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GOVERNMENT OF KERALA

Health And Family Welfare (FW) Department

NOTIFICATION

G. O. (P) No. 23/2022/H&FWD.

*Dated, Thiruvananthapuram, 17th June, 2022
3rd Mithunam, 1197.*

S. R. O. No. 616/2022

In exercise of the powers conferred by section 49 read with sections 23, 24, 25 and 34 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Act No.16 of 2017), the Government of Kerala hereby make the following rules, namely:—



RULES

1. *Short title extent and commencement*:—(1) These rules may be called the Kerala Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Rules, 2022.

(2) These rules shall come into force on and with effect from the date of the notification in the Gazette.

2. *Definitions*:—(1) In these rules, unless the context otherwise requires

- (a) “Act” means the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Act No.16 of 2017);
- (b) “Appropriate authority” means, unless otherwise notified, the National AIDS Control Organisation in case of the Central Government and the Kerala State AIDS Control Society in case of the State Government.
- (c) “High Burden District” means District which has:—
 - (i) more than one percent prevalence among antenatal care in sentinel service or,
 - (ii) more than 5 percent prevalence among high risk population in sentinel surveillance or
 - (iii) HIV positivity of more than national average among general clients in Integrated Counseling and testing centres notified by the appropriate authority under the central government from time to time.
- (d) “Memorandum of understanding” means an agreement entered into by a service provider with the Kerala State AIDS Control Society for delivery of services envisaged in the Act.
- (e) “notification” means notification published in the Official Gazette of State of Kerala.
- (f) “Ombudsman” means an officer appointed or designated as such by the State Government as the case may be under Section 23 of the Act.
- (g) “State Government” means the Government of Kerala.
- (h) “Unfair treatment” means and includes any action explicit or implied in nature through words either spoken or written, publish, propagate advocate or communicate by signs or by visible representation or otherwise action intending to cause prejudicial consequence to the protected person.



(2) The words and expressions used herein and not defined in these rules but defined in the Act shall have the meaning assigned to them in the Act.

3. Functioning of integrated counseling and testing centres:—(1) Notwithstanding anything contained in any other law for the time being in force:—

- (i) The functioning of the Integrated Counselling and Testing centres shall be governed by the Guidelines as issued by National Aids Control Organization and Central Government as per the latest Technological advances from time to time and shall be binding on the parties involved;
- (ii) All Integrated counselling and Testing centres shall be registered with the State Government and shall function as per the Memorandum of Understanding entered between the Integrated Counselling and testing Centres and Kerala State AIDS Control Society;
- (iii) All Integrated Counselling and Testing Centres shall enter into a Memorandum of understanding with Kerala State AIDS Control Society for providing various services to provide access to quality HIV counselling and testing services;
- (vi) All Testing or diagnostic centre, pathology laboratory, blood bank Treatment centres shall be licensed/registered with the Kerala State AIDS Control Society for efficient Monitoring and implementation of services sought to be rendered as per Guidelines issued from time to time.

(2) Notwithstanding anything contained in any other law, for the time being in force any dispute arising out of the functioning and delivery of services shall be dealt with through arbitration.

4. Ombudsman:—The State Government shall by notification designate an officer not below the rank of the Additional Director of Health Services attached to Directorate of Health Services, Department of Health and Family Welfare as the Ombudsman for the State.

5. Manner of Inquiring into Complaints by Ombudsman:—

- (a) The Ombudsman shall act as a quasi-Judicial authority while handling enquiries under this Act.
- (b) The Ombudsman shall follow the due process of law while carrying out proceedings as per Natural Justice.



- (c) The Proceedings of the Ombudsman shall be in camera and strict rules of confidentiality shall be followed.
- (d) The Ombudsman shall have the powers of the Civil Court in calling for documents and records and to issue Summons to witnesses.
- (e) The Ombudsman may take the assistance of specialised experts, having domain knowledge, including protected persons and persons vulnerable to HIV, persons working in the field of HIV and Aids, Public health or Health Delivery systems, NGO having experience for the purpose of arriving at a conclusion.
- (f) The Ombudsman shall pass interim orders in cases of Emergency/crisis situations.
- (g) The Ombudsman shall after due enquiry make directions for action to be taken by the establishment depending on the nature of the grievance namely but not limiting to:—
 - (i) Removal of discrimination
 - (ii) Compensation
 - (iii) Initiation of enquiry
 - (iv) Restoration of status quo ante
- (h) An appeal shall lie against the order of the Ombudsman to the Principal Secretary, Health & Family Welfare Department.

6. Procedure of making complaints to Ombudsman:—(a) Any person, protected person, his nominated representative, legal heir may approach the Ombudsman within six months from the date of the alleged violation took place:

Provided that the Ombudsman may for reasons to be recorded in writing extend the time limit for another period of three months if he is satisfied that the circumstances prevented the complainant from making complaint in the stipulated period.

(b) All complaints shall be reduced to writing with the specific instance of violation described in detail in the Form given in the appendix appended to these rules:

Provided that if the complainant needs assistance in putting the complaint to writing, all necessary assistance shall be provided through Para Legal Volunteers associated with the Kerala State legal Services Authority.

(c) The Ombudsman may receive complaints in person, via post, Email Communication or through the Website of the Ombudsman.



7. Manner of Maintaining records by Ombudsman: — (1) The Ombudsman shall,

- (a) Immediately on receipt of a complaint record it by assigning a sequential unique complaint Number in a register maintained solely for that purpose in physical or computerised form;
- (b) on receipt of the complaint, an acknowledgement shall be immediately given, send to the complainant along with the unique complaint number through SMS and email or in physical forms;
- (c) record the action taken on the complaint;
- (d) maintain the Register of Complaints in a manner that ensures Confidentiality of data;
- (e) The Ombudsman shall comply with Data Protection Measures in accordance with Section 11 of the Act.

8. The Procedure for Recording Pseudonym and Providing Suppression of Identity in Legal Proceedings:—(1) In any legal Proceeding where a Court pursuant to clause (a) of sub section (1) of section 34 of the Act directs on an application made by a protected person or any other person, that in the interests of justice, the proceeding or any part thereof be conducted by suppressing the identity of such protected person, the Registrar/Officer concerned court shall direct all parties involved to:—

- (i) File one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the court which shall be kept in a sealed cover and in safe custody with the Registrar/Officer concerned and
- (ii) Serve one copy of documents bearing the full name, identity, and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential.

(2) The Registrar/Officer concerned shall provide Pseudonyms to protect the persons involved in the legal proceeding in the documents filed before the court in such manner that the identity and identifying details of the protected person involved in the legal proceeding are kept confidential.

(3) The Registrar/ Officer concerned shall place the sealed covered documents before the court on the first date the legal proceeding is listed for hearing before the court, if so required by the court.



(4) The identities of the protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym of the documentation generated by the court in relation to the legal proceeding, including the listing of the case on the court Board, interim orders and final judgements.

(5) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives including assistants and staff.

*Exception:—*Where in the interest of justice the name and identity of the protected person needs to be revealed to a third party ,it shall only be allowed by an order of the court.

(6) Printing or publishing any matter in relation to the aforementioned legal proceedings in electronic form shall be lawful only if the same is done by ensuring the suppression of identities of the parties in the legal proceeding.

(7) In any proceeding before it the Court shall take specific measures for Data Protection as envisaged in section 11 of the Act.



APPENDIX

Form for making Complaint to Ombudsman under Rule 6

1. Date of Incident :
2. Place of Incident :
3. Description of incident :
4. Person/ Institution responsible for the incident :

Signature/ Thumb Impression of Complainant*

Name:

Date:

Mobile No./e-mail/fax/Address:

For Official use only

Unique Complaint Number:

*Where the complaint is received telephonically and reduced to writing by the Ombudsman, the Ombudsman shall sign the Form

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per Section 49(1) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act 2017 (Central Act 16 of 2017), State Government is empowered to make rules for carrying out the provisions of the Act.

This notification is intended to achieve the above object.

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