

The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Rules, 2018

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The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Rules, 2018¹

In exercise of the powers conferred by Section 47 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (16 of 2017), the Central Government hereby makes the following rules, namely—

CHAPTER I PRELIMINARY

1. Short title and commencement.—(1) These rules may be called the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official 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 (16 of 2017);
- (b) “appropriate authority” means;
 - (i) the National AIDS Control Organisation in case of Central Government; and
 - (ii) the State AIDS Control Society in case of State Government;
- (c) “high burden district” means a district which has—
 - (i) more than one per cent prevalence among antenatal care in Sentinel Surveillance; or
 - (ii) more than five per cent prevalence among high-risk population in Sentinel Surveillance; or
 - (iii) HIV positivity of more than national average among general clients in Integrated Counselling and Testing Centre notified by the appropriate authority under the Central Government from time to time;

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

CHAPTER II MANNER OF NOTIFYING HIV AND AIDS POLICY FOR ESTABLISHMENTS

3. The appropriate authority under the Central Government shall, before notifying a model HIV and AIDS policy for establishments consult—

1. Ministry of Health and Family welfare (National AIDS Control Organisation), Noti No. G.S.R. 888(E), dated September 17, 2018, published in the Gazette of India, Extra., Part II, Section 3(i), dated 17th September, 2018, pp. 8-12, No. 653.

- (a) all stakeholders including representatives of HIV positive persons;
- (b) HIV affected persons and protected persons;
- (c) healthcare providers;
- (d) establishments engaged in providing education, healthcare services, experts and organisations working in the field of HIV and AIDS, employers, trade unions, and other relevant stakeholders on such policy.

4. The appropriate authority under the Central Government shall notify a model HIV and AIDS policy for establishments in the Official Gazette.

5. The appropriate authority under the Central Government shall review and update from time to time the model HIV and AIDS policy for establishments in accordance with Rules 3 and 4.

6. (1) The model HIV and AIDS policy applicable to an establishment, engaged in the provision of healthcare services and every other establishment where there is a significant risk of occupational exposure to HIV shall provide for a safe working environment and for informed consent for testing, treatment and research in accordance with the provisions of the Act.

(2) The model HIV and AIDS Policy applicable to an establishment consisting of one hundred or more persons, whether as an employee or officer or member or director or trustee or manager, as the case may be, shall provide for a grievance redressal mechanism in accordance with the provisions of the Act and these rules:

Provided that in the case of healthcare establishments, the provisions of this sub-rule shall have the effect as if for the words “one hundred or more”, the words “twenty or more” had been substituted.

7. (1) The model HIV and AIDS policy as may be applicable and as may be amended and updated from time to time by the appropriate authority under the Central Government shall be adopted by every establishment upon its notification.

(2) The text of the HIV and AIDS policy shall be communicated to all persons working in the establishment by the person in charge of or responsible to the establishment.

(3) The person in charge or responsible for the establishment shall prominently post the text of the HIV and AIDS policy as a notice in English and in the language understood by majority of persons working in or accessing such establishment on special boards to be maintained for such purpose, at or near the entrance through which the majority of the persons working in or accessing the services of the establishment enter such establishment.

(4) The establishment shall conduct annual training sessions for persons working in such establishment in understanding and implementing the HIV and AIDS policy.

8. (1) The notice referred to in sub-rule (3) of Rule 7 shall state the manner in which copies of the HIV and AIDS policy shall be obtained and persons working

in or accessing the services of the establishment shall be entitled to a copy of such policy free of charge.

(2) The copies of the HIV and AIDS policy of establishments shall be made available in the public domain by those to whom the policy has been made available including on their website if any and in case of hard copies for a nominal price.

(3) The appropriate authority of every State shall make available the copy of HIV and AIDS policy to heads of all educational establishments who shall further provide a copy of the policy to the learners and their parents or guardians free of charge immediately upon admission of the learner to the establishment.

CHAPTER III

GRIEVANCE REDRESSAL MECHANISM FOR ESTABLISHMENTS

9. (1) Every establishment having one hundred or more persons, whether as an employee or officer or member or director or trustee or manager, as the case may be, shall within one hundred and eighty days of the commencement of the Act, designate such person of senior rank, as it deems fit, as the Complaints Officer who shall dispose of complaints of violations of the provisions of the Act in the establishment, in accordance with these rules:

Provided that every branch of an establishment having one hundred or more persons, whether as an employee or officer or member or director or trustee or manager, as the case may be, shall within one hundred and eighty days of the commencement of the Act, designate such person of senior rank, as it deems fit, as an additional Complaints Officer for such branch who shall dispose of complaints of violations of the provisions of the Act in the establishment, in accordance with these rules:

Provided further that in the case of healthcare establishments, the provisions of this rule shall have the effect as if for the words “one hundred or more”, the words “twenty or more” had been substituted.

(2) The establishment shall within thirty days of appointment, provide training to the Complaints Officer on the provisions of the Act including information on prevention, care, support and treatment related to HIV, human sexuality, sexual orientation and gender identity, drug use, sex work, people vulnerable to HIV, stigma and discrimination, principles of the greater involvement of people living with HIV, strategies of risk reduction, etc. During the training assistance of experts including protected persons and persons vulnerable to HIV may be provided to the Complaints Officer.

10. (1) Any person may make a complaint to the Complaints Officer, within three months from the date that the person making the complaint became aware of the alleged violation of the Act in the establishment:

Provided that the Complaints Officer may, for reasons to be recorded in writing, extend the time-limit to make the complaint by a further period of three

months, if he is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period.

(2) Every complaint shall be made to the Complaints Officer in writing in the Form set annexed to these rules:

Provided that where a complaint cannot be made in writing the Complaints Officer shall render all reasonable assistance to the complainant to reduce the complaint in writing.

(3) The Complaints Officer may receive complaint made in person, or by post or telephonically or in electronic form:

Provided that the establishment shall within a period of thirty days of appointing the Complaints Officer, establish a method for receipt of complaints in electronic form either through dedicated website, webpage or by providing an official e-mail address for the submission of complaints to the Complaints Officer.

(4) The Complaints Officer shall, on receipt of a complaint, provide an acknowledgment to the complainant and record the Complaint in a register to be kept solely for that purpose.

(5) The time of the complaint and the action taken on the complaint shall be entered in a register.

(6) Every complaint shall be numbered sequentially in the register.

(7) The Complaints Officer shall act in an objective and independent manner while deciding complaints made under the Act.

(8) The Complaints Officer shall decide a complaint promptly and in any case within seven working days:

Provided that in case of emergency or in the case of healthcare establishment where the complaint relates to discrimination in the provision of, or access to health care services or provision of universal precautions, the Complaints Officer shall decide the complaint on the same day on which he receives the complaint.

11. (1) The Complaints Officer, if satisfied that a violation of the Act has taken place as alleged in the complaint, shall—

- (a) firstly, direct the establishment to take measures to rectify the violation;
- (b) secondly, counsel the person who has committed the violation and require such person to undergo training in relation to HIV and AIDS, provisions of the Act, rules and guidelines, particularly in relation stigma and discrimination, for a period amounting to one week, and a fixed period of social service, which shall include working with a non-governmental organisation working on HIV and Acquired Immunodeficiency Virus, a protected person's network, or the appropriate authority under the State Government that shall be monitored, and may also require that the person supervising the violator undergo such training.

(2) Upon subsequent violation of the Act by the same person, the Complaints Officer may recommend the establishment to take disciplinary action in accordance with the law.

(3) The Complaints Officer shall inform the complainant of the action taken in relation to the complaint and of the complainant's right to approach the Ombudsman or to any other appropriate legal recourse in case the complainant is dissatisfied with the action taken.

(4) The Complaints Officer shall, on deciding a complaint, provide brief reasons in writing for the decision to the establishment and the concerned parties to the complaint within a period of ten days from the date of decision.

12. (1) The Complaints Officer shall ensure that the complaint, its nature and number and the action taken are reported to the appropriate authority under the Central Government every six months subject to the provisions of Section 11 of the Act and Rule 13 of these rules.

(2) The Complaints Officer shall ensure that the complaint, the nature of the complaint, the number of the complaint and the action taken are published on an annual basis or the establishment publishes annual report or on the website of the establishment or in such annual report, subject to the provisions of Rule 13 and Section 11 of the Act.

13. (1) The Complaints Officer shall, if requested by a protected person who is part of any complaint, ensure the protection of the identity of the protected person in the following manner, namely—

- (a) the Complaints Officer shall file one copy of the document bearing the full name, identity and identifying details of such protected person which shall be kept in a sealed cover and in safe custody with the Complaints Officer;
- (b) the Complaints Officer shall provide pseudonyms to protected person involved in complaints before him;
- (c) the identity of protected person involved in complaints before the Complaints Officer and their identifying details shall be displayed in pseudonym in all documentation and records generated by the Complaints Officer and the establishment in relation to the complaints including in the register of complaints under sub-rule (4) of Rule 10;
- (d) the identity and identifying details of the protected person involved in a complaint before the Complaints Officer shall not be revealed by any person or their representatives including assistants and staff.

(2) No person shall print or publish any matter in relation to a complaint before a Complaint Officer unless the identity of the protected persons in the complaint is protected.

(3) The Complaints Officer shall comply with the data protection measures in accordance with the provisions of Section 11 of the Act.

14. Every establishment which requires to appoint a Complaints Officer shall—

- (a) on an annual basis, organise workshops and awareness programmes for sensitising its employees with the provisions of the Act and orientation programmes for the Complaints Officer;
- (b) provide necessary facilities for the Complaints Officer for deciding the complaint; and
- (c) make available such information as the Complaints Officer may require in deciding the complaint.

15. The appropriate authority under the Central Government shall—

- (a) develop and disseminate information, education, communication and training materials to advance the understanding of the public generally and in particular of protected persons, civil authorities and healthcare workers of the provisions of the Act including relating to redressal of rights;
- (b) formulate and disseminate orientation and training programmes that may be used by establishments in the training of Complaints Officers under sub-rule (2) of Rule 9 and in the counselling of persons found to have violated the provisions of the Act and clause (b) of sub-rule (1) of Rule 11;
- (c) provide training for the establishments in high burden districts, in coordination with the appropriate authority under the State Government and their Complaints Officers in such districts on the implementation of the Act and the rules and shall further provide such trainings on an annual basis;
- (d) provide training for civil authorities, and healthcare workers including Accredited Social Health Activists and Anganwadi Workers in high burden districts, in coordination with the appropriate authority under the State Government in such districts on the implementation of the Act and the rules and shall further provide such trainings on an annual basis.

16. Nothing contained in these rules prohibits, limits or otherwise restricts the right of a person to other remedies provided under the Act or any other law for the time being in force to address violations of the provisions of the Act.

FORM*Form for making Complaint to Complaints Officer under Rule 10*

1. Date of Incident
2. Place of Incident
3. Description of Incident
4. Person or institution responsible for the Incident

Signature or Thumb Impression of Complainant*

Name: Date:

Mobile No. or e-mail or Fax or Address:

For Official Use only:

Complaint Number:

*Where the complaint is received orally or telephonically and reduced to writing by the Complaints Officer, the Complaints Officer shall sign and date the Form.

