orders shall be made by the <i>Director of Public Prosecutions</i>.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 96</b> requires the medical officer of health who examines a person suspected of having Leprosy to ensure that the house of the person is cleansed and disinfected if it is found that the person does have Leprosy and needs to be isolated.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 97</b> requires all persons who are detained in asylums to submit themselves for photographs whenever required to do so by the superintendent of the asylum. The section also makes it an offence to supply or exhibit photographs of people detained in an asylum without express authorisation.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p> <p>Also, this section goes against a person's right to privacy as provided for in <b>Article 31</b> of the <b>Constitution</b> as well as the right to dignity as provided in <b>Article 29</b> of the <b>Constitution</b>.</p>	<p>Delete this section.</p>
		<p><b>Section 98</b> provides that any person who commits an offence under this part of the Act shall be liable to a fine of Kes 15,000 or an imprisonment term not exceeding 1 year or both the fine and imprisonment.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>

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		<p><b>Section 99</b> empowers the Minister to make rules with regards to the handling of persons with Leprosy, including providing for the detention of persons in asylums and the staffing of asylums.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 100</b> provides that where it shall cause undue delay or inconvenience to have a person suspected of having Leprosy examined by two medical practitioners, the person may be examined by one medical practitioner whose report should be confirmed by a second examiner as soon as is convenient.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 101</b> empowers police officers to execute orders made under the Leprosy part of the act and makes it an offence for any person to resist or obstruct the execution of any duty provided for under the Act.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>
		<p><b>Section 102</b> empowers the minister to grant exemptions to persons which allow said persons to operate private Leprosy asylums.</p>	<p>Leprosy is now eliminated in Kenya. This section no longer relevant.</p>	<p>Delete this section.</p>

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		<p><b>Section 103</b> provides for the definition of terms to be used in the part of the Act which provides for smallpox. It defines a public vaccinator as a public vaccinator appointed by the Director of Medical Services and any person appointed to assist a public vaccinator.</p> <p>The <b>Section 106</b> provides for emergency vaccination procedures in areas that are threatened by Smallpox outbreaks.</p> <p><b>Section 111</b> empowers persons who are in charge of leper asylum or mental hospital or chronic sick hospital, jail, prison, reformatory, penitentiary or other similar institution to cause to be vaccinated, all persons admitted therein if they have not been successfully vaccinated in the preceding 5 years.</p>	<p>Human resources for the national and county government is now done by the governments at either level and cannot be prescribed in detail by this Act. It is an issue that is addressed in the health Act.</p>	<p>Rework this section to provide for public vaccination officers within the structure of the national health system and county health system as they are provided for by the <b>Health Act</b>.</p>
		<p>Section situated in the former centralised system and the local governments.</p> <p>Leprosy is now eliminated in Kenya.</p>	<p>Delete this section and address the issue in the <b>Health Act (Act No 21 of 2017)</b>.</p> <p>Amend to delete the words “leper asylum”.</p>	
		<p><b>Section 112 (2)</b> empowers the Director of Medical Services to instruct public vaccinators to visit schools and inspect the children attending them to establish that the children have been vaccinated against Smallpox.</p> <p><b>Section 114 (b)</b> empowers the Minister to make rules conferring powers and imposing duties on magistrates, police</p>	<p>This section is situated in the former centralised system and the local governments.</p>	<p>Rework this section to recognise the national and County Health Systems that have been set up by the Constitution and the <b>Health Act. (Act No. 21 of 2017)</b>.</p>
		<p>This section is situated in the former centralised system and the local governments.</p>	<p>Delete this section and address the issue in the <b>Health Act. (Act No.21 of 2017)</b>.</p>	

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		and other officers to enforce the vaccination provisions of the Act.		
		<b>Section 114 (c)</b> empowers the Minister to make rules prescribing the conditions under which the Smallpox vaccine shall be given to medical practitioners, municipal councils and others.	This section is situated in the former centralised system and the local governments.	Delete this section and address the issue in the <b>Health Act. (Act No.21 of 2017)</b> .
		<b>Section 116</b> provides that it is the duty of every local authority to take all practical measures to maintain cleanliness and sanitary conditions in the district.	Section situated in the former centralised system and the local governments.	Delete and address issue in the Health Act. This should also be done in <b>Sections 126C, 26D, 129 and 144</b> .
		<b>Section 119</b> empowers the medical officer of health to serve a notice on any person causing a nuisance (as defined by <b>section 118</b> ) requiring the person to remove the nuisance within a specified time.	Section situated in the former centralised system and the local governments.	Delete and address the issue in light of the county health systems provided for in the <b>Health Act. (Act No. 21 of 2017)</b> .
		<b>Section 120</b> provides for the procedure to be followed where an author of a nuisance fails to comply with a notice. The medical officer who issued the notice should lodge a complaint with a magistrate who shall then make appropriate orders.	Section situated in the former centralised system and the local governments.	Delete and address the issue in light of the county health systems provided for in the <b>Health Act. (Act No. 21 of 2017)</b> .
		<b>Section 121</b> provides for the penalty of failing to comply with the order of a medical officer with regards to a nuisance.	Section situated in the former centralised system and the local governments.	Delete and address the issue in light of the county health systems provided for in the <b>Health Act. (Act No. 21 of 2017)</b> .

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 122</b> empowers the court to order a health authority to remove a nuisance if the owner or occupier of the premises where the nuisance is located is unknown or cannot be found.</p> <p><b>Section 123</b> empowers medical officers, health authorities or any of their officers and police officer on the order of a magistrate to enter any building or premises to inspect the same for the existence of any nuisance. This inspection may include opening up the floor of the premises or building to inspect drains.</p> <p>Where it is found that there is no nuisance, the health authority is required to restore the premises at its own cost.</p> <p><b>Section 124</b> empowers the magistrate's court of the first class to make orders for the demolition of buildings where it is satisfied that the building is defectively constructed or dilapidated.</p> <p><b>Section 125</b> empowers the medical department to collect data on overcrowding and insufficient housing and inquire into the methods of dealing with such issues. The department</p>	<p>Section situated in the former centralised system and the local governments.</p> <p>Section situated in the former centralised system and the local governments.</p> <p>Also, the section does not require these officers to have probable cause to inspect a premise. Thus, this section is prone to abuse and may result in the violation of people's rights to property as guaranteed by <b>Article 40</b> of the <b>Constitution</b>.</p> <p>Section situated in the former centralised system and the local governments.</p> <p>This section addresses the inter- relation between poor housing condition and health but under the old system. It's an important issue that should be situated in the clauses addressing the inter-linkage</p>	<p>Delete and address the issue in light of the county health systems provided for in the <b>Health Act. (Act No. 21 of 2017)</b>.</p> <p>Delete and address the issue in light of the county health systems provided for in the <b>Health Act (Act No. 21 of 2017)</b>. Also, conditions for the exercise of this power should be put in place to safeguard citizens' right to property.</p> <p>Amend to recognise the current system of magistrates court as provided by the <b>Magistrate's Court Act (Act No. 26 of 2015)</b></p> <p>Delete and address the issue within the Health Act.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p>is also empowered to publish their recommendations</p> <p><b>Section 126</b> provides that the Minister shall make rules and may confer powers on local authorities on various matters including inspection of land, dwellings, buildings, factories and trade premises and the keeping of animals or birds.</p>	<p>between health departments and other departments at national levels.</p> <p>Section situated in the former centralised system and the local governments.</p>	<p>Delete and address issue in the <b>Health Act</b>.</p>
		<p><b>Section 126A</b> empowers the municipal councils, when required to do so by the Minister for Local government with the agreement of the <i>Minister for health</i>, to make by laws on buildings and sanitation.</p>	<p>Section situated in the former centralised system and the local governments.</p>	<p>Delete and address issue in the <b>Health Act</b>.</p>
		<p><b>Section 126B</b> provides that, where by-laws made by municipal councils under <b>Section 126A</b> are unreasonable, the local authority may, with the consent of the Minister, relax them.</p>	<p>Section situated in the former centralised system and the local governments.</p>	<p>Delete and address issue in the <b>Health Act</b>.</p>
		<p><b>Section 126C</b> empowers local authorities to reject plans of work that are not in accordance with building by-laws made by municipal councils. Where there is a dispute over rejected plans, either the local authority or the person who lodged the plans may apply to a magistrate's court of the first class.</p>	<p>This section addresses the inter- relation between poor construction practices and health but under the old system. It's an important issue that should be situated in the clauses addressing the inter-linkage between health departments and other departments at national levels.</p>	<p>Delete and address the issue within the <b>Health Act</b>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 126D</b> provides the procedure to be followed when construction works are in contravention of building by-laws.</p>	<p>This section addresses the inter- relation between poor construction practices and health but under the old system. It's an important issue that should be situated in the clauses addressing the inter-linkage between health departments and other departments at national levels.</p>	<p>Delete and address the issue within the <b>Health Act.</b></p>
		<p><b>Section 127</b> empowers medical officers to determine the materials which shall be used to construct buildings used to store food stuffs. Where such a building is not constructed in accordance with the medical officer's direction, the medical officer may enter the premises and cause the necessary works to be done at the cost of the building owner.</p>	<p>This section addresses the inter- relation between poor food storage practices and health but under the old system. It's an important issue that should be situated in the clauses addressing the inter-linkage between health departments and other departments at national levels.</p>	<p>Delete and address the issue within the <b>Health Act.</b></p>
		<p><b>Section 130</b> provides that the Minister, on the advice of the Central Health Board shall make rules for the protection of water supplies.</p>	<p>Section situated in the former centralised system and the local governments.</p>	<p>Delete and address issue in the <b>Health Act.</b></p>
		<p><b>Section 131</b> empowers medical officers of health, veterinary officers, sanitary inspectors, meat inspectors to seize tainted or unwholesome food which is to be sold and, upon application to a magistrate, destroy the same.</p>	<p>Section situated in the former centralised system and the local governments.</p>	<p>Delete and address issue in the <b>Health Act.</b></p>

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		<p><b>Section 132</b> empowers medical officers of health and persons so authorised by a health authority to enter any premises used for the sale, preparation or storage of food and seize any unwholesome foods found therein and, upon application to a magistrate, destroy the same.</p> <p><b>Section 134</b> provides that the Minister shall make rules for the protection of food.</p>	<p>Section situated in the former centralised system and the local governments.</p>	<p>Delete and address issue in the <b>Health Act</b>.</p>
		<p><b>Section 135</b> empowers the Minister, with the advice of the Board to make rules for the protection of food. These include prohibiting registration of dairy farmers and ordering the inspection of premises where dairy and meat products are produced and kept.</p>	<p>Section makes sense on food safety but should provide this in national legislation and regulations while the county governments can also make implementation laws and regulations.</p>	<p>Amend to provide that the Cabinet Secretary shall formulate policies for the protection of food including the inspection of cattle, stock and dairy products and fixing standards for dairy products and the storage of food. The county governments shall then enact county laws to implement these policies.</p>
		<p><b>Section 135A (1) and (2)</b> provide that the municipal councils, with the approval of the Minister may make bye-laws to</p>	<p>It is the duty of the counties to ensure the safety and hygiene of food and places where it is produced, obtained or sold. The making of orders to protect food id thus a county government function.</p>	<p>Delete and re-draft to provide for county implementation of the national standards on food safety</p>
			<p>The function of regulating the production and preparation of food which includes dairy and dairy production should be</p>	<p>Delete and re-draft to provide that the county government shall laws to regulate the production, preparation, storage,</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		regulate the production, preparation, storage and sale of milk and milk products. These by-laws shall be passed in accordance with the <b>Local Government Act</b> .	performed by the county government as it is part of the food safety and control function.	certification and sale of milk and milk products.
		<b>Section 140</b> requires owners of cesspits to ensure that they are protected or screened so as to prevent the entry and breeding of mosquitoes therein. This screening must be done to the satisfaction of a medical officer.	While this is an important provision in so far as the prevention of malaria is concerned, its implementation is situated in the former centralised system and the local governments.	Delete and address issue in the <b>Health Act</b>
		<b>Section 141</b> empowers medical officers of health to direct owners of gutters, pipes, grooves or waterways to drill holes into said gutters, pipes, grooves and waterways at least every 2 feet so as to prevent the accumulation of water.	While this is an important provision in so far as the prevention of malaria is concerned, its implementation is situated in the former centralised system and the local governments.	Delete and address issue in the <b>Health Act</b>
		<b>Section 142</b> empowers the Director of Medical Services, persons authorised by him or medical officers of health to destroy immature stages of mosquitoes when the same are found on in any collection of water.	While this is an important provision in so far as the prevention of malaria is concerned, its implementation is situated in the former centralised system and the local governments.	Delete and address issue in the <b>Health Act</b>
		<b>Section 144 (1)</b> provides that the Minister has the duty of selecting sites to be used as cemeteries and that burials shall be.	The section is good but situated in the former system of government. The function of establishing and managing	Delete and re-draft to provide that the county government shall select sites to be used as cemeteries and that burials

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		conducted in accordance with rules made by the local authority	cemeteries was devolved to the county governments. Thus, the county government should select sites for cemeteries and make laws to provide for burials.	shall be conducted in accordance with county laws.
		<b>Section 145</b> defined authorised cemeteries as cemeteries authorised by the Minister.	Cemeteries are now under the control of the county governments.	Amend to provide that authorised cemeteries are cemeteries authorised by the relevant county government.
		<b>Section 146 (3)</b> provides that permits to exhume bodies or the remains of bodies shall be granted by the Minister.	Permits for exhumation should be granted by the county government because cemeteries are under the control and management of the county governments.	Amend to provide that a permit to exhume a body or the remains of any body from a cemetery shall be granted by the county government.
		<b>Section 147 (1)</b> only allows the Minister to make an order for exhumation of a body to enable the execution of public works.	The county government is tasked with county transport and county public works while the national government is tasked with the construction and operation of national roads. Both levels of government therefore need the power to order exhumations for the execution of public works.	Amend to clarify the instances in which applications for exhumation orders should be made to the Cabinet Secretary and the instances in which they should be made to the county government.
		<b>Section 149</b> provides that the Minister can close cemeteries.	The establishment and management of cemeteries is a county function thus, orders to close a cemetery should come from the county government not the Cabinet Secretary.	Amend to provide that the county government shall have the power to close any cemetery.

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		<p><b>Section 150</b> empowers the board to recover expenses incurred in the execution of an order that was requested by a person from the person in question.</p> <p><b>Section 152</b> requires all persons who wish to open lodging houses to obtain a licence for the same from a local authority.</p>	<p>The section is good but situated in the former system of government.</p>	<p>Delete and re-draft to align to devolved government.</p>
		<p><b>Section 153 (2)</b> empowers the <i>Director of Medical Services</i> to authorise a medical practitioner to visit and inspect nursing homes, convalescent homes, private hospitals, private mental hospitals, maternity homes, infirmaries or any institutions where invalids, convalescents or children are treated. While <b>Section 153 (3)</b> makes it an offence to obstruct such an inspection.</p>	<p>The section is good but situated in the former system of government.</p>	<p>Delete and re-draft to align to devolved government.</p>
		<p><b>Section 153 (3)</b> provides for instances where the Central Board may refuse to grant a licence to operate a nursing home, convalescent home, private hospital, private mental hospital, maternity home, infirmary or any other institution where invalids, convalescents or children are treated</p>	<p>The function of granting licences is a county government function.</p>	<p>Amend to provide that licences shall be granted by county governments in accordance with the rules set for the same by the national government.</p>

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		<p><b>Section 155</b> provides that where, in the opinion of a local authority, a public latrine is required, the authority shall apply to the Minister for permission to erect it.</p>	<p>The section is good but situated in the former system of government.</p>	<p>Delete and re-draft to align to devolved government.</p>
		<p><b>Section 156</b> empowers local authorities to prohibit the washing of clothes in places not appointed for such purposes.</p>	<p>The section is situated in the former system of government.</p>	<p>Delete and re-draft to align to devolved government.</p>
		<p><b>Section 157</b> provides that the Minister, where advised as such by the Central Board, may prohibit the use of irrigation to grow of crops within a township or within three miles of the boundaries of a township.</p>	<p>The section is good but situated in the former system of government.</p>	<p>Amend to provide that the county government can, where necessary, prohibit the use of irrigation to grow crops within the boundaries of a city, town or municipality or within 3 miles of the boundaries of a city, town or municipality.</p>
		<p><b>Section 157 (2)</b> provides that the Minister shall make rules on the collection of standing water, to provide for the draining of standing water and to the inspection repair and cleaning of channels, canals and drains.</p>	<p>The section is good but situated in the former system of government. Prevention of waterborne diseases is a part of primary healthcare thus a function for the county government. Although, when passing laws on public health, the counties should be guided by national policy.</p>	<p>Amend to provide that the county government may pass laws regarding these issues. These laws should be made in accordance with national public health policies and the relevant national legislation.</p>
		<p><b>Section 159</b> empowers the District Commissioner, the Central Board of Health, a Local Authority Officer, a Medical Officer of Health or a Sanitary Inspector</p>	<p>The Office of the District Commissioner does not exist in the current government.</p>	<p>Delete and re-draft to align to devolved government.</p>

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		<p>to authenticate orders or notices made under the Act.</p> <p><b>Section 161</b> empowers <i>Director of Medical Services</i> to authorise the <i>Deputy Director of Medical Services</i>, any assistant <i>Director of Medical Services</i>, medical officer of health, port health officer or medical officer of the department to perform his functions set out under the Act.</p> <p>It also empowers the <i>Director of Medical Services</i> and the <i>Deputy Director of Medical Services</i> to perform the functions of the <i>Director of Medical Services</i>, the <i>Deputy Director of Medical Services</i> or any assistant <i>Director of Medical Services</i> or medical officer provided under the Act.</p> <p><b>Section 163 (1)</b> empowers any medical officer of health or health inspector, district surgeon or port health officer, or any police officer of or above the rank of Inspector, or any other person generally or specially authorized in writing by the <i>Director of Medical Services</i> to enter onto a premise and inspect in the performance of any of the duties given to them under the Act.</p>	<p>The section is good but situated in the former system of government.</p>	<p>Delete and re-draft to align to devolved government.</p>
			<p>The section is good but situated in the former system of government.</p>	<p>Delete and re-draft to align to devolved government.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 167</b> empowers health authorities or any persons authorised by them to prosecute any cases which may arise from contravention of the Act.</p> <p><b>Section 168A (1)</b> empowers municipal councils to, with the approval of the minister, make by-laws for the prevention of breeding of mosquitoes and flies.</p>	<p>The section is practical given the technical nature of offences under the Act but situated in the former system of government.</p> <p>The section is good but situated in the former system of government Prevention of malaria and other such diseases is a county function thus the passing of the relevant laws should be done by the county government. Urban area and city boards should help in the implementation of these laws.</p>	<p>Delete and re-draft to align to devolved government.</p> <p>Amend to provide that the county government may make laws for preventing the breeding of mosquitoes and flies. These laws should then be enforced by urban areas and city boards.</p>
		<p><b>Section 169</b> empowers the Minister to make rules to aid in the implementation of the Act.</p>	<p>The section is situated in the former system of government</p>	<p>Amend to provide that the Cabinet Secretary has the power to make policy for the carrying out of the purposes of the Act and the county governments may pass county legislation and regulations to effect the implementation of the national policies and laws.</p>
10.	Public Health Act interphase with the Health Act			<p>Harmonise the Public health and the health Act by lifting the remnant of the clauses of the public Health Act into the Health Act</p>

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11.	Mental Health Act Cap 248	<p><b>Section 73</b> of the Health Act, 2017, provides for the enactment of legislation on Mental Health to cover the following areas:</p> <ul style="list-style-type: none"> <li>a) protect the rights of any individual suffering from any mental disorder or condition;</li> <li>b) ensure the custody of such persons and the management of their estates as necessary;</li> <li>c) establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country at the national and county levels;</li> <li>d) advance the implementation of other measures introduced by specific legislation in the field of mental health; and</li> <li>e) ensure research is conducted to identify the factors associated with mental health.</li> </ul> <p><b>Section 2</b> refers to offices that do not exist under the current system of government for example Ministers.</p>	<p>Although the <b>Mental Health Act, Cap 248</b> addresses to a large extent (a) and (b) it does not address (c) in so far as county level is concerned. There is an erroneous assumption that mental health care is national government function.</p> <p>The Act is also not clear on how it addresses (d) which is in itself vague. Further it does not address (e) whatsoever.</p>	<p>The Act should be reviewed to capture the provisions of <b>Section 73 (Part IX)</b> of the <b>Health Act, 2017</b>.</p> <p>There should be an option of repealing all the provisions on mental health in the health Act and comprehensively addressing the mental health concerns in one this Act.</p> <p>The assumption that mental health services are the business of the national government is erroneous- mental health care services should be integrated in county health care services</p>
			<p>The <b>Constitution of Kenya, 2010</b> provides for Cabinet Secretaries and not Ministers and thus should be reviewed to ensure it complies with <b>Article 152</b> of the <b>Constitution</b>.</p>	<p>Amend to correct the error</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 4</b> establishes the Kenya Board of Mental Health and lists the membership to the board. The board and its constitution should be reviewed to ensure that the functions are limited to setting standards and to the National Government.</p>	<p>Review to amend various terminologies including Minister which no longer exists as per the Constitution.</p>	<p>Amend to limit the Board to be a preserve of the functions of National Government only since it's intended to be a national government entity.</p>
		<p><b>Section 4</b> of the Act establishes the Board however is silent on its composition.  <b>Article 27 (8)</b> of the Constitution provides that not more than <math>\frac{2}{3}</math> of the members of the elective or appointive bodies shall be of the same gender.</p>	<p>Whenever any public body is set up, it is important to provide for the requirement that the minimum constitutional requirements on gender and inclusion are provided.</p>	<p>Amend to require that the Two-third gender and inclusion on regional balance and other criteria are considered.</p>
		<p><b>Section 5</b> provides for the functions of the Kenya Board of Mental Health including among others “<i>coordinating mental health care activities in Kenya and approve establishment of mental hospitals.</i>”</p>	<p>The functions should be limited to National Government run mental hospitals to avoid any conflict with county governments.   Counties have also established their own health boards that manage county hospitals and county referral hospitals and the Act provides no clear linkage between the Kenya Health Board and other Boards at the county levels.</p>	<p>Amend to limit the functions of the Board to the functions assigned to the National Government under the <b>Fourth Schedule</b> to the <b>Constitution</b>.</p>

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		<p><b>Section 7</b> provides for the appointment of mental health councils in the districts.</p>	<p>The Constitution of Kenya 2010 provides for different administrative structures under devolution. The District is no longer a structure under the devolved system.</p> <p>The Act does not recognize the different roles of the two levels of government. The national government is responsible for the National Mental Health Referral Facility (Mathare Mental Hospital) but the county government is also responsible for county health services which includes mental health.</p> <p><b>Article 6</b> of the Constitution also provides for the distinct and inter-dependent roles of the national and county governments. This section should thus be amended to incorporate the shared function of mental health.</p>	<p>Amend to take cognizance of the devolved system of government in line with the <b>Constitution of Kenya 2010</b>.</p> <p>Amend clauses that make reference to districts.</p> <p>The same will apply to other sections in the Act that make reference to district mental health council including <b>Section 22 (4)</b>.</p>
	<p><b>Section 8</b> provides for the expenses of the board and the district mental health councils.</p>		<p>The Constitution provides for a new form of administrative structure. A review of the formation/constitution of health councils if necessary would also address the expenses of such a body/bodies.</p>	<p>The provision should be amended to address the above mentioned concern on district mental health councils as provided in <b>section 7</b> above.</p>

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		<p><b>Section 9</b> provides for the establishment of mental hospitals, a preserve of county and national government departments.</p>	<p>The section provides for the authorization of the establishment of mental hospitals. The act should be amended to limit the role of the board to an advisory role.</p> <p>The function of establishment should be the preserve of national and county governments and particularly the departments in charge of health. This is because the respective government department has the development plan which may not be with the board.</p>	<p>This section should thus be deleted or reviewed to ensure that the board is assigned an advisory as opposed to an approval role.</p>
	<p><b>Section 10 (1)</b> provides that “any person who has attained and apparent age of sixteen years, who desires to voluntarily submit himself to treatment for mental disorder and who makes to the person in charge a written application in duplicate in the form prescribed, may be received as a voluntary patient into a mental hospital.”</p>	<p><b>Section 20 (1)</b> provides that the Minister may, after consultation with the Minister for the time being responsible for finance by notice in the Gazette, prescribe the fees payable for admission of persons into Governmental mental hospitals</p>	<p>The <b>Constitution</b> defines a child as any person below the age of 18 years. In line with this definition therefore a child at 16 years of age should not be allowed to voluntarily submit themselves for mental treatment.</p>	<p>The Act should be amended to revise the age of an individual to voluntarily submit themselves for treatment for mental disorder from 16 to 18 years, as an individual of 16 years is still a child within the definition of the <b>Constitution</b> and has thus not attained the age of consent.</p>
			<p>The section refers to ‘Minister’ instead of ‘Cabinet secretary’.</p> <p>The section does not respect the functional assignment of the two levels of government with different roles in</p>	<p>Amended to Cabinet Secretary where it refers to Minister</p> <p>Delete aspects where the national government officer is being assigned county functions</p>

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		<p>under this part and the manner of payment of such fees.”</p> <p>Similarly, <b>Section 20 (2)</b> which provides that a non-government mental hospital admitting persons under this Part may charge such fees and in such manner as the Minister for the time being responsible for finance may from time to time approve in writing.”</p>	<p>so far as mental health is concerned. It assigns county functions to a national government entity.</p>	
		<p><b>Section 23 (1)</b> provides that “any person detained in a Government mental hospital under this Act may be transferred by order of the Director from one Government mental hospital to another.”</p>	<p>This provisions fails to realize the devolved system of government and therefore fails either to:</p> <ul style="list-style-type: none"> <li>(i) limit this transfer to Government mental hospitals ran by National Government or:-</li> <li>(ii) provide for a consultative process that allows for transfers from National to County ran hospital or between County ran mental hospitals.</li> </ul>	<p>The act should be amended in recognition of the two levels of Government which may each establish mental hospitals as noted.</p>
		<p>The Act has not adequately addressed the human rights concerns relating to mental health.</p>		<p>Review the UN Committee recommendations on mental health and human rights and include the rights approached in mental health care.</p>

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12.	Mental Health Act (Board Meetings) Regulations, 2000.	<p><b>Regulation 4 (4)</b> provides that “the quorum for the conduct of the business of the Board shall be nine members.”</p>	<p>The membership of the board including the Chairperson and excluding the co-opted members is 9 members as provided in <b>Section 4</b> of the <b>Mental Health Act</b>. The quorum may pose a challenge where all the members have to be present at every meeting. This would also avoid any contradiction that may arise if <b>Regulation 4 (4)</b> is read together with <b>Regulation 4 (8)</b> which provides that “subject to <b>sub-Regulation (4)</b>, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.</p>	<p>The regulations should be reviewed to reduce the number for the quorum required for the conduct of business.</p>
		<p><b>Sub-Regulation 5</b> provides that in the event of the absence of chairman the vice-chairman will preside over the meeting.</p> <p>The regulations are silent on the role and the relationship between the co-opted members and the board members as provided in <b>section 4</b> of the Act.</p>	<p><b>Sub-Regulation 5</b> should be amended to provide for gender balance between the chairman and the vice-chairman.</p>	<p>Amend to provide that the vice-chairman should be of a different gender to the chairman. Use language that respects gender balance is the drafters are agreeable.</p> <p>The regulations should thus be amended to factor in the provision of <b>section 4</b>.</p>

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13.	Anatomy Act (Cap 249)	<p><b>Section 3</b> empowers the Minister to grant licences to practice anatomy to medical practitioners and officers, teachers of anatomy or students in schools of anatomy.</p>	<p>The office of Minister has been replaced by the office of Cabinet Secretary under <b>Article 152(1)(D)</b> of the <b>Constitution</b>.</p> <p>Furthermore, the function of granting licences has been devolved to the county governments. The function of the national government is to guide the counties by setting standards by stipulating criteria for the granting of licences.</p>	<p>Amend to provide that the Cabinet Secretary shall issue guidelines which stipulate criteria for the granting of licences for the practice of anatomy and the county government shall, in accordance with these guidelines, grant licences to medical practitioners and officers as well as teachers of anatomy and students in schools of anatomy.</p> <p>Replace the word “Minister” wherever it appears with the words “Cabinet Secretary”.</p>
		<p><b>Section 6</b> provides that the Minister may grant authority to the Commissioner of Prisons, Director of Medical Services, a Medical Officer concerned with a public hospital or an officer in charge of a prison to anatomically examine the body of any person who dies in a prison or public hospital or institution.</p>	<p>Under the devolved system, county hospitals and health facilities are under the mandate of the county governments. Only national referral health facilities are under the national government. The Section should therefore differentiate between the two levels of health facilities.</p> <p>The Office of Director of Medical Services was replaced by the office of the Director General for Health by the <b>Health Act (Act no 21 of 2017)</b>.</p>	<p>Amend to provide that the Cabinet Secretary shall grant authority to anatomically examine the body of a deceased person where the person dies in a national referral health facility or a prison. However, where the person dies in a county health facility, the authority to anatomically examine their body shall be sought from and granted by the county government.</p> <p>Replace the words “Director General” with “Director General for Health.”</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 10 (1)</b> sets out the conditions that need to be met before the body of a dead person can be removed from the place where the person died. They include giving 24 hours' written notice of the intended examination to the <i>Director of Medical Services</i>.</p>	<p>Under the devolved system, each county has a director of health who is supposed to supervise health services in the county which include anatomical examinations.</p>	<p>Amend to state that, the written notice of intended examinations shall be given to the relevant <i>County Director of Health</i>.</p>
		<p><b>Section 11</b> requires all persons who receive the body of a deceased person for examination to deliver a return detailing the particulars of the deceased and the details of the examination as well as the death certificate of the deceased person to the <i>Director of Medical Services</i>.</p>	<p>Under the devolved system, each county has a director of health who is supposed to supervise health services in the county which include anatomical examinations.</p>	<p>Amend to provide that the return and the death certificate should be submitted to the <i>County Director of Health</i>.</p>
		<p><b>Section 12 (2)</b> requires a person who receives a body for anatomical examination to notify the <i>Director of Medical Services</i> within 6 weeks of the cremation or interment of the body.</p>	<p>Under the devolved system, each county has a director of health who is supposed to supervise health services in the county which include anatomical examinations.</p>	<p>Amend to provide that the notice of the cremation or interment should be given to the <i>County Director of Health</i>.</p>
		<p><b>Section 13</b> enables the <i>Director of Medical Services</i> to authorise the removal of a dead body or part thereof for educational, scientific or research purposes.</p>	<p>The licensing of persons to handle dead bodies for scientific, educational or research purposes is a county function as it is part of licensing and accreditation of healthcare providers.</p>	<p>Amend to provide that the authorisation of the removal of a dead body or part thereof for educational, scientific or research purposes shall be granted by the <i>County Director of Health</i> in accordance with the criteria specified for granting such authority by the <i>Director-General of Health</i>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 14</b> empowers the <i>Director of Medical Services</i> to enter or authorise others to enter a school of anatomy to inspect a dead body or to collect information from a persons who has authorised the anatomical examination of a dead body or carried out the examination themselves.</p> <p><b>Section 15</b> empowers the <i>Minister for Health</i> to authorise the dispatch from Kenya and reception by Kenya of a dead body for anatomical examination.</p> <p>It also empowers the <i>Director of Medical Services</i> to authorise a person to receive a dead body for the purposes of either dispatching the body to a foreign country or conveying them to an approved school of anatomy.</p> <p><b>Section 16</b> empowers the <i>Minister</i> to make regulations.</p>	<p>Under the devolved system, each county has a director of health who is supposed to supervise health services in the county which include anatomical examinations.</p> <p>The office of Minister was replaced by that of Cabinet Secretary in accordance with <b>Article 152</b> of the <b>Constitution</b>.</p> <p>The Office of Director of Medical Services was replaced by the office of the Director General for Health by the <b>Health Act (Act no 21 of 2017)</b>.</p>	<p>Amend to provide that authorisation to enter a school of anatomy to inspect a dead body or collect information shall be issued by the County Director of Health.</p> <p>Replace the word “Minister” with the words “Cabinet Secretary” wherever they appear in the section.</p> <p>Also, replace the words “Director of Medical Services” with the words “Director General for Health”.</p>
	<p>There are no complete copies of the Act available online. In all available copies the following sections are incomplete: <b>Sections 3 (3)(b), 11 (1)(b) and 14 (1)(d)</b>.</p>			<p>Amend to include the formulation of guidelines to guide counties with regards to the issuance of licences for anatomical examination.</p> <p>Provide the public with complete copies of the Act.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
14.	Narcotic Drugs and Psychotropic Substances Act (Act No. 4 of 1994)	<p><b>Section 2</b> does not include a definition for the term "Minister".</p> <p><b>Section 7</b> provides for the forfeiture of land (both government land and land that is not government land) which is used for the cultivation of prohibited plants.</p> <p><b>Section 10 (4) and (5)</b> make reference to the "Commissioner of Lands".</p>	<p>The Act gives many powers and functions to the Minister but does not specify the Minister being referred to. In <b>Part V</b>, however, the Act specifies that the Minister referred to in that part is the Minister for Health.</p> <p><b>Article 152</b> of the Constitution replaced the office of Minister with that of Cabinet Secretary.</p> <p>The <b>Constitution</b> only recognises 3 classifications of land: public land, private land and community land. The act needs to be amended to recognise this.</p> <p>The National Land Commission, as created by <b>Article 67</b> of the <b>Constitution</b> and the National <b>Land Commission Act (Act no. 5 of 2012)</b> is now headed by a chairperson and has different functions from the previous commission.</p>	<p>Amend to specify the Cabinet Secretary referred to in the Act.</p> <p>Replace the word "Minister" wherever it appears in the Act with the words "Cabinet Secretary".</p> <p>Amend to align to the constitution and specify whether the land shall be forfeited to the national government, a county government or a community.</p> <p>Consider the rights and freedoms in <b>Chapter 4</b> of the <b>Constitution</b> and consider revising the penalty.</p> <p>Amend to replace "Commissioner of Lands" with "Chairperson of the National Land Commission".</p> <p>Amend to ensure consistency with the functions of the National Land Commission as provided by the National <b>Land Commission Act (Act No. 5 Of 2012)</b>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 11</b> provides for the power of entry into land (both government land and land that is not government land) where an authorised officer suspects that a prohibited plant is being cultivated.</p>	<p>Under the current constitutional dispensation, land is classified into private land, public land and community land. The classification of government land and land that is not government land has been done away with.</p>	<p>These amendments should be made throughout the Act. Including <b>Section 11</b>. Amend to provide for the procedures for entry for all 3 classifications of land. These procedures should put in place checks and balances which safeguard the right to privacy and the right to property (<b>Article 31</b> and <b>article 40</b> of the <b>Constitution</b>, respectively).</p>
		<p><b>Section 14</b> makes it an offense for a person who, for the treatment of any disorder, is supplied with/has a prescription for a narcotic drug or psychotropic substance and receives additional narcotic drugs or psychotropic substances from another medical practitioner or dentist without disclosing their initial supply. This offence attracts a fine of at least Kes 50,000 and imprisonment for a term not exceeding 10 years.</p>	<p><b>Article 36 (1)</b> and <b>Article 38</b> of the Single <b>Convention on Narcotic Drugs of 1961</b> as amended by the <b>1972 Protocol</b> as well as <b>Article 20</b> and <b>Article 22 (1)</b> of the <b>Convention on Psychotropic Substances of 1971</b> call on party states to rehabilitate drug abusers and to adequately punish serious drug offences particularly using imprisonment.</p>	<p>Amend to provide for different penalties when the person receives the additional narcotic drugs or psychotropic substances for:</p> <ul style="list-style-type: none"> <li>a) personal use; and</li> <li>b) for other purposes.</li> </ul>
	<p><b>Section 16</b> empowers the Minister to establish a board to oversee and regulate the importation, exportation, diversion, sale, manufacture, production and distribution of narcotic drugs.</p>	<p>The office of "Minister" has been replaced with that of "Cabinet Secretary" by virtue of <b>Article 152</b> of the <b>Constitution</b>.</p>		<p>Amend and harmonise both the <b>Narcotic and Psychotropic Substances Act (Act No. 4 of 1994)</b> the <b>Pharmacy and Poisons Act (Cap 244)</b> such that only one body is mandated with the function</p>

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			<p>This function has been duplicated in the <b>Pharmacy and Poisons Act (Cap 244)</b> which creates the <b>Pharmacy and Poisons Board</b>. The functions of the Board include overseeing and regulating the manufacture, importation, exportation, sale etc. of poisons which include cannabis, opiates and other narcotic drugs and psychotropic substances. The Board is supported in this role by the <b>National Drug Quality Control Laboratory</b>. The duplication of this role is an inefficient use of resources which goes contrary to <b>Article 232 (1)(b)</b>.</p> <p>Furthermore, the function of issuing of licences for manufacture, production and distribution of narcotic drugs and psychotropic substances is a county function although the national government has the mandate to issue guidelines to guide the counties.</p> <p>It is however, a national function to oversee and regulate the importation and exportation of narcotic drugs and psychotropic substances.</p>	<p>of setting standards for regulating the manufacture, production and distribution of narcotic drugs and psychotropic substances. This same body should be empowered to regulate the importation and exportation of such drugs.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p>The <b>Fourth Schedule</b> of the <b>Constitution</b> provides that the control of drugs is a county function. However, criminal law and the police force are under the national government. There is need to clarify the role of each level of government with regards to apprehension of drug users, traffickers and manufacturers, confiscation drugs as well as receiving forfeited drugs. This will prevent conflict between the levels and duplicate allocation of resources.</p>	<p>Amend to clarify the roles of the county government and national government when it comes to controlling drugs, specifically the forfeiture of narcotic drugs and psychotropic substances that are held in contravention of the Act. These amendments shall affect the forfeiture orders made under <b>Section 42</b> and effected in accordance with <b>Section 43</b> of the Act.</p>
		<p><b>Section 20</b> provides for the forfeiture of all conveyances, implements and utensils used for the commission of offences under the Act to the government.</p>	<p>The <b>Fourth Schedule</b> of the <b>Constitution</b> provides that the control of drugs is a county function. However, criminal law and the police force are under the national government. There is need to clarify the role of each level of government when it comes to apprehension of drug users, traffickers and manufacturers, confiscation drug paraphernalia as well as receiving forfeited drug paraphernalia. This will prevent conflict between the levels and duplicate allocation of resources.</p>	<p>Amend to clarify the roles of the county government and national government when it comes to the forfeiture of drug paraphernalia used for commission of offences under the Act. These amendments shall affect the forfeiture orders made under <b>Section 42</b> and effected in accordance with <b>Section 43</b> of the Act.</p> <p>Consider harm reduction programmes for rehabilitating drug users and exempt these from these provisions.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 52</b> empowers the minister to establish rehabilitation centres.</p>	<p>The function of establishing and operating rehabilitation centres is now a county function. The role of the national government is to provide policies and guidelines to aid the counties.</p>	<p>Amend to provide that a county government shall establish as many rehabilitation centres as it sees is necessary and the Cabinet Secretary for health shall provide guidelines for the establishment and operation of these centres.</p>
		<p><b>Section 53</b> establishes the rehabilitation fund. <b>Section 54</b> establishes a board which shall administer the fund. <b>Section 55</b> provides for the management of the fund,</p>	<p>The purpose of the fund is to cater to the costs of establishing and running rehabilitation centres. The function of establishing and running rehabilitation centres is now a function of the counties and thus, should be funded as all other county functions.</p>	<p>Delete these sections in their entirety. Consider including in respective county government laws</p>
		<p><b>Section 57</b> sets out the mandate of the Advisory Council for the Rehabilitation of Narcotic Addicts as advising the Minister on matters relating to the administration of rehabilitation centres and the care, treatment and rehabilitation of drug addicts.</p>	<p>The function of the national government, when it comes to rehabilitation centres is limited to creating policy and setting national standards to guide the counties. This needs to be clear in the provisions of the Act.</p>	<p>Delete and consider reformulating to constitute a council with limited functions of the national government.</p> <p>In the alternative consider establishing an intergovernmental institution with the concurrence of the county and national governments.</p>
		<p><b>Section 67</b> empowers the Minister, in consultation with the Minister for the time being responsible for matters relating to Health, to designate analysts for the purpose of enforcing the Act.</p>	<p>The section is not specific about which Cabinet Secretary, in addition to the Cabinet Secretary responsible for health, will appoint analysts. This needs to be clarified.</p>	<p>Amend to take into account that the function is shared. Provide for analysts at county levels.</p>

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			<p>The section is not clear about the number of analysts who shall be appointed. In the spirit of decentralising state functions and services (<b>Article 174 (1)(h)</b> of the <b>Constitution</b>), there should be at least one analyst designated for each county.</p>	<p>Determine mandates for either level of government.</p>
		<p><b>Section 71</b> provides for the inspection of premises and places where narcotic drugs or psychotropic substances are lawfully being produced, manufactured, sold, distributed or otherwise being dealt with.</p>	<p>There are already provisions in the <b>Pharmacy and Poisons Act</b> for the inspection of such places by persons who are qualified to assess the quality of the drugs. The <b>Pharmacy and Poisons Act</b> only allows police officers who are above the rank of superintendent to carry out inspections. While the <b>Narcotic Drugs and Psychotropic Substances Act</b> is not specific.</p> <p>The Section allows police officers to inspect such places and seize and detain stock that is not up to standard. It is not guaranteed that all police officers will be qualified to determine which drugs are below standard, thus, to ensure efficient use of resources, police officers who carry out inspections should be accompanied by authorised and qualified persons.</p>	<p>Amend to harmonise with the provisions of the <b>Pharmacy and Poisons Act</b>.</p> <p>Amend to provide that where the inspection of such premises is carried out by a police officer such officer is accompanied by an analyst, inspector drugs or such other person who is qualified to determine whether the drugs are below standard or unfit for use.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 72</b> empowers police officers to stop and search persons who they have reasonable cause to suspect are in possession of or are removing narcotic drugs or psychotropic substances in contravention to the Act. The section also allows police to search vehicles, aircrafts and ships. In the course of these searches, the police may use as much assistance and force as may be reasonable.</p> <p><b>Section 84 (2) (a)-(h)</b> and (l) mandate the Minister to make regulations to prescribe the standards and regulations for the possession, sale, supply, importation, exportation, storage, packing narcotic drugs and psychotropic substances.</p>	<p>This section does not define “reasonable cause”. Thus, it gives the police unchecked discretion to search persons and their vehicles. This is contrary to the right to privacy which is provided for in <b>Article 31</b> of the <b>Constitution</b>.</p>	<p>Amend to define situations or circumstances which amount to “reasonable cause” so that the police do not have unchecked discretion when searching persons and vehicles.</p>
		<p><b>Section 88 (2)(i)</b> tasks the Minister with prescribing the form for an application for removal licence, the removal licence itself and the fees which should accompany an application for a removal licence.</p>	<p>The Act is not specific as to the Cabinet Secretary being referred to in this section. Furthermore, the <b>Pharmacy and Poisons Act</b> empowers the Cabinet Secretary for health to make regulations with regards to these issues. This lack of clarity and duplication of functions may result in conflict and duplication of efforts.</p> <p>There is no mention in the act of a removal licence prior to this section.</p>	<p>Delete these sections.</p>
				<p>Delete this section</p>

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15.	Narcotic Drugs and Psychotropic Substances (Control) Restraint And Forfeiture Regulations, 1997 (L.N. 547/1997)	<b>Section 1 (1)</b> empowers the Attorney General to apply to the court for a restraint order where the AG has reasonable grounds to believe a person has committed a specified offence (an offence under <b>Section 3-6</b> of the Act).	The function of public prosecution is now carried out by the Director of Public Prosecutions in accordance with <b>Article 157</b> of the <b>Constitution</b> . Given that applying for a restraint order is part of the prosecution process under the Act, this function should be carried out by the DPP not the AG.  Furthermore, the Act, under <b>Section 22</b> , states that it shall be the responsibility of the DPP to apply for restraint orders.	Amend to provide that the Director of Public Prosecutions shall apply for restraint orders where necessary.
16.	Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006 (L.N. 16/2006)	<b>Section 4 (3)</b> requires the Seizures Registrar, upon receipt of seized substances, to notify the Attorney General and furnish the AG with the seizure report.  <b>Section 4 (4)</b> provides that the AG shall not be required as a witness merely because he has been notified of a seizure and provided with a copy of the seizure report.  <b>Section 13</b> requires the Attorney General to apply to a magistrate for destruction orders where an accused person cannot be identified or located or is not in Kenya.	The function of public prosecution is now carried out by the Director of Public Prosecutions in accordance with <b>Article 157</b> of the <b>Constitution</b> . As such, notification of a seizure and the seizure report itself should be sent to the DPP not the AG.	Amend to replace the words “Attorney General” wherever they appear in the sections, with the words “Director of Public Prosecutions”.  Amend to replace the words “Attorney General” wherever they appear in the sections, with the words “Director of Public Prosecutions”.

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
17.	Public Health Officers (Training, Registration and Licensing) Act (Act No 12 of 2013)	<p><b>Section 14</b> provides the matters to be considered by a magistrate before issuing a destruction order.</p> <p><b>Section 3 (3)</b> provides for the composition of the Public Health Officers and Technicians Council. The Council consists of a chairperson, the Director of Medical Services, the Chief Public Health Officer, a representative from the Ministry responsible for urban areas and cities, a public health officer from a local authority among others.</p>	<p>mandate of the DPP to make applications for destruction orders.</p> <p>The offices referred to existed under the old governance system.</p>	<p>Amend to align with the structures of devolved governance and the offices established by the <b>Health Act (Act No 21 of 2017)</b> and the national and county health systems set out therein.</p> <p>Also, as a public body, the council must adhere to the two thirds gender rule in its composition Provided in <b>Article 27 (8)</b> of the Constitution. Provide a clause to facilitate compliance in the nominations.</p>
		<p><b>Section 3 (4)</b> requires the members of the council to appoint a vice-chairperson.</p>	<p>Gender should be a consideration in the appointment of the vice-chairperson.</p>	<p>Amend to provide that the vice chairperson should not be of the same gender as the chair-person.</p>
		<p><b>Section 4 (2)(d)</b> empowers the Public Health Officers and Technicians Council to consider and approve the qualifications of public health officers and technicians for the purposes of registration.</p>	<p>The function of the national government is to prescribe standards for the registration and licensing of health providers. It is the duty of the counties is to register and licence healthcare providers in accordance with these standards.</p>	<p>Amend to clarify roles of either level of government. The function of the Council shall be only to prescribe the qualifications required by public health officers and technicians. Registration at the county level is a function of the county government.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 4 (2)(k)</b> provides that the council shall prescribe and approve the badges, insignias and uniforms worn by public health officers and technicians.</p>	<p>Under the devolved system of government, the national government has the function of prescribing standards which in this context includes prescribing the standards for the badges, insignias and uniforms to be worn by public health officers and technicians. However, the function of approving badges, insignias and uniforms is now a county function because it is part of implementing national policies and standards.</p>	<p>Amend to provide that the Council shall only prescribe the standards for badges, insignias and uniforms to be worn by public health officers and technicians.</p>
		<p><b>Section 23</b> provides that the Chief Public Health Officer shall be the registrar of the council.</p>	<p>The Officer of Chief Public Health Officer does not exist in the current health system as set out by the <b>Health Act</b>.</p> <p>Also, the registration of healthcare providers is now a county function.</p>	<p>Amend to align with the new structures.</p>
		<p><b>Section 24</b> provides for the criteria to be met by persons to enable them be registered as public health officers and technicians.</p> <p>The language in the section implies that the council is responsible for the actual registration of public health officers and technicians. For example, <b>Section 24 (5)</b> provides for criteria to be met before</p>	<p>The function is situated in a centralised system of governance and does not distinguish registration by the council and that by a county government function.</p>	<p>Amend to clarify that the function of the council vis a vis that of county governments in regard to registration.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		the council can authorise the registration of a person as a Public Health Officer or Technician.		
		<b>Section 25</b> requires all persons wishing to be registered to public health officers and technicians to apply to the council.	The function of the council shall be to set standards for the registration of public health officers and technicians.	Amend to include county government roles.
		<b>Section 26</b> requires the council to maintain registers for public health officers and technicians. It also provides for the amendment of the registers.	Include the need for registers at the county levels.	Amend to provide for maintenance of registers by county governments.
		<b>Section 29</b> requires the registrar to remove the names of persons from the register in certain cases for example deceased persons or persons who request to have their names removed from the register.	The management of registers shall now be done at the county level as well	Amend to provide for the updating of registers by the respective county governments as well.
		<b>Section 32</b> provides that the council shall issue both practising certificates and annual licences to public health officers engaging in private practice.	The County Governments are tasked with implementing standards set by the national government and the issuing of licences for practicing at the county level.	Amend to factor the role of county governments- issuing of licenses in accordance with the criteria specified by the Council.
		<b>Section 33</b> provides for the procedure of application for a practising certificate from the council registrar.	The procedure is set in a centralised system of government.	Amend to also provide the procedure applicable at the county level.
		<b>Section 35</b> empowers the Council to receive and grant or deny applications for the renewal of practising certificates.	see comment above	Amend to also provide the procedure applicable at the county level.

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 37</b> establishes the disciplinary Committee of the council.</p>	<p><b>Article 27 (8)</b> requires the state to put in place legislative measures to ensure that not more than <math>\frac{2}{3}</math> of the members of any elective or appointive body shall be of the same gender. Any clause that prescribed composition of a body must provide for the need to ensure compliance with the <math>\frac{2}{3}</math> gender principle.</p>	<p>Amend to provide that not more than <math>\frac{2}{3}</math> of the members of the committee shall be of the same gender</p>
		<p><b>Section 43</b> allows any public health officer or technician whose name has been removed from the register to appeal to the council, upon the expiry of 3 years from the date of its removal, to restore their name to the register.</p>	<p>Since registers will be maintained at the county level their sis need to synchronise with counties.</p>	<p>Amend to provide for a procedure for the notification of county governments on any restoration of names removed from their registers.</p> <p>It may further be prudent to notify all county governments through an intergovernmental process.</p>
		<p><b>Section 5</b> provides that fees payable to the council for professional licences.</p>	<p>The licencing of public health officers and technicians in a county is not a function of the council. Thus, licencing fees should be payable to the county government not the council.</p>	<p>Amend to provide that the relevant fees are payable to the county government.</p>
		<p><b>Section 6</b> provides that fees payable to the council for registration of firms, consultancies and NGOs to operate in Kenya.</p>	<p>The registration of firms, consultancies and NGOs to operate in Kenya are mandates that may fall with the NGO coordination board and the registrar of companies among others</p>	<p>Delete or Amend to provide clarity</p>

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18.	Kenya Medical Training College Act (Cap 261)	<p><b>Section 3 (1) (b)</b> provides that the Kenya Medical Training College shall include such other institutions as the Minister may, in consultation with the Board of Management of the College, declare to be training centres of the College.</p> <p><b>Section 8</b> provides that the Principal of the College shall be appointed by the Minister while the two Deputy Principals shall be appointed by the Board. The section is silent on gender considerations.</p> <p><b>Section 9 (1)</b> provides for the composition of the Board of Management of the College.</p> <p><b>Section 11 (1)</b> provides for the composition of the Academic board which includes two members of the academic staff and two student members.</p>	<p>The office of “Minister” has been replaced with that of “Cabinet Secretary”.</p> <p>As KMTTC is a state corporation, it is bound by the two thirds gender rule provided for in <b>Article 27 (8)</b>.</p> <p><b>Articles 10, 27 and 237, of the Constitution</b> provide for principles of governance. These include inclusion and equality, not more than <math>\frac{2}{3}</math> of either gender and regional balance. These principles should guide the appointment of Board members of KMTTC.</p> <p>see comment above</p>	<p>Amend to remove the word “Minister” and replace it with the words “Cabinet Secretary”.</p> <p>This amendment should be made throughout the Act.</p> <p>Amend to provide that, in appointing the Principal and deputy Principals of the College, the Minister and the Board of Management shall adhere to the constitutional principles on gender equality.</p> <p>Amend to provide that when appointing the members of the Board who are not ex-officio members, the President, the Cabinet Secretary and the Board shall be guided by the principles of the constitution.</p> <p>Amend to provide that one of the two members of the academic staff of the college elected to the Academic Board shall be a woman and the other a man. The same shall go for the two student-elected members of the Academic Board. Subject to ensuring competence also provide for regional balance.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
19.	National Authority for the Campaign Against Alcohol and Drug Abuse Act (Act No 14 of 2012)	Section 5 (a) mandates NACADA to carry out public education on alcohol and drug abuse directly or in collaboration with other public or private bodies.	<p>Public education on alcohol and drug abuse is part of health education which is part of primary healthcare. Primary healthcare is a county function thus cannot be legally performed by NACADA which is a national government body.</p> <p>There is need for inter-governmental discussions on the role of NACADA under the devolved governance structure. This may require that</p> <ul style="list-style-type: none"> <li>» NACADA cedes all the county functions that it is currently undertaking or</li> <li>» NACADA is transformed into an intergovernmental parastatal pursuant to an intergovernmental agreement by the national and county governments.</li> </ul>	<p>. Amend to reflect the fact that public education on alcohol and drug abuse is also a county health function and whatever intergovernmental agreement that may be reached on NACADA.</p>
		Section 5 (b) empowers NACADA to coordinate and facilitate public participation in the control of alcohol and drug abuse.	The control of drugs and health promotion are county functions. The law cannot mandate that they are performed by a national government body.	Remove this section entirely.

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 5 (e)</b> empowers NACADA to establish rehabilitation centres and programmes as well as set standards for their operation.</p>	<p>The establishment and operation of rehabilitation centres is a county function. The function of NACADA as a national government body should be limited to advising the Cabinet Secretary on the standards for the establishment and operation of these centres.</p>	<p>Delete or Amend to provide that NACADA shall advise the Cabinet secretary in the development of standards for guiding County governments on the establishment and operation of rehabilitation centres for persons suffering from substance abuse disorders.</p>
		<p><b>Section 5 (f)</b> empowers NACADA to license and regulate the operation of rehabilitation centres.</p>	<p>see comment above</p>	<p>Delete.</p>
		<p><b>Section 5 (g)</b> not only empowers NACADA to formulate national policies, laws and plans of action on the control of alcohol and drug abuse but also implement and enforce these plans.</p>	<p>Implementation and enforcement of national policy is a county function. It should therefore be performed by the county governments and not by NACADA.</p>	<p>Amend to limit NACADA's powers to only advise the cabinet secretary on the formulation of national policies on the control of alcohol and drug abuse.</p>
		<p><b>Section 5 (k)</b> provides that NACADA shall assist and support the counties in the development and implementation of policies, laws and plans of action.</p>	<p>The national government has no constitutional powers to mandate a national government entity to carry out county functions without the relevant intergovernmental agreement.</p>	<p>Delete</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><i>Section 6 (2) The sub-section provides for the criteria to be considered when appointing the non-ex-officio members of the board. They are impeccable character, high moral standards and the capacity to achieve the objectives of the authority.</i></p>	Delete these sections and revise to situate the provision in devolved governance.	Amend to provide that the representation of women and other marginalised groups and to ensure regional balance in the consideration of the appointment the non-ex-officio members of the Board.
		<p><b>Section 19</b> empowers the Cabinet Secretary to appoint authorised persons upon recommendation by NACADA. The Function of these officers, as set out in Section 20 of the Act is the enforcement of the <b>Narcotic Drugs and Psychotropic Drugs Act (Act No.4 of 1994)</b>.</p>	Delete these sections and revise to situate the provision in devolved governance.	Delete these sections and revise to situate the provision in devolved governance.
		<p><b>Section 20</b> empowers authorised officers to apply ex parte to a Magistrate's Court or a High Court for a warrant to search a premise.</p>	Delete these sections and revise to situate the provision in devolved governance.	Delete these sections and revise to situate the provision in devolved governance.
		<p><b>Section 22</b> empowers authorised officers to seize property during their search of a premises.</p>	Enforcing the <b>Narcotic Drugs and Psychotropic Drugs Act</b> is part of the larger function of controlling drugs which is a county function and a function of the National Police Service.	Delete these sections and revise to situate the provision in devolved governance.
		<p><b>Section 24</b> creates the offence of obstructing an authorised officer who is performing their duties under the act.</p>	Enforcing the <b>Narcotic Drugs and Psychotropic Drugs Act</b> is part of the larger function of controlling drugs which is a county function and a function of the National Police Service.	Delete these sections and revise to situate the provision in devolved governance.

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
20.	<p>The Alcoholic Drinks Control Act (Act No. 4 of 2012)</p>	<p><b>Section 2</b> refers to offices that do not exist under the current system of government. For example, the term “Minister” is defined to mean the minister for matters relating to the provincial administration</p> <p><b>Section 3</b> of the act sets out the objects of the Act. These objects include both national and County government functions such as protection of the consumer rights of alcohol consumer’s health education.</p> <p><b>Section 4 (c)</b> empowers NACADA to advise the Minister on the national policy to be adopted with regards to the production, manufacture, sale and consumption of alcoholic drinks.</p> <p><b>Section 4 (d)</b> empowers NACADA to advise the Minister on various issues including the permissible levels of constituents of alcoholic drinks and the test methods to be used on alcoholic drinks.</p>	<p>The office of minister does not exist as a result of Article 152 of the Constitution which creates the office of Cabinet Secretary.</p> <p>Furthermore, the provincial administration was abolished when the devolved system was introduced.</p> <p>The clustering of county government functions with national government functions without clearly differentiating on the responsibilities for each level shall lead to confusion and conflict when it comes to implementation of the Act.</p> <p>The section may be in conflict with devolved governance since the policies being advised are operationalised by counties.</p> <p>Secondly the Cabinet Secretary being advised should be the Cabinet Secretary in charge of health since the matters relate to health functions.</p>	<p>Amend to align to the current system of government.</p> <p>Amend section to differentiate between the objects which are National government functions and those which are county government functions.</p> <p>Amend to factor the role of counties and limit the responsibility of the national government department in line with devolved governance.</p> <p>Replace the definition of Minister in <b>Section 2</b> with that of “Cabinet Secretary” and replace Ministry In charge of Provincial Administration with Cabinet Secretary in charge of health.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 4 (e)</b> empowers NACADA to make recommendations to the Minister on the formulation of regulations under the Act as well as participate in the formulation of the regulations.</p> <p><b>Section 2</b> defines “the Minister” as the Minister for the time being in charge of provincial administration.</p>		
		<p><b>Section 4 (e)</b> empowers NACADA to provide support and assistance in the establishment of rehabilitation centres which recognise alcoholism as a disease.</p>	<p>The establishment of county rehabilitation centres is a county government function. The national government is responsible for national rehabilitation centres. Thus, NACADA, which is a national government agency can only provide assistance in the establishment of national rehabilitation centres.</p>	<p>Amend to specify that NACADA shall only assist in the establishment of national rehabilitation centres.</p>
	<p><b>Section 5</b> establishes the Alcoholics Drinks Control Fund which shall consist of, among others, licence and another fees payable under the Act. The Fund shall finance:</p> <ul style="list-style-type: none"> <li>a) research on alcoholic drinks;</li> <li>b) promoting national cessation and rehabilitation programmes;</li> </ul>		<p>The Fund is situated in the previous system of government. For example, the objects of the Fund include both county and national functions. Furthermore, one of the main sources of money for the fund, licensing fees, shall now be collected by the counties.</p>	<p>Delete the section. If it is to be retained determine from an agreement between the two levels of government if county government have agreed to seed their function to NACADA.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p>c) the functions of the District Committees; and</p> <p>d) Any other incidental matters to the above.</p>		
		<p><b>Section 6</b> provides that the <i>Alcoholic Drinks Control Fund</i> shall be administered by an Accounting Officer of NACADA and such other staff as he/she shall require. The Accounting Officer shall prepare and submit statements of accounts to the Controller and Auditor General.</p>	<p>The Fund is situated in the previous system of government. Refer to the comment above.</p>	<p>Delete this section.</p>
		<p><b>Section 8 (1)</b> provides for the establishment of District Committees whose function shall be issue licences and perform any other function allocated to them by the Minister.</p>	<p>Issuance of licences is a county function which is to be carried out in accordance with the standards and criteria set by the national government.</p>	<p>Delete this section and provide the issuance of licences by the county governments.</p>
		<p><b>Section 9</b> provides for the procedure to be followed when applying for a licence to manufacture alcoholic drinks. Once an application in the prescribed form has been made to the District Committee, the District Committee shall share the same with the Commissioner of Police (or such other police officer appointed by him for that purpose), the Medical Officer of Health of the District and the local authority.</p>	<p>The section refers to offices which existed under the previous system of government.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 10</b> empowers the District Committee to grant licences where they are satisfied with an application for a licence to manufacture alcoholic drinks or sell alcoholic drinks. Where the District Committee is not satisfied with an application, they may, while giving their reasons and making recommendations, reject the application.</p>	<p>The function of granting licences is a county government function. When performing this function, counties are to be guided by the standards set by the national government.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 11</b> empowers the District Committees to grant provisional licences where an application to use a premise for the sale of alcoholic drinks is made in respect of a premises which is about to be constructed or in the course of construction or reconstruction.</p>	<p>The function of granting provisional licences is a county government function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 12</b> provides some of the criteria to be considered when District Committees are reviewing applications for licences.</p>	<p>The function of granting provisional licences is a county government function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 13</b> provides for the factors which would cause a District Committee to reject an application for a licence or an application for the renewal of a licence.</p>	<p>The function of granting or refusing licences is a county function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 14</b> empowers the District Committees to grant applications for the renewal, transfer and withdrawal of the licences.</p>	<p>The function of renewing, transferring and withdrawing licences is a county function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 16</b> empowers a District Committee to require a corporate body which applies for a licence to disclose its directorship. Where any of the directors would not qualify to be granted a licence individually, the District Committee may refuse to grant the licence.</p>	<p>Granting or refusing to grant licences is a county function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 18</b> provides for the procedure of transfer of a licence when the licensee sells the premises to which the licence applies.</p>	<p>The function of renewing, transferring and withdrawing licences is a county function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 19</b> sets out the procedure to be followed when a District Committee refuses to renew a licence. Where there is no pending appeal with regards to the refusal, the licensee shall be issued with a licence to all them deplete any existing stocks of alcohol. Where there is a pending appeal, the licensee shall be granted a licence for the duration of the appeal.</p>	<p>The function of granting, renewing or refusing licences is now a county government function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 21 (2)</b> empowers a District Committee to allow other persons other than a licensee to run a licensed business.</p>	<p>The power to allow persons to run or manage licensed businesses under the Act is now a county government function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 25</b> empowers medical officers to visit premises which serve alcohol and ensure they are adhering to sanitation laws. The officer shall then report to the District Committee.</p> <p>It also empowers police officer of the rank of inspector and above to report disorderly premises to the District Committee.</p>	<p>The monitoring licensees to ensure compliance with sanitation codes is a county function as it forms part of maintaining standards of environmental health and sanitation.</p> <p>Furthermore, District Committees no longer exist in the current system of government.</p>	<p>Delete and provide for measures which can be adopted by county governments in ensuring premises comply with the provisions of the Act as well as sanitation codes.</p>
		<p><b>Section 26</b> empowers a District Committee to cancel a licence upon receipt from a report by a medical officer or a police officer.</p>	<p>The function of cancelling licences is a county government function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>
		<p><b>Section 41</b> requires any court which convicts a licensee for an offence under the Act to inform the District Committee of the conviction and note the same on the licence.</p>	<p>District Committees do not exist in the current governmental structure.</p>	<p>Amend to require the county government to be informed of the conviction of licensees.</p>
	<p><b>Section 60</b> requires the government, through the relevant ministries, and NACADA to promote public awareness about the health consequences, addictive nature and mortal threat posed by excessive alcoholic drink consumption through a comprehensive nationwide education and information campaign.</p>		<p>Health education is a county function.</p>	<p>Delete. Let the licence application procedures be defined in the county legislation.</p>

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21.	Human Tissues Act (Cap 252)	<p>Section 2 provides for the conditions which need to be met in order for a person's body, upon their death, to be used for therapeutic purposes or for purposes of medical education or research.</p> <p>It also provides, in Section 3, for the limitations to authority granted to use a person's body for these purposes.</p>	<p>These issues are covered more comprehensively in the <b>Anatomy Act (Cap 249)</b> which provides for the anatomical examination of dead bodies which includes the use by medical practitioners and teachers and students of anatomy.</p>	<p>Harmonise the Act with the <b>Anatomy Act (Cap 249)</b> Repeal the Act</p>
22.	Counsellors and Psychologists Act (Act No 14 of 2014)	<p>Section 4 (6) requires that, in appointing members of the Counsellors and Psychologist Board, the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.</p>	<p><b>Article 27(8) of the Constitution</b> expressly requires the government to put in place legislative measures to ensure that two-thirds of elective or appointive bodies are of the same gender. Thus, it is not sufficient for the Act to require that, in appointing the members of the board, the Cabinet Secretary should take into account gender diversity.</p>	<p>Amend to provide that the Cabinet Secretary shall ensure that two-thirds of the members of the Board are not of the same gender.</p>
	Section 6 (c) empowers the Counsellor's and Psychologist Board to register and licence counsellors and psychologists.		<p>Licensing of healthcare providers who will practice in Counties is a county government function. It is also expected that counties will also keep their own register of health care providers. The function of the council, as a national government body is to set standards for the execution of this function.</p>	<p>Amend to provide that the Council will provide county governments with guidelines of the criteria to be considered when hiring a Counsellor or psychologist. Make the necessary inter-governmental linkage.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 6 (g)</b> empowers the Counsellors and Psychologists Board to take the necessary disciplinary measures in cases of professional misconduct and indiscipline.</p>	<p><b>Part VI of the Health Act (Act No, 21 of 2017)</b> establishes the Health Professions Oversight Authority. One of the functions of this authority is to receive and facilitate the resolution of complaints from aggrieved patients.</p> <p>There is overlap between the functions of the Counsellors and Psychologists Board and the Health Professions Oversight Authority.</p>	<p>Amend to harmonise with the <b>Health Act</b>; clearly distinguish the mandate of the Health Professions Oversight Authority with regards to complaints against counsellors and psychologists and that of the <i>Counsellors and Psychologists Board</i> and with the employers' administrative action in line with <b>article 47</b>.</p>
		<p><b>Section 6 (f)</b> empowers the Counsellors and Psychologist Board to, upon request, act as an arbitrator in disputes between a counsellor or psychologist and a client.</p>	<p><b>Part VI of the Health Act (Act No, 21 of 2017)</b> establishes the Health Professions Oversight Authority. One of the functions of this authority is to receive and facilitate the resolution of complaints from aggrieved patients.</p> <p>The existence of two bodies with the same function shall result in confusion and possibly conflict between the bodies.</p>	<p>Amend to harmonise with the <b>Health Act</b>, specify the particular instances in which the Counsellors and Psychologists Board shall be called in to arbitrate disputes between counsellors/psychologists and their clients. Also, specify the instances in which the complaints must be taken before the Authority.</p>
		<p><b>Section 21</b> provides that the Council of the Counsellors and Psychologists Society shall consist of a chairperson and 10 other members who shall be elected in accordance with the 4th Schedule.</p>	<p><b>Article 27 (8) of the Constitution</b> expressly requires the government to put in place legislative measures to ensure that two-thirds of elective or appointive bodies are of the same gender. <b>Articles 10, 232</b></p>	<p>Amend the <b>Sub-Paragraph 1 of the 4th Schedule</b> to provide for a procedure of election of the 10 members of the Council which ensures that two-thirds of the council are not of the same gender, that</p>

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		<p><b>Sub-Paragraph 1</b> of the <b>4th Schedule</b> provides that the 10 members of the Council shall be elected at the annual general meeting of the Society.</p>	<p>also requires inclusion of the marginalised and regional balance This election procedure does not meet this requirement.</p>	<p>regional balance and inclusion of the marginalised is also required.</p>
		<p><b>Section 23 (1)(d)</b> provides that a person shall be eligible for registration under the Act if they satisfy the Board that they are of good moral character and fit and proper to be registered.</p>	<p>Registration of healthcare providers which includes counsellors and psychologists, be shared with the county government.. The function of the Board, as a national government body, is to prescribe criteria to guide the county governments on registration of counsellors and psychologists or to determine how the council process related to the County process</p>	<p>Amend to clarify that the function of the council visa vis that of county governments in regard to registration. Require that the person meet the requirement in the ethics and leadership Act.</p>
		<p><b>Section 24</b> requires a person who wishes to be registered as a counsellor or psychologist to apply to the registrar in the prescribed form. Where the person has been accepted by the board, the registrar shall register them and issue them with a certificate.</p>	<p>Registration is likely to be done at the two levels of government.</p>	<p>Amend to clarify that the function of the council visa vis that of county governments in regard to registration.</p>
		<p><b>Section 25</b> requires the registrar to maintain a register of counsellors and psychologists.</p>	<p>The county governments will also maintain a register of their staff.</p>	<p>Amend to recognise that, in addition to registration by professional bodies, the registration of counsellors and psychologists shall also be done by the county governments thus, the keeping of the registers shall also be done at a county level.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 26</b> provides for the process by which the Registrar may amend the register and the instances in which it shall be allowed.</p>	<p>County governments will from time to time amend their registers function.</p>	<p>Amend to recognise that, in addition to registration by professional bodies, the registration of counsellors and psychologists shall also be done by the county governments thus there shall be need to update county register upon amendment of the register.</p>
		<p><b>Section 28</b> provides that one cannot practise as a counsellor or psychologist unless licensed to do so by the Board. Furthermore, the Board may issue a counsellor or psychologist with a licence to practice on their own or be employed as a counsellor or psychologist.</p>	<p>Licensing healthcare providers is a county government function.</p>	<p>Amend to provide that practise licences shall be granted by county governments. However, the county governments shall be guided by the standards set by the council and shall not licence anyone who is not registered with the Council.</p>
		<p><b>Section 29 (2)</b> and <b>(3)</b> provide for the procedure to be followed where a person has not renewed their licence for a year wishes to renew their licence.</p>	<p>Licensing healthcare providers is a county government function.</p>	<p>Amend to provide for a procedure applicable by county governments.</p>
		<p><b>Section 34</b> provides for the procedure to be followed where a person wishes to lodge a complaint against a counsellor or psychologist. It also provides the possible sanctions which can be levied against a counsellor or psychologist.</p>	<p><b>Part VI</b> of the <b>Health Act (Act No, 21 of 2017)</b> establishes the Health Professions Oversight Authority. One of the functions of this authority is to receive and facilitate the resolution of complaints from aggrieved patients. <b>Article 47</b> of the <b>Constitution</b> provides for fair administrative action.</p>	<p>Amend to clearly distinguish the mandate of the Health Professions Oversight Authority with regards to complaints against counsellors and psychologists and that of the Counsellors and Psychologists Board. Also, provide for fair administrative (<b>Article 47</b>) processes within the service delivery points which will also be in county facilities.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 35</b> provides for the effect of the removal of a name from the register. It also provides for the procedure of getting one's name restored to the register.</p>	<p>County governments also have a role in matters of removal and restoration on the register function.</p>	<p>Amend to provide for the procedure of linking this procedure to the county government operations and registers upon the removal or return of a name of a counsellor or psychologist from the register and on restoration.</p>
		<p><b>Section 36</b> provides for appeals from the decisions of the Board after the hearing of a complaint.</p>	<p><b>Part VI of the Health Act (Act No, 21 of 2017)</b> establishes the <i>Health Professions Oversight Authority</i>. One of the functions of this authority is to receive and facilitate the resolution of complaints from aggrieved patients.</p>	<p>Amend to clearly distinguish the mandate of the <i>Health Professions Oversight Authority</i> with regards to complaints against counsellors and psychologists and that of the Counsellors and Psychologists Board. The procedure should be clear and sequential beginning with the facility and administrative action to the Authority.</p>
		<p><b>Sub-Paragraph 5</b> of the <b>4th Schedule</b> creates the position of <i>Vice-Chairperson</i> of the Council. It is silent on the aspect of gender.</p>	<p>In the spirit of gender inclusivity (<b>Article 10 (2)(b)</b> of the <b>Constitution</b>), the chairperson of the council and the vice chairperson should not be of the same gender.</p>	<p>Amend to include that the vice-Chairperson shall not be of the same gender as the chairperson.</p>
23.	<p><b>Clinical Officers (Training, Registration and Licensing) Act (Cap 260)</b></p>	<p><b>Section 2</b> ascribes the same definition to the term "medical officer of health" as is in the <b>Public Health Act</b>.</p>	<p>The definition of a medical officer under the <b>Public Health Act</b> includes office from the previous centralised system of government for example <i>Director of Medical Services</i>.</p>	<p>Amend to provide a definition which is in line with the devolved system of governance and as set out in the <b>Health Act</b>.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 3 (1)</b> provides for the membership of the Clinical Officers Council. They include the Director of Medical Services and 2 medical officer of health appointed by the Minister.</p>	<p>The Officer of Director of Medical Services exists under the precious system of government.</p> <p>Appointment of medical officers of health for county health facilities has now been devolved to the county governments.</p> <p>The national government is only responsible for appointing health officers in national referral health facilities.</p> <p>There is no mention in the section of gender considerations when appointing members of the council.</p>	<p>Amend to constitute the board in accordance line with the devolved system of governance as set out by the <b>Health Act (Act No. 21 of 2017)</b>.</p> <p>Amend to provide that, in appointing members of the Council, the Cabinet Secretary shall ensure that not more than two-thirds of the members are from one gender. Also, provide for regional balance and inclusion of the marginalised.</p>
		<p><b>Section 3 (4)</b> requires the Council to elect a deputy chairman from among its members.</p> <p><b>Section 5 (e)</b> empowers the Council to take the necessary disciplinary measures in cases of professional misconduct.</p>	<p>Gender inclusivity is a constitutional requirement for all elective and appointive bodies.</p> <p><b>Part VI of the Health Act (Act No 21 of 2017)</b> establishes the Health Professions Oversight Authority. One of the functions of this authority is to receive and facilitate the resolution of complaints from aggrieved patients. <b>Article 47</b> also required fair administrative procedures to be entrenched in public service operations.</p>	<p>Amend to provide that the chairperson and the deputy chairperson of the Council shall not be of the same gender</p> <p>Amend to clearly distinguish the mandate of the Health Professions Oversight Authority with regards to complaints against clinical officers and that of the Clinical Officers' Council. Also, provide for fair administrative processes at facilities which will include those set by county governments.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 6 (1)</b> provides that the Chief Clinical Officer shall be the registrar of the Council.</p> <p><b>Section 6 (3)</b> empowers the Registrar to keep a register of the names of clinical officers. <b>Section 6 (4)</b> empowers the registrar to make the necessary alterations to the register.</p>	<p>There is no provision for the establishment of the Office of Chief Clinical Officer</p> <p>Registering healthcare providers will also be done by county governments.</p>	<p>Delete or determine and provide for this position and the distinct role expected of this office.</p> <p>Amend to clarify and differentiate between any registration that will be done by counties in respect of its human resources and that to be done by this body noting that registration for purposes of licencing professionals is national government function that is usually delegated to professional bodies.</p>
		<p><b>Section 7 (1)</b> provides for the registration of persons as clinical officers by the Council.</p> <p><b>Section 8 (1)</b> prohibits the rendering of medical services by persons who are not registered by the Council.</p>	<p>See comment above</p> <p>County governments are will be the employers of majority of the clinical officers.</p>	<p>See comment above.</p> <p>Amend to make a linkage between the County as the employer and the council as the body that licences professionals in order to ensure harmony.</p>
		<p><b>Section 9</b> requires persons who are deleted from the register to surrender their certificates to the council for cancellation with 30 days of the publication of the deletion.</p>	<p>County governments as employers would need to be notified in order to ensure protection of the public from any illegal services by a deleted (deregistered) person.</p>	<p>Amend to provide for the notification of county governments where a name is removed from the register.</p>

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		<p><b>Section 11</b> provides for the issuance and renewal of licences for private practices.</p>	<p>Licensing healthcare providers in counties is a county government mandate. The function of the Council should be to provide guidelines to guide the counties.</p>	<p>Amend to provide for the issuance of licences to private practices by the county government.</p>
		<p><b>Section 13 (4)</b> provides that private practices must comply with building requirements set out in the third schedule. These requirements include that the building should be made of permanent standard or made of wattle, mud as may be approved by the local medical officer of health.</p>	<p>The function of setting standards for healthcare facilities is a national government function. The local medical officer of health is likely to be a county government officer. The county governments are tasked with ensuring these standards set at the national level are met and continuously complied with.</p>	<p>Amend this section to properly make the distinction in relation to standards to apply in the establishment of private practises.</p>
24.	<p><b>Health Records and Information Managers Act (Act No 15 of 2016)</b></p>	<p><b>Section 2</b> defines the terms "Association" as the Association of Medical Records Officers of Kenya.</p>	<p>The Act does not provide for any such association.</p>	<p>Amend the act to provide for the establishment, membership, leadership and functions of the Association of Medical Records Officers of Kenya.</p>
		<p><b>Section 7 (1)</b> of the Act provides for the composition of the Board. The non-officio members of the Board include:</p> <ul style="list-style-type: none"> <li>a) <b>Section 7 (1)(d)</b> provides for the appointment by the Board of a manager from private practice;</li> <li>b) <b>Section 7 (1)(g)</b> provides for the appointment, by the Cabinet Secretary, of 2 managers; and</li> </ul>	<p>There is no requirement that gender or ethical diversity be considered when appointing these members.</p> <p>The <b>Health Laws (Amendment) Bill, 2018</b> provides for the reconstitution of the board. In the proposed board, there is only a vague requirement that gender or ethical diversity be considered when appointing non-ex-officio members.</p>	<p>Amend to provide that 2/3 of the non-ex-officio members shall be of the same gender.</p> <p>Review the composition of the Board as provided by the <b>Health Laws (Amendment) Bill, 2018</b>.</p>

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		<p><b>Section 7 (1)(h)</b> provides for the co-opting of one more member by the Board whose knowledge and experience is deemed necessary.</p> <p><b>Section 9 (1)</b> provides for the election of the Chairperson and Vice-Chairperson of the Board</p>	<p>Also, the amendments proposed by the <b>Health Laws (Amendment) Bill</b> refer to <b>Sub-Section (1)(g)</b> which the bill then deletes.</p> <p>There is no requirement that gender balance be considered when appointing these members.</p> <p>The <b>Health Laws (Amendment) Bill, 2018</b> provides for the appointment of the chairperson of the Board by the Cabinet Secretary from among the managers appointed under <b>Sub-Section (1)(g)</b>. It is however silent on how this amendment affects <b>section 9</b>.</p> <p>There is no mechanism put in place to ensure that this power is not abused by the Cabinet Secretary.</p> <p>The registration of healthcare providers is now a county government function.</p>	<p>Amend to provide that the chairperson and the vice-chairperson shall not be of the same gender.</p> <p>Review the composition of the Board as provided by the <b>Health Laws (Amendment) Bill, 2018</b>.</p>
		<p><b>Section 9 (5)</b> empowers the Cabinet Secretary to annul or revoke the appointment, nomination, election or appointment of any member if it is in the national interest.</p> <p><b>Section 16</b> provides the procedure to be followed in order for a person to be registered as a health records and information manager under the Act.</p>		<p>Amend to include a mechanism to prevent the abuse of this power.</p> <p>Amend to provide for the procedure to be followed by the County Government when registering managers.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 17</b> provides for the maintenance of the register of managers.</p>	<p>The registration of healthcare providers is now a county government function.</p>	<p>Amend to provide for the alignment of county registers with that of the Registrar.</p>
	<p><b>Section 24</b> provides for the granting of private practices for health records and information management.</p> <p><b>Section 24 (1)</b> provides for the licences for private practices for Kenyan nationals and <b>Sections 24 (2)- (5)</b> provides for the licensing of private practices run by foreigners.</p>	<p>Licensing of healthcare providers is a county government function.</p>	<p>Amend to provide for the licensing of private practices by the county government in accordance with the guidelines and standards set by the Board.</p>	
	<p><b>Section 31</b> empowers the disciplinary committee to suspend managers or cancel their practising certificates or remove the manager's name from the register where they find the manager is guilty of the conduct complained of.</p>	<p>Registration and licensing of managers is now a county government function.</p> <p>The <b>Health Act (Act No.21 of 2017)</b> provides for the Health Professions Oversight Authority whose function includes receiving and facilitating the resolution of complaints from patients, and aggrieved parties.</p>	<p>Amend to provide that the Board must also update the relevant county government about the suspension of a manager.</p> <p>Amend to clarify the role of the Health Professions Oversight Authority and that of the Disciplinary Committee with regards to handling complaints made against managers.</p>	

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 32</b> provides for the lifting of the suspension of a manager where the Board is satisfied that the suspension should be lifted. Upon lifting the suspension, the Board is empowered to restore the registration, practising certificate and annual licence of the manager.</p>	<p>Registration and licensing of managers is now a county government function.</p>	<p>Amend to provide that the Board must also update the relevant county government about the lifting of the suspension of a manager.</p>
		<p><b>Section 33</b> empowers the board to restore the name of a manager to the register where the manager appeals to the Board after the expiry of 3 years from the date of the manager's suspension.</p>	<p>Registration and licensing of managers is now a county government function.</p>	<p>Amend to provide that the Board must also update the relevant county government about the restoration of the name of a manager to the register.</p>
		<p><b>Section 2</b> of the <b>Schedule</b> to the Act requires members of the board to disclose conflicts of interest in any contracts, proposed contracts or any other matter before the Board in a timely fashion. Failure to do so attracts a fine of Kes 100,000 and/or imprisonment for a term not exceeding 6 months</p>	<p>Given the scale and importance of the functions of the Board, failure to disclose a conflict of interest should attract steeper penalties such as dismissal, a higher fine and a longer imprisonment term.</p>	<p>Review the penalties for failure to disclose conflicts of interest.</p>
25.	<p><b>Malaria Prevention Act.</b> <b>(Cap 246)</b></p>	<p><b>Section 2</b> defines a health authority as health authority as defined in the <b>Public Health Act.</b></p>	<p>The definition of a health authority as defined in the <b>Public Health Act</b> no longer applies in the present system of government.</p>	<p>Amend to provide that a health authority for the purposes of the Act is a county government or any such person authorised by the county government to carry out the functions of the Act.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
26.	Clinical Officers (Training, registration and Licensing) Act (Act No 20 of 2017)	<p><b>Section 14</b> provides that the provision of the Act shall be in addition to the powers contained in the <b>Public Health Act</b>.</p> <p>The <b>Health Laws (Amendment) Bill</b> amends <b>Section 2</b> of by including the following definition: Kenya Clinical Officers Association means the Kenya Clinical Officers Association registered by the Registrar of Societies Kenya.</p> <p><b>Section 4(1)(b)</b> provides that the Director of Medical Services shall be a member of the Clinical Officers Council.</p>	<p>The Public Health Act has been rendered mostly defunct by the <b>Health Act (Act No 21 of 2017)</b>.</p> <p>There is no provision in the Act for a Kenya Clinical Officers Association.</p>	<p>Amend to provide that the powers and provisions of the act are in addition to the provisions of the <b>Health Act</b>.</p> <p>Amend to provide for the establishment, membership, leadership and functions of the Kenya Clinical Officers Association.</p>
		<p><b>Section 4(1)(c)</b> provides that the Chief Clinical Officer shall be a member of the Clinical Officers Council.</p>	<p>The Office of Director of Medical Services was replaced with that of Director General for Health by <b>Section 16</b> of the <b>Health Act (Act No. 21 of 2017)</b></p> <p>There is no provision in the Act for the Office of Chief Clinical Officer.</p>	<p>Amend to provide that the Director General for Health shall be a member of the Council.</p> <p>Delete.</p>
		<p>The <b>Health Laws (Amendment) Bill</b> amends <b>Section 4</b> by inserting a <b>Sub-Section (5)</b> which empowers the Council to elect a chairperson and a vice-chairperson from amongst its members.</p>	<p>The amended section does not specify that the chairperson and the vice-chairperson should not be of the same gender.</p>	<p>Amend to provide that the chairperson and the vice-chairperson should not be of the same gender.</p>
		<p><b>Section 4 (3)</b> requires the Cabinet Secretary to take into account marginalised groups and persons with disabilities when appointing member of the Board.</p>	<p>The body being constituted is the Clinical Officer's Council not a board.</p>	<p>Delete the word "Board" and replace it with "Council".</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 5 (2)(e)</b> empowers the Clinical Officer Council to register and licence officers.</p>	<p>Registration and licensing of medical healthcare providers is now a county function.</p> <p>The function of the Council with regards to licensing of Clinical officers should be limited to formulating guidelines and standards to guide the county governments in the licensing of officers.</p>	<p>Amend to clarify the role of the council and the role of the county governments when it comes to registration of clinical officers.</p> <p>Delete the part that empowers the Council to licence clinical officers.</p>
		<p><b>Section 5 (2)(k)</b> empowers the Clinical Officers Council to prescribe badges, insignias and uniforms for clinical officers.</p>	<p>The role of prescribing badges, insignias and uniforms is a county function. The role of the Board in this instance is to prescribe standards for the badges, insignias and uniforms which shall guide the county governments.</p>	<p>Delete.</p>
		<p><b>Section 15 (3)</b> provides that the Registrar shall be an ex-officio member of the Council with no right to vote.</p>	<p><b>Section 4</b> provides for a council which consists of 6 members excluding the Registrar. This means that it is very likely that there shall be a tie in votes of the council.</p>	<p>Amend <b>Section 15</b> to give the registrar a vote in the case of a tie.</p> <p>Alternatively, amend <b>Section 4</b> to give another member of the council a casting vote.</p>
		<p><b>Section 15 (5)-(6)</b> empowers the Registrar to keep a register of all qualified clinical officers and make amendments to the register where necessary.</p>	<p>The function of registering healthcare providers is a county government function.</p>	<p>Amend to provide for co-ordination between the registrar and the county governments.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 16 (3)</b> provides for the registration of persons as clinical officers by the Council.</p>	<p>The function of registering healthcare providers is a county government function.</p>	<p>Amend to provide for registration of clinical officers by the county governments.</p>
		<p><b>Section 18</b> provides for the surrender of certificates by clinical officers whose names have been removed from the register for any reason.</p>	<p>The function of registering healthcare providers is a county government function</p>	<p>Amend to include a duty, on the part of the registrar, to inform the relevant county government, in a timely manner, where a clinical officer's name is removed from the register.</p>
		<p>The <b>Health Laws (Amendment) Bill</b> amends <b>Section 20</b> by including subsequent sub-sections which empower the Council to:</p> <p>a) Register and licence medical centres and clinics for private practice; and</p> <p>Inspect premises which are to be used for private practice</p>	<p>The function of licensing healthcare centres is a county government function. The role of the council would be to set standards and provide guidelines to help the counties in the performance of their duty.</p>	<p>Amend to provide that both the inspection of premises to be used as private practices and the granting of private practice licences shall be done by the county governments.</p> <p>Also, amend to require the council to formulate guidelines for the inspection and licensing of private practices.</p>
		<p><b>Section 21</b> provides that a person who wishes to engage in private practice must apply to registrar in the prescribed form and the council shall grant him a practising certificate.</p>	<p>The licensing of healthcare providers is a county government function. The function of the council is to set national standards which will guide the county governments in the execution of this function.</p>	<p>Amend to provide that applications for practising certificates shall be made to the county governments and such applications shall be granted in accordance with the guidelines and standards set out by the council.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 22 (1)</b> prohibits any person from engaging in the practice of clinical medicine unless they have a registration certificate and a practising licence from the Council.</p> <p><b>Section 21</b> provides that officers must have practising certificates. However, <b>Section 22</b> provides for practising licences.</p>	<p>Registering and licensing is a county government function.</p>	<p>Amend to provide that registration by the county government is a requirement for clinical officers who intend to practice.</p> <p>Review <b>Section 21</b> and <b>22</b> and align the language.</p>
		<p><b>Section 22 (4)</b> empowers the council to renew, cancel, suspend or withdraw a licence.</p>	<p>Granting, renewing, cancelling or withdrawing licences is a function of county governments. The function of the council is to provide guidelines to guide the counties.</p>	<p>Amend to provide that renewal, cancellation, suspension of withdrawal of licences shall be done by county governments.</p>
		<p><b>Section 24</b> establishes a <i>Disciplinary Committee</i> whose functions include receiving and investigating complaints against clinical officers.</p>	<p>The <b>Health Act (Act No.21 of 2017)</b> provides for the <i>Health Professions Oversight Authority</i> whose function includes receiving and facilitating the resolution of complaints from patients, and aggrieved parties.</p>	<p>Amend to clarify the role of the <i>Health Professions Oversight Authority</i> and that of the <i>Disciplinary Committee</i> with regards to complaints made against clinical officers.</p>
		<p><b>Section 25</b> empowers the <i>Disciplinary Committee</i> to revoke or suspend the registration and practice certificates of clinical officers upon investigating the complaint against the officer.</p>	<p>The function of registering and licensing healthcare providers is a county government function.</p>	<p>Amend to require the board to inform the relevant county government when they revoke or suspend an officer's licence or registration.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 31</b> empowers the Cabinet Secretary to make rules for the better implementation of the Act.</p>	<p><b>Article 94 (6)</b> of the <b>Constitution</b> requires any Act of parliament which empowers any organ to make law to expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.</p>	<p>Amend to provide for the clarification required by <b>Article 94 (6)</b>.</p>
		<p><b>Section 4 (3)</b> of the <b>First Schedule</b> to the Act requires members of the council to disclose conflicts of interest in any contracts, proposed contracts or any other matter before the council in a timely fashion. Failure to do so attracts a fine of KES 100,000 and/or imprisonment for a term not exceeding 6 months</p>	<p>Given the scale and importance of the functions of the Council, failure to disclose a conflict of interest should attract steeper penalties such as dismissal, a higher fine and a longer imprisonment term.</p>	<p>Review the penalties for failure to disclose conflicts of interest.</p>
27.	<p><b>National Health Insurance Fund Act</b> <b>Act No 9 of 1998</b></p>	<p><b>Section 2</b> defines the term “Minister” as the minister in charge of health.</p>	<p><b>Article 152</b> of the Constitution provides for appointment of Cabinet Secretaries and not Ministers.</p>	<p>Amend replace the word “Minister” with <i>Cabinet Secretary</i>,</p>
		<p><b>Section 4</b> provides for the membership to the Board; however, it omits the representation of county representatives perhaps through the Council of Governors.</p>	<p><b>Section 19</b> of the <b>Intergovernmental Relations Act 2012</b> establishes the Council of Governors and mandates it with among other functions to offer a collective voice on policy issues, and</p>	<p><b>Section 4</b> should be amended to include the Council of Governors as one of the members of the Board.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p>collective consultations on matters of interest to County Governments. The fourth schedule to the Constitution provides that Health is a devolved function.</p> <p>Given the vital role that the Council of Governors plays in matters relating to County Governments, and in this particular regard promotion of the right to health, it is imperative that the Council should be included into the membership of the board. This will ensure representation of the counties and also give effect to article 6 of the Constitution which provides for consultation and cooperation between the two levels of governments.</p>	
	<p><b>Section 5</b> of the Act enumerates the objects and function of the board including receipt of contributions and making payments.</p>		<p>Health is a devolved function and county governments are employers in their own right. <b>Section 59</b> of the <b>County Government Act</b> recognizes the role of the <b>County Public Service Board</b> in the employment of county staff. The NHIF board was established as a National Government body during the centralized system of governance hence the need</p>	<p><b>Section 5</b> should be reviewed in recognition of the functions of both the National and the County Governments in employment of staff and remittance of contributions for health insurance.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p>for a provision that realigns the NHIF as an institution to align to devolved governance and its board membership to ensure that in managing and administering funds obtained from employees at both National and County Governments the NHIF is answerable to both levels as an intergovernmental structure.</p>	
		<p><b>Section 6 (b)</b> empowers the board to receive any gifts, grants, donations or endowments and make disbursements in accordance with the provisions of the Act</p>	<p><b>Article 201</b> of the <b>Constitution</b> relates to the principles of public finance which include the prudent use of resources, in this regard employee contributions. The board should be guided by this when receiving monies and making disbursements.</p>	<p><b>Section 6 (b)</b> of the act should be amended by incorporating the words that will integrate the spirit of <b>Article 201</b> of the <b>Constitution</b> at the end of the provision</p>
		<p><b>Section 10</b> creates the <b>Office of the Chief Executive Officer</b> but does not specify a tenure.</p>	<p>The tenure of the Chief Executive Officer is essential as it provides the necessary clarity for the CEO and the board members.</p>	<p><b>Section 10</b> should be amended to include a provision on the tenure of the Chief Executive Officer.</p>
		<p><b>Section 15 (2)</b> refers to persons who qualify as contributors to make payment to the Board.</p>	<p><b>Article 43</b> of the Constitution provides that every person has the right to the highest attainable standard of health and the state has a responsibility under <b>Article 21</b> to ensure progressive realization of this rights by all.</p>	<p><b>Section 15</b> should be amended to reflect the reality of <b>Article 43</b> where health is reflected as a right of everyone and the governments at the two levels should find ways of facilitating inclusion of the vulnerable. Possibly a provision to</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p>There is however need for consultations between both levels of government on the modalities of ensuring that the NHIF is progressively moved to being a fund that can facilitate access to health by all. The current control of the Funds contributions and by the National Government is not tenable given that county governments also remit their employees contributions to the fund. It is also important to note that other contributors to the fund include private sector and individual members of the public.</p> <p>Decisions on the investment of contributors' resources should no longer be entirely at the discretion of the national government. It's important to structure the organization to reflect it as an institution that both levels of government have an interest but more important one whose resources belong to contributors from all sectors of society.</p>	<p>include contributions by the respective governments to support vulnerable persons including older members of the society, orphans and vulnerable persons, persons with severe disabilities among others.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 16 (3)(c)</b> mandates the employer to retain possession of the card issued to the employee, except where the employee requires the card to obtain any benefit or making a claim.</p>	<p>The card is the property of the NHIF with temporary possession by the employee/ contributor once issued to the later. The employer merely facilitates the employee to obtain the card, which assists in accessing the benefits. This provisions should be deleted as the employer merely requires a copy of the details of the card for record purposes. In any case the funds are a contribution of the employee and not the employer. Further the provision operates on the premise that the Fund is only for employees whereas we know that we have self-employed individuals who are not required to submit to any third party their cards for retention purposes.</p>	<p><b>Section 16</b> should be amended to reflect the current reality on the contributions to the Fund</p>
		<p><b>Section 16 (4)</b> provides that sums deducted from the salary or other remuneration shall not be recoverable from the employer and further reiterates that nothing shall affect the responsibility of the employer for the safe custody of that employee's card.</p>	<p>As noted in <b>Section 16(3)</b> above, the card is the property of the NHIF with temporary possession by the employee/ contributor once issued to the later. The employer merely facilitates the employee to obtain the card which assists in accessing the benefits. To subject the rights of employees in regard to their contribution to such unclear provisions does not make sense</p>	<p>Amend <b>Article 16</b> to ensure that employees rights vis a vis their contributions to the Fund and the employers responsibility towards the employee in respect of those funds are not undermined by the provisions in law. <b>Section 16(4)</b> should also be amended to provide clarity on some of the provisions e.g.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
				<p>(i) to either delete or provide clarity on what was meant by the words “stamp to the value of that sum has been affixed to a card issued to that person and duly canceled vis-à-vis the common practice; or</p> <p>(ii) to delete the proviso on the retention by the employee of the employee’s card</p>
		<p><b>Section 16 (6)</b> provides that an employer who fails to remit deductions commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.</p> <p><b>Section 19 (2)</b> imposes a penalty on failure to make payments on the due date.</p>	<p>The imposition of a fine may not be adequate enough to deter many employers and to protect the rights of contributors.</p> <p><b>Sections 19 (2)</b> should be reviewed to ensure that it is not too punitive as to deny persons who have paid late any services.</p>	<p>The review should be undertaken to ensure that the fine imposed is punitive enough to deter such practices but that employers are held accountable to meeting the costs of the health care in respect of any affected employees.</p> <p><b>Sections 19 (2)</b> and <b>(3)</b> on special contributions should be reviewed to ensure that the rights of contributors to access health services is not denied on the basis late payments.</p>
		<p><b>Section 21 (5)</b> provides for the documents that will constitute conclusive evidence that a contribution for any month in any financial year has been paid by a person.</p>	<p><b>Section 21 (5)(a)</b> lists the stamp duly affixed to the card as a form of evidence, which provision brings confusion as the common practice is that no stamp is affixed to the card in any month, hence the need to determine the relevance (or lack thereof) of that provision.</p>	<p><b>Section 21 (5)</b> should be reviewed to either provide clarity on the “stamp duly affixed to the card” or delete the provision</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 22 (1)</b> provides that the Board shall pay from the Fund, benefits to declared hospitals for expenses incurred at those hospitals by any contributor, his named spouse, child or other named dependent.</p>	<p>See also comments on <b>Section 16(4)</b> above,</p> <p>1 The concept of declared hospitals should be reviewed against the need to facilitate access to health services to all in all counties and locations. It might be a practice that violates both the constitutional principle of non-discrimination and some of the trade rules.</p> <p>2 The inclusion of the group of persons who, on approval by the board are unable to pay will promote access to the right to health for vulnerable groups in society.</p>	<p>1 Review the provisions on declared hospitals to incorporate facilitation of access and to provide safeguards against discrimination, illegal trade practices and corruption.</p> <p><b>Section 22 (1)</b> should be amended to include in the list, persons whom the board has determined that they are unable to pay. These include, as enumerated above, orphans and vulnerable persons, persons with severe disability and older persons in society.</p>
	<p><b>Section 22 (3)</b> provides in part “Without prejudice to the provisions of <b>Sub-Section (1)</b> the benefits payable from the fund shall be limited to expenses incurred in respect of...”</p>		<p><b>Section 22 (3)</b> should be reviewed to ensure that the list for which the benefits payable from the fund are exhaustive as the list limits the services for which expenses can be incurred.</p>	<p>Review the list to ensure that all the services listed are exhaustive.</p> <p>In the alternative however, <b>sub-Section 3</b> could be amended to ensure that the provision does not limit the benefits for which the fund can pay, but allows for the Board, in consultation with the <i>Cabinet Secretary for Health</i> to publish and publicize information on any other services that may over time be added onto the list, in accordance with</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 23 (2)</b> provides for the documents that a contributor or employee shall on request be entitled to.</p>	<p>The section needs to be amended to ensure efficiency and accountability in service delivery while also ensuring realization of the right of access to information as provided by article 35 of the Constitution and the Access to Information Act 2016.</p>	<p><b>Article 35</b> of the Constitution and the Access to Information Act, 2016.</p> <p><b>Section 23 (2)</b> should be amended to allow the contributor or employer on request to the</p> <p>(i) receipt (or other form of documentation) of the payments/contributions by the contributor to the fund</p> <p>(ii) receipt (other form of documentation) of the benefits paid by the board on behalf of the contributor.</p> <p>The information may be sought by an individual or a group of contributors and may include information regarding then management of the Fund</p>
		<p><b>Section 24</b> provides for the sale by the board of National hospital Insurance Stamps.</p>	<p><b>Section 24</b> should be reviewed to determine the relevance of the provision vis-à-vis the current practice.</p>	<p>The act should be reviewed to ensure that any mention of stamps is relevant and attains the intended purpose of the drafters of the law with regards to the stamps e.g. <b>Section 25 (2)(c); 25 (3); Section 26 (a).</b></p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
		<p><b>Section 30(2)</b> provides for declaration of any hospital, nursing home or maternity home to be a hospital, limits declaration conditions to charges which may be made by the hospital to any contributor.</p>	<p>The section is however silent on the conditions/standards that must be attained by the health facility before it can be declared a hospital for purposes of the Act. Given that public health facilities under the charge of national and county governments. It's important that the section confines itself to describing the standards applicable rather than declaring facilities to be 'hospitals'. These details are essential as an objective guide.</p>	<p>Amend to include the requirements/standards that the qualifying health facility is required to meet before a declaration is made.</p> <ol style="list-style-type: none"> <li>1 Provide for consultations by the national and county governmental through the intergovernmental bodies on a selection criteria that will ensure equitable deployment of the Funds to all counties – based on contribution- and equitable access by citizens to the benefit in all regions.</li> </ol> <p>Provide that decisions on matters affecting counties shall be based on discussions in the intergovernmental meetings and shall be presented by the relevant board representatives of the county governments.</p>
		<p><b>Section 31(2)</b> provides for the enactment of regulations that provide for mechanisms for which the decision of the board or by any person thereof can be reviewed.</p>	<p>It limits the same to anybody or person appointed in accordance with the regulation or a reference to the High Court for a decision on any question of law.</p> <p><b>Article 47</b> of the <b>Constitution</b> provides for the right of every person to</p>	<p>Amend to include review of any administrative action that limits the right of the contributor in line with <b>Article 47</b> of the <b>Constitution</b>. This procedure must facilitate easy access to justice for contributors who include people who may not have the financial ability to access the high court.</p>

No	Name of Laws / Subsidiary Legislations and Legal Notices	Issues	Rationale / Concern	Recommendations
			<p>action that is expeditious, efficient, lawful, reasonable and procedurally fair. Where such right or fundamental freedom has been, or is likely to be adversely affected by and administrative action, the person has a right to be given written reasons for the action and review of the action. The Commission on Administrative Justice Act mandates the Commission (Ombudsman) with the right of review of any administrative action.</p> <p><b>Section 31(2)</b> should thus also include the Ombudsman as an avenue for the contributor to seek redress on any such decision.</p>	
		<p><b>Section 35(2)(c)</b> provides a list of expenditures that amount to annual estimates of the board.</p>	<p><b>Section 35(2) (c)</b> should be amended to reflect contributions by national and county governments for claims and benefits made on behalf of persons unable to pay for themselves i.e. the vulnerable groups (determine who this will be).</p> <p>This will be particularly relevant where the board uses part of its revenue to make payments for such groups of persons.</p>	<p>Amend to include payments of all claims and benefits made on behalf of persons whom the board has determined are unable to pay for themselves.</p> <p>Provide a clause to prohibit arbitrary and discriminatory decisions on amounts payable for certain individuals- if it is contemplated that certain members of the society and their family members can have unlimited access to the benefits of the fund this should be determined in law and the categories of the members should be defined.</p>

This section focuses on the review of county legislation and regulations, which include:

#### 4. County legislation

An important part of legislative and policy changes are the county laws and policies. As stated in the preceding parts, counties are allocated responsibility over county health services. The Constitution requires counties to develop laws and county policies to facilitate the performance of county functions in the health sector. Accordingly, the audit reviewed 10 counties (Nairobi, Nyeri, Makueni, Kisii, Kisumu, Mombasa, Turkana, Vihiga, Lamu and Wajir). The laws covered include: ***Nyeri County Health Services Act, 2015, Kisii County Alcoholic Drinks Control Act (Act No. 11 of 2015), The Kisii County NHIF Support Act (Act No. 6 of 2015), the Makueni County Cancer Control Act (Act No. 6 of 2016), and the Nairobi County Alcoholic Drinks Control Act (Act No. 3 of 2014). The Kisii County Health Management Services Fund Bill, 2015 was also reviewed.***

Most of the 10 counties that were covered during the review do not have health laws. Furthermore, some of the Bills that were drafted some time back never went through the full legislative process; Bills were abandoned soon after they were developed. In other cases, the counties split issues that would have been comprehensively covered in one piece of legislation. There is also a need for counties to carefully develop legislation in a manner that does not lead to rigidity and lack of flexibility during implementation; the solution here is to leave detailed issues for county regulation and administration action as opposed to making such measures a substantive part of the specific provisions of a law. Finally, with the formation of regional blocs comprising adjoining counties, counties should consider passing laws that can promote cross-county cooperation in provision of health services for effectiveness. Specific analysis of the county legislation reviewed is captured below.

Table 4: Review of relevant county legislation/ subsidiary legislation and legal notices tabulated in a matrix

No	Name of Laws / Subsidiaries Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
1.	Nyeri County Health Services Act, 2015	<p><b>Section 3</b> does not provide for the implementation of provisions of treaties ratified by Kenya relating to health as they are part of Kenyan laws.</p> <p><b>Section 5</b> assigns functions to the Department responsible for county health services.</p>	<p><b>Article 2(6)</b> of the Constitution provides that treaties that have been ratified by Kenya form part of the laws of Kenya.</p> <p>A review of the <b>Health Act, 2017</b> highlights that some of the duties of the County Government provided for in <b>Section 20</b> are either not provided for in the <b>Nyeri County Health Act</b> or would require one to infer from reading the <b>Nyeri Health Act</b>. Some of these functions include:</p> <ul style="list-style-type: none"> <li>(e) designation of county referral hospitals according to criteria agreed upon by the intergovernmental health coordinating mechanism;</li> <li>(f) making due provision and develop criteria to compensate health care facilities for debts arising through failure to secure payment for bills for non-payment of treatment of indigent users;</li> </ul> <p>and</p>	<p>The Act should, in addition to the Fourth Schedule to the Constitution, <b>Article 46</b> and <b>Vision 2030</b> also provide for <b>Article 2(6)</b> of the <b>Constitution</b> in regards to international and regional treaties.</p> <p>The section should be reviewed to ensure it capture or is consistent with <b>Section 20</b> of the <b>Health Act, 2017</b>.</p>

No	Name of Laws / Subsidiaries / Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
			<p>(n) making known to the public at all times the health facilities through which generalized or specialized services are available to them.”</p> <p>Function (n) above relates to proactive disclosure of information as provided by <b>Article 35 of the Constitution</b> and the <b>Access to Information Act</b> and should not be confused with public participation whose provisions are well addressed in both laws.</p>	
		<p><b>Section 6(3)(e)</b> provides that one of the functions of the County Director of Health is to report periodically to the National Ministry of Health.</p>	<p>The <b>Health Act, 2017</b> however provides in <b>Section 19</b> that the among the functions of the County Director of Health is report periodically to the Director-General for health. It is essential to note that although the Director-General is the technical advisor to the national Government, he/she is not the supervisor of the county government department of health.</p>	<p><b>Section 6</b> should be amended to provide for provision of reports to the relevant county officers to avoid challenges in implementation of the county law, where reports are not submitted to the designated officer the county. This will ensure respect for the functional assignment between the two levels.</p> <p>Any programmatic reporting to the national government should be done through inter-governmental agreements between the two levels of government to respect the constitution and the <b>Inter-Governmental Relations Act</b>.</p>

No	Name of Laws / Subsidiaries and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<p><b>Section 12</b> provides for operational guidelines and standards for administration of health facilities.</p>		<p>The Executive Secretary (County Executive Committee member-in-charge of health) should prescribe for county operational policies and guidelines for management and administration of a health facility in accordance with existing norms and standards.</p>
		<p><b>Section 13</b> provides that the department and each county health facility shall adapt a health service delivery system as guided by the County Health Policy Framework, County Health Strategic and investment plans and annual work plans.</p>	<p>An audit of the interpretation clause and <b>Section 13</b> does not provide the reader of the law with the definition of "health service delivery system."</p>	<p>The act should be amended by providing definition of the term "health service delivery system."</p>
	<p><b>Section 21 (6)</b> and <b>Section 35</b> provide that the Executive Secretary shall prepare health related laws and policies stipulated under the <b>Fourth Schedule</b> to the Act which include:</p> <ol style="list-style-type: none"> <li>1. Environmental health Sanitation and hygiene.</li> <li>2. Occupational safety.</li> <li>3. Public health.</li> <li>4. Tobacco control.</li> <li>5. <b>Pharmacy and Poisons Act.</b></li> </ol>			<p>Delete and prepare Bills for the enactment of these laws.</p>

No	Name of Laws / Subsidiaries / Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<ul style="list-style-type: none"> <li>6. Treatment and rehabilitation for alcohol and drug dependency.</li> <li>7. Mental health.</li> <li>8. Emergency health.</li> <li>9. Food safety and control.</li> <li>10. Ambulance services, including referral systems and linkages.</li> <li>11. <b>Persons with disabilities Act, 2003.</b></li> <li>12. Herbal and Alternative Therapist; and</li> <li>13. Any other laws and policies that the county may find necessary from time to time.</li> </ul>		
		<p><b>Sections 15 - 17</b> address the rights and duties of healthcare personnel as well as those of a patient.</p>	<p>The section fails to provide for protection of the consumer of the right to health.</p>	<p>The Act should be amended to include provisions on measures to be undertaken for either party in case of breach of duty.</p> <p>It should also provide for the protection of consumer rights in line with the constitution.</p>

No	Name of Laws / Subsidiaries / Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
2.	The Kisii County Health Management Services Fund Bill, 2015	<p><b>Section 2</b> defines the term “Director for Medical Services” as the County Director of Health appointed by the County Public Service Board.</p> <p><b>Section 2</b> defines a health facility as a County Hospital, Sub-County Hospital, Health Centre, Clinic or Dispensary;</p>	<p>The <b>Health Act (Act No 21 of 2017)</b> in <b>Section 19</b> creates the Office of County Director of Health and sets out the functions of the office. There is no need to rename the office.</p> <p>The <b>Health Act (Act No 21 of 2017)</b>, in the <b>First Schedule</b>, breaks down the different level of health facilities as follows:</p> <ol style="list-style-type: none"> <li>1. Community Health Services</li> <li>2. Dispensary / Clinic</li> <li>3. Health Centre</li> <li>4. Primary Hospital</li> <li>5. Secondary Hospital; and</li> <li>6. Tertiary Hospital</li> </ol>	<p>Amend to align with the offices established in the <b>Health Act (Act No 21 of 2017)</b>.</p> <p>Make this amendment throughout the Act.</p> <p>Amend to align with the hierarchy of health facilities as set out in the Health Act (Act No 21 of 2017).</p>
		<p><b>Section 6 (2)</b> empowers the Executive Committee member in charge of health to remove a member of the County Health Management Services Committee member for any of the grounds specified in <b>6 (1)</b> which include gross misconduct and incompetence and neglect of duty. <b>Section 6 (5)</b> provides that the County Health Management Services Committee member shall be given the opportunity to defend himself / herself.</p>	<p>The section does not provide for the procedure of making a complaint against a County Health Management Services Committee member or for the hearing of such a complaint. This may result in the abuse of power by the Executive Committee member in charge of health.</p>	<p>Provide for a complaints procedure, which specifies how complaints shall be received and heard.</p>

No	Name of Laws / Subsidiaries Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<p><b>Section 11</b> provides for the establishment of County Hospital Management Committee, Sub-county Hospital Management Committees and the Health Centre and Dispensary Management Committees.</p>	<p>This hierarchy of healthcare facilities is not the same as the hierarchy set out in the <b>Health Act (Act No 21 of 2017)</b>.</p>	<p>Amend to align with the provisions of the <b>Health Act (Act No 21 of 2017)</b></p>
		<p><b>Section 13</b> provides for the instances in which an office of a member of a County Hospital Management Committee, Sub-county Hospital Management Committees and the Health Centre or Dispensary Management Committees becomes vacant. These include instances of the contravention of <b>Chapter 6</b> of the <b>Constitution</b>.</p>	<p>Removal from office on the grounds of contravention of the provisions of Chapter 6 of the Constitution requires a hearing process. This has not been provided for in the act.</p>	<p>Amend to include provisions on the process or cross reference to any existing process for removal that may have been established by the county public service board.</p>
		<p><b>Section 15 (1)</b> provides that user charges shall be reviewed from time to time by the Executive Committee Member-in-charge of health, in consultation with the County Health Management Services Committee and the County Treasurer.</p>	<p><b>Article 43</b> of the <b>Constitution</b> provides that every Kenyan have the right to healthcare services. This should be main consideration when reviewing user charges.</p>	<p>Amend to specifically provide that when determining user charges, the Executive Committee Member-in-charge of health, County Health Management Services Committee and the County Treasurer should shall take into consideration the need to facilitate access to health as a right for all including the poor, vulnerable and marginalized.</p>

No	Name of Laws / Subsidiaries and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<p>The <b>First Schedule</b> sets out the composition of the <i>County Hospital Management Committee, Sub-county Hospital Management Committees</i> and the <i>Health Centre and Dispensary Management Committees</i>.</p>	<p>The composition of these committees does not take into account the hierarchy of health facilities as set out in the <b>Health Act (Act No 21 of 2017)</b>.</p> <p>The composition of the committees also does not take into <sup>2</sup>/<sub>3</sub> gender rule when it comes to appointing the non-ex-officio members of the committees.</p>	<p>Amend to align with the <b>Health Act (Act No 21 of 2017)</b>.</p> <p>Amend to provide that in appointing the non-ex-officio members of the committees, the Executive Committee member must ensure that not more than <sup>2</sup>/<sub>3</sub> of the members are of the same gender.</p>
3.	<p><b>Kisii County Alcoholic Drinks Control Act (Act No 11 of 2015)</b></p>	<p><b>Section 4 (2)</b> provides that one of the members of the County Alcoholic Drinks Control Directorate shall be the Officer Commanding Administration Police in the sub-county.</p> <p><b>Section 14</b> empowers the Sub-County Alcoholic Drinks Regulation Committee to hear applications for the granting of licenses and any objections thereto.</p>	<p>There is no indication of the sub-county to which the section refers. Alternatively, it is possible that the provision was supposed to be with regards to the <i>Administration Police</i> in the county.</p> <p>Given the provisions of <b>Section 15</b>, the membership of the committee may benefit from having a person with legal training. The person would guide the committee on matters of fair hearing.</p>	<p>Amend to clarify the officer being referred to.</p> <p>Consider Amending to include, as a member of the committee, an advocate of a minimum number of years standing (possibly 10 years) to guide the committee on matters of evidence and fair hearing.</p>
		<p><b>Section 15</b> empowers Sub-County Alcoholic Drinks Regulation Committee take evidence under oath for questions to be determined by the court.</p> <p><b>Section 19 (6)</b> of the act is improperly drafted.</p>	<p>The section provides for hearings by the <i>Sub-County Alcoholic Drinks Regulation Committee</i> of applications for licences not for court hearings.</p> <p>The meaning of the section is unclear because it does not make sense.</p>	<p>Amend this section to align it accordingly.</p> <p>Amend to have a clear provision.</p>

No	Name of Laws / Subsidiaries Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<p><b>Section 34</b> of the act is improperly drafted.</p> <p><b>Section 35 (1)-(3)</b> empowers the Sub-County Alcoholic Drinks Regulation Committee, upon receiving a report from a public health officer or police officer who has inspected a licensed premises, to conduct hearings to determine whether a license should be cancelled.</p> <p><b>Section 43</b> makes it an offence for a licensee under the act to sell alcohol to an intoxicated person or encourage or excite an intoxicated person to drink alcohol.</p>	<p>The meaning of the section is unclear because it does not make sense.</p> <p>The membership of the committee does not include any advocates or persons with legal training. There is therefore no one to guide the committee on matters of fair hearing.</p>	<p>Amend to have a clear provision.</p> <p>Amend to include, as a member of the committee, an advocate of at least 10 years standing to guide the committee on matters of evidence and fair hearing.</p>
		<p><b>Section 58</b> establishes the County Alcoholic Drinks Control Enforcement Co-ordinating Committee, which is charged with monitoring and co-ordinating the enforcement of the Act and advising the Governor on the enforcement of the Act.</p>	<p>It is difficult to enforce this provision; thus, it is likely that this provision can be used to unnecessarily harass licensees which violates their right to fair labour practices under <b>Article 41</b> of the <b>Constitution</b>.</p>	<p>Delete this section</p>
4.	<p>The Kisii County NHIF Support Act (Act No. 6 of 2015)</p>	<p><b>Section 7</b> of the Act provides that a Ward Social Protection Committee shall consist of 7 members. However, <b>Section 8</b> of the Act provides for 9 members.</p>	<p>The act already established Sub-County Alcoholic Drinks Regulation Committees and the County Alcoholic Drinks Control Directorate who are tasked with implementing the Act. There is no need for an additional body to oversee enforcement.</p> <p>There is inconsistency with these provisions.</p>	<p>Delete this section.</p> <p>Amend to provide consistency.</p>

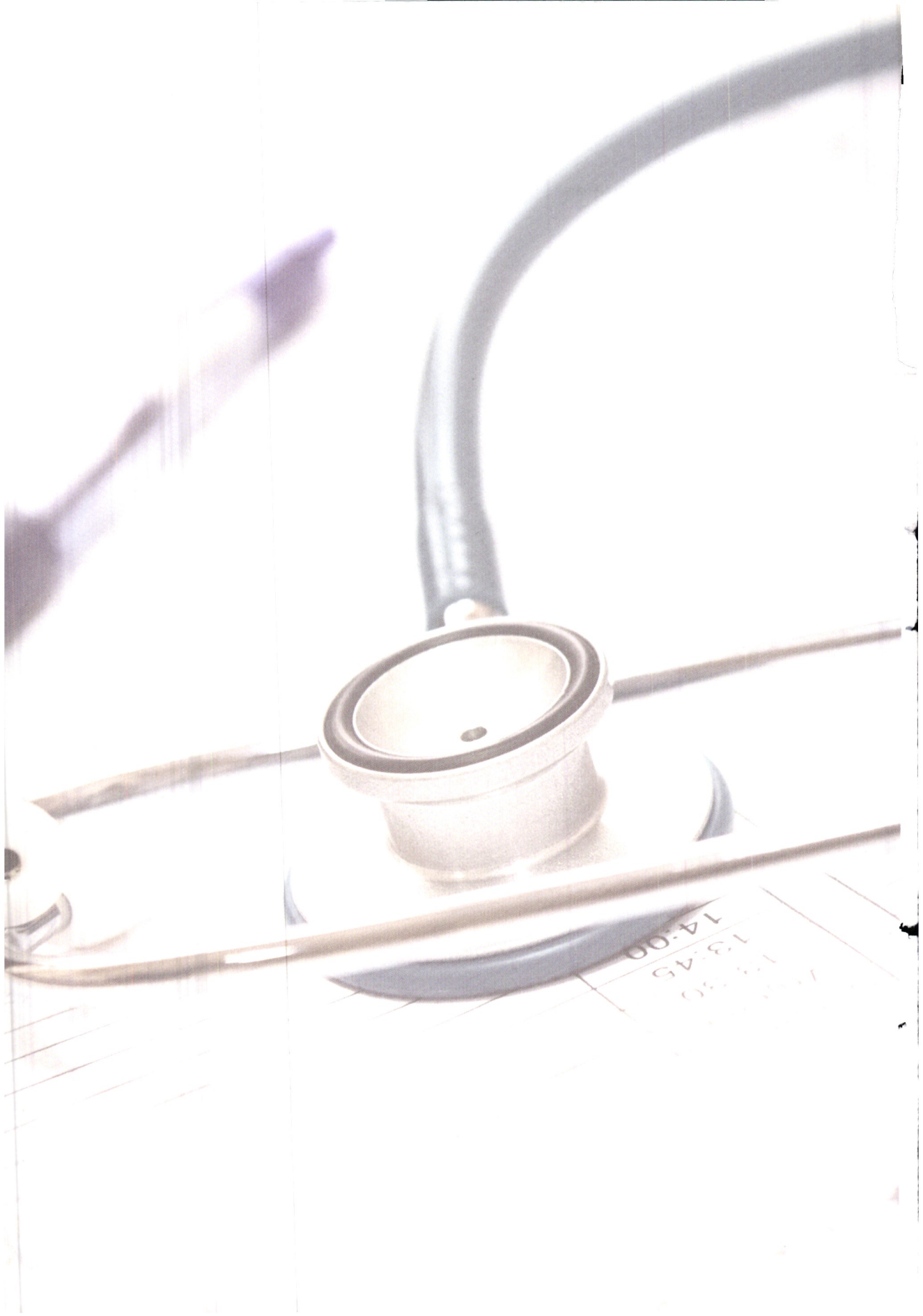
No	Name of Laws / Subsidiaries / Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<p>Section 8 provides that all members of the Ward Social Protection Committee except the Chairperson and Secretary of the committee shall serve for periods of 3 years and shall be eligible for one further term of 3 years.</p>	<p>The section does not provide for the terms of the chairperson and Secretary of the Committee.</p>	<p>Amend to specify the terms of the Chairperson and Secretary of the committees.</p>
5.	<p>Makueni County Cancer Control Act (Act No 6 of 2016)</p>	<p>Section 21 of the Act directs medical institutions to notify the Makueni County Cancer Management Institute, within 14 days of making a diagnosis of any type of cancer, of the particulars of the diagnosis including the name of the patient. The patient or their guardian must consent to the disclosure.</p>	<p>The Section does not specify how such consent should be obtained. In light of the provisions of the Article 31 of the Constitution with regards to the right to privacy, the section should specify that every patient (and their guardian) should be clearly informed of the hospital's duty to disclose the diagnosis and the effects of their consenting to the inclusion of their name. Also, consent should be obtained in writing.</p>	<p>Amend protect patients' right to information and right to privacy.</p>
		<p>Section 14(2) of the Act provides that all documents not required to be made under seal and all decisions of the board shall be authenticated by the signatures of the Chairperson and the CEO of the Institution. However, Paragraph 6(1) of the First Schedule states that contracts can be entered into on behalf of the board by any person generally or specially authorized by the Board for that purpose.</p>	<p>These provisions are inconsistent with each other.</p>	<p>Amend to make the provisions consistent.</p>

No	Name of Laws / Subsidiaries / Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
6.	Nairobi County Alcoholic Drinks Control Act (Act No 3 of 2014)	<p><b>Section 4</b> provides for the composition of the Nairobi City County Alcoholic Drinks Control and Licensing Board</p> <p><b>Section 5 (b)</b> empowers the Nairobi City County Alcoholic Drinks Control and Licensing Board to hear appeals from decisions of the Sub-County Committees.</p> <p><b>Section 8</b> empowers Sub-County Alcoholic Drinks Control and Licensing Committees to conduct hearings to determine whether to grant applications for licenses as well as objections to applications for licences.</p> <p><b>Section 14</b> provides that a person shall appeal against the decision of a Sub-County Alcoholic Drinks Control and Licensing Committee in accordance with national legislation.</p>	<p>The section does not provide that two thirds of the non-ex-officio members of the Board should not be of the same gender.</p> <p>None of the Board members are required to be advocates. There is therefore no one to guide the board on issues of fair trial and evidence.</p> <p>None of the committee members are required to be advocates. There is therefore no one to guide the board on issues of fair trial and evidence.</p>	<p>Amend to include <math>\frac{2}{3}</math> gender rule requirement for the non-ex-officio members of the Board.</p> <p>Amend to include, as a member of the Board when it is entertaining appeals from committee decisions, an advocate of at least 10 years standing.</p> <p>Amend to include, as a member of the Committee when it is conducting hearings, an advocate of at least 10 years standing.</p>
			<p>The <b>Alcoholic Drinks Control Act (Act No. 4 of 2010)</b> provides that appeals in respect of denied licences shall lie with the high court. However, <b>Section 5 (b)</b> empowers the Nairobi City County Alcoholic Drinks Control and Licensing Board to hear appeals from decisions of Sub-County Committees.</p>	<p>Amend to provide for one mechanism for appeals. It would be more efficient to require persons to appeal to the Nairobi City County Alcoholic Drinks Control and Licensing Board.</p>

No	Name of Laws / Subsidiaries Legislation and Legal Notices.	Issue.	Rationale / Concern.	Recommendation.
		<p><b>Section 31</b> empowers a Sub-county <i>Alcoholic Drinks Control and Licensing</i> Committee, upon receiving a report from a medical officer or police officer with regards to a licensee or licensed premises, to conduct a hearing to determine whether to cancel a licence</p>	<p>None of the committee members are required to be advocates. There is therefore no one to guide the board on issues of fair trial and evidence.</p>	<p>Amend to include, as a member of the Committee when it is conducting hearings, an advocate of at least 10 years standing.</p>

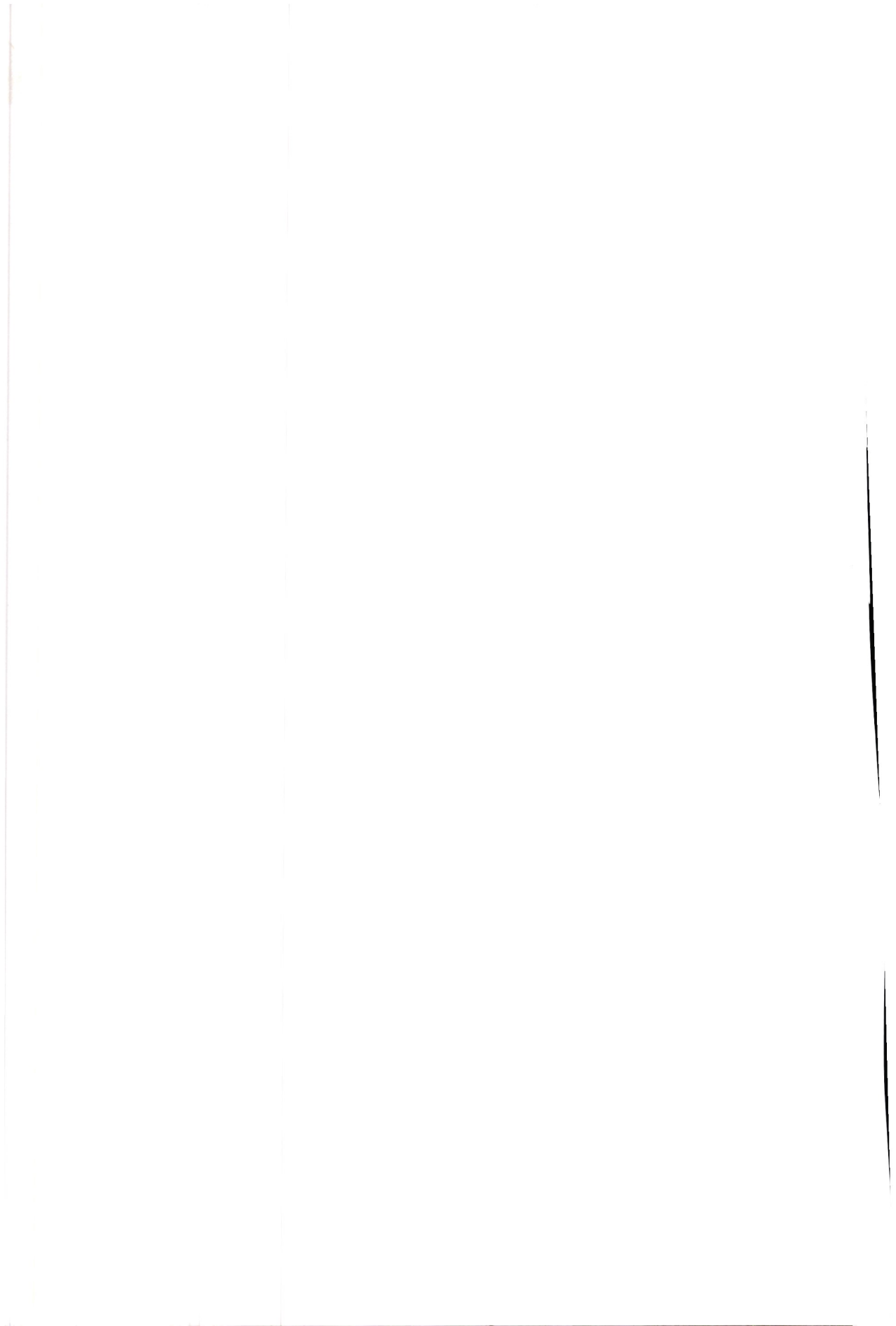
## 5. Conclusion and recommendations

- » All the national laws and regulation relating to health should be urgently reviewed to align them to the Constitution. This will assist in facilitating better understanding and compliance by national and county staff with the devolved system of governance.
- » County governments need to put in place county implementation frameworks (County policies, laws, regulations, guidelines) for the health sector which will better guide county staff to deliver improved health services to the citizens. Specifically, county executives need support with Legislative Drafting to enable them come up with sufficient and responsive Bills to actualize devolution
- » The ongoing reviews of the **Health Act** should be carried out simultaneously with that of the **Public Health Act** with a view to repealing the **Public Health Act** and including its provisions in the **Health Act**.
- » There should be a harmonization of laws, policies, and regulations in order to ensure that fees and other charges paid for licensing/ regulating health facilities are not excessive. E.g. Amendments to the Kenya Medical Practitioners and Dentist Board regulations require counties to pay fees annually
- » Any amendment bill on any of the reviewed laws that may be pending before parliament (e.g. the Miscellaneous Amendment Bills) should be reviewed to incorporate the recommendations of this audit and then subjected to public participation in line with the constitution.
- » The laws and legal notices establishing parastatals in the health sector should be reviewed and relevant inter-governmental consultations held on how the institutions with mandates that include county functions can be re-structured if they are not wound up.
- » The laws affecting the licencing and registration of health personnel need to be clarified to indicate the role of county governments in regard to health professionals noting that the regulation of professionals is a national government function while counties are employers of professionals and providers



of licences to facilities that provide county health services. Furthermore, regulatory services should be decentralized in order to ensure effective supervision of health service provision across the country.

- » Now that the constitution contemplates the implementation of provision of ratified international treaties, it will be important for the drafters of laws at the national and county levels to factor these provisions in the laws.





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