

The Nurses (Amendment) Bill, 2016

A Bill for

AN ACT of Parliament to amend the Nurses Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows;-

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| Short Title | 1. This Act may be cited as the Nurses (Amendment) Act, 2016. |
| Amendment to section 2 | <p>2. (1) In this Act, the Nurses Act is referred to as the principal Act.</p> <p>(2) The principal Act is amended in section 2 by inserting the following new definitions in their proper alphabetical order-</p> <p>“Cabinet Secretary” means the person for the time being responsible for matters relating to health;</p> <p>“enrolled community health nurse” means a person who has undergone training in an approved nursing programme in an approved institution and has been enrolled and licensed by the Council;</p> <p>"nurse" means a person who is authorized by licensure to practice as an enrolled or registered nurse;</p> <p>“member” means a member of the Council established under section 3;</p> <p>"specialist" means a nurse who has master’s degree from a recognized university in any of the following disciplines-</p> <ul style="list-style-type: none">(a) Midwifery;(b) Medical surgical nursing;(c) Pediatrics nursing;(d) Oncology and palliative care nursing;(e) Forensic nursing;(f) Community health nursing;(g) Nursing education;(h) Nursing management and leadership;(i) Mental health or geriatric nursing; and(j) Nursing Informatics. <p>“year” means financial year;</p> <p>(3) The principal Act is amended by deleting the word 'Minister' wherever it occurs and replacing it with 'Cabinet Secretary'.</p> |

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| | <p>(4) The principal Act is amended by deleting the word 'chairman' wherever it occurs and replacing it with 'chairperson'.</p> |
| <p>Amendment to section 4</p> <p>Composition</p> | <p>3. Section 4 of the principal Act is deleted and replaced with the following new section—</p> <p>4. (1) The Council consists of—</p> <p>a chairperson who shall be a registered nurse with experience of not less than ten years in leadership position; and the holder of bachelors degree in nursing or Masters degree in health related field appointed by the Cabinet Secretary;</p> <p>(a) the Principal Secretary in charge of health or a representative appointed in writing by the Principal Secretary;</p> <p>(b) the Director of Nursing Services or a representative appointed in writing by the Director of Nursing Services;</p> <p>(c) a person nominated by the Professional Nurses Association of Kenya;</p> <p>(d) a person with knowledge and experience in matters relating to finance nominated by the Institute of Certified Public Accountants of Kenya;</p> <p>(e) a representative of accredited mid-level institutions involved in the training of Nurses in Kenya;</p> <p>(f) a representative of accredited universities involved in the training of nurses in Kenya;</p> <p>(g) a person elected by Registered General Nurses in Kenya;</p> <p>(h) a person elected by Registered Nurse-Midwives in Kenya; and</p> <p>(i) a person elected by Registered Specialists</p> <p>(2) The representatives nominated under paragraphs (b) and (c) shall be <i>ex officio</i> members of the Council.</p> <p>(3) The members appointed under paragraphs (e), (f) and (g) shall be competitively recruited by their respective organizations.</p> |

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| | <p>(4) Members appointed under paragraphs (a), (d), (h), (i) and (j) shall be persons of good professional standing.</p> <p>(5) A member of the Council shall hold office for a term of three years and shall be eligible for reappointment for one further term.</p> <p>(5) The Registrar is the Secretary to the Council.</p> |
| Amendment to section 5 | <p>5. Section 5 of the principal Act is amended in subsection (1) as follows—</p> <p>Deleting the word "or" in paragraph (a)</p> <p>Deleting the full stop in paragraph (b) and replacing it with a semicolon and adding the word "or" after the semicolon.</p> <p>Inserting a new paragraph in subsection (1) immediately after paragraph (b) as follows—</p> <p>(c) he has contravened the provisions of the Constitution or any other written law.</p> |
| Amendment to section 6 | <p>6. Section 6 of the principal Act is deleted.</p> |
| Amendment to section 7 | <p>7. Section 7 of the principal Act is amended by inserting the following new subsections immediately after subsection (2)—</p> <p>(3) Council meetings shall be presided over by the chairperson or in the chairperson's absence any other member elected by the Council at the meeting for that purpose.</p> |
| Amendment to section 8 | <p>8. Section 8 is amended by deleting subsection (1) and replacing it with the following new subsection—</p> <p>(1) The quorum of a meeting of the Council is five members.</p> |

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| Amendment to section 9 | <p>9. Section 9 of the principal Act is amended in subsection (1) by deleting paragraph (k) and replacing it with the following new paragraph—</p> <p>(k) to advise the Cabinet Secretary on any matter falling within the scope this Act.</p> |
| <p>Amendment to section 12</p> <p>Registers to be kept</p> | <p>10. Section 12 of the principal Act is deleted and replaced with the following new section—</p> <p>12. (1) The Registrar shall, under the direction of the Council, compile and keep in the office of the Registrar the following registers—</p> <ul style="list-style-type: none"> (a) general register of nurses; (b) register of nurse midwives; (c) register of nurses with post basic training; (d) register of specialists; and (e) such other registers that the Council may from time to time deem necessary. <p>(2) Subject to the payment of a prescribed fee, there shall be entered and maintained in the appropriate register the names including professional qualifications and address of every person entitled to be registered under this Act.</p> |
| Financial year | <p>11. Section 17 of the principal Act is deleted and replaced with the following new section—</p> <p>17. (1) A person may engage in private practice as a nurse if the person is;</p> <ul style="list-style-type: none"> (a) either a citizen of Kenya or of a foreign country; (b) a registered nurse with at least two years post qualification experience; (c) a holder of a valid practicing license issued under this Act; (d) a holder of such other qualification as may be prescribed. <p>(2) A person who qualifies to engage in private practice referred to in subsection (1) may operate a—</p> <ul style="list-style-type: none"> (a) nursing home; |

- (b) maternity home;
- (c) nursing and maternity home;
- (d) clinic; and
- (e) a community nursing services

(3) A person who has been trained outside Kenya, whether a citizen of Kenya or not, may be licensed to engage in private practice as a nurse if the person-

(a) is of good character, as may be approved by the Council;

(b) has passed an examination, elsewhere other than in Kenya, and is registered and licensed in the country of training and meets the requirements as prescribed under this Act; and

(c) has paid the prescribed fees

(4) A license to engage in private practice-

(a) may be for such period and for such purpose as the Council may prescribe; and

(b) is renewable for such period, not exceeding one year, as the Council may from time to time, determine.

(5) Details of a renewal license issued under subsection (4) may be captured in the appropriate register.

(6) If a license is due for renewal and is not renewed within thirty days after its expiry, the licensee shall not engage in private practice until issued with a renewal license.

(7) An application to engage in private practice or renewal shall be made to the Council in the prescribed form, accompanied with such fee as the Council may from time to time, determine.

(8) A person who has made an application to engage in private practice shall be issued with such license by the Council, if the Council is satisfied that all the requirements to issue a private practicing license has been met by the applicant.

(9) A license to engage in private practice is valid for a period of twelve months from the date of issue.

(10) A person who contravenes the provision of this section commits an offence and is liable upon conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

12. The principal Act is amended by inserting the following new sections between sections 27 and 28 –

27A. The financial year of the Council shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

27B. (1) The Council shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Council.

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

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

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

(3) The annual accounts of the Council shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Nurses Act, particularly, the Bill seeks to amend sections 2, 4, 5, 6, 7, 8, 9 and 12 of the Act so as to allow for the participation of enrolled community health Nurses in the elections into the Council through reconstitution of the Council and the register of Nurses.

The enrolled community health Nurses under the current Act, are not recognised as among the category of persons allowed to participate in the election and subsequent appointment into the Council. This, not only amounts to discrimination against this category of Nurses, but is also contrary to the national values and principles espoused in the Constitution.

Section 2 of the Bill, provides for the definition of the following terms; Cabinet Secretary, enrolled community health Nurse, member and year. The Bill under section 2 also provides for the change of terms from 'Minister' to 'Cabinet Secretary' and from 'chairman' to 'chairperson'. The change in terminologies is to align the Act with the Constitution which uses the term 'Cabinet Secretary' instead of 'Minister' while the use of the term 'chairperson' instead of 'chairman' is to make the language used in the Act gender neutral.

The Bill under section 3 seeks to reconstitute the Council by incorporating into the Council, representatives of persons from recognized training institutions as well as different categories of Nurses. This is to ensure that all categories of Nurses including enrolled community health Nurses participates in the elections of representatives into the Council hence promoting the constitutional principle of inclusivity and non-discrimination. The reconstitution also takes into account the principle of prudent management of public resources under the Constitution through the inclusion of persons with knowledge in finance matters into the Council.

Further, the Bill seeks to amend section 5 of the principal Act by providing that persons who have been removed from any public office for contravening the provisions of the Constitution or any other written law are not eligible for appointment into the Council.

Finally, the Bill provides for various categories of registers that the Registrar may keep and also defines financial year as a period of twelve months beginning the first day of July ending thirtieth of June of the subsequent year.

These proposed amendments have partly been necessitated by the ruling of the High Court in the Constitutional Petition number 285 of 2015 involving the *Kenya National Union of Nurses versus the Nursing Council of Kenya & 4 others* and the subsequent consent entered into by the same parties.

This Bill does not affect County Governments within the meaning of Article 110 of the Constitution. Its enactment, shall not occasion any additional expenditure on the Exchequer.

Dated.....