

Punjab Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2019

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Rule

PUNJAB-HUMAN-IMMUNODEFICIENCY-VIRUS-AND-ACQUIRED-IMMUNODEFICIENCY SYNDROME (OMBUDSMAN AND LEGAL PROCEEDINGS) RULES, 2019

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Punjab Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2019Published vide Notification No. G.S.R.

27/C.A.16/2017/S.49/2019, dated 22.7.2019Last Updated 30th September, 2019No. G.S.R.

27/C.A.16/2017/S.49/2019. - 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 (Central Act 16 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules to provide for the appointment, terms and conditions, qualifications and manner of inquiry by Ombudsman, namely:-

1. Short title, extent and commencement.

(1)These rules may be called the Punjab Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2019.(2)These rules shall come into force on and with effect from the date of their publication in the Official Gazette.

2. Definitions.

- 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 (Central Act 16 of 2017);(b)"Appropriate authority" means, unless otherwise notified, the National AIDS Control Organisation in the case of the Central Government and Punjab State AIDS Control Society in the case of Government of Punjab;(c)"High burden districts" means districts notified as such by the appropriate authority from time to time;(d)"Ombudsman" means an Officer appointed or designated by the State Government, as the case may be, under section 23 of the Act;(e)"State Government" means the Government of Punjab in the Department of Health and Family Welfare; and(f)The words and expressions used and not defined in these rules but defined in the Act, shall have the meanings assigned to them in the Act.

3. Provision of Diagnostic Facilities of HIV/AIDS, ART and Opportunistic Infections management (Section 14).

- The State Government shall provide free diagnostic services related to HIV/AIDS and other opportunistic infections to all citizens in Government Health Facilities (Primary Health Centres or Community Health Centres or Sub-Divisional Hospitals or District Hospitals or Government Medical Colleges and Hospitals). ART drugs shall be provided free of cost at all Government Health Facilities in accordance with the guidelines issued by National AIDS Control Organisation and State Government to all HIV positive persons.

4. Appointment and jurisdiction of Ombudsman (Section 23(1)).

- The State Government shall designate the Civil Surgeons of the following five divisions of Punjab as Ombudsman of their respective jurisdiction, namely:-Jalandhar (Jalandhar, Gurdaspur, Pathankot, Amritsar, Taran Taran, Kapurthala, Hoshiarpur);Ropar (Ropar, Mohali, Nawan Shahar);Ferozepur (Ferozepur, Moga, Muktsar, Fazilka);Patiala (Patiala, Sangrur, Barnala, Fatehgarh, Ludhiana); andFaridkot (Faridkot, Bathinda, Mansa):Provided that the State Government shall provide him the assistance from the Department of Legal and Legislature Affairs on legal issues that may arise in the course of his work, if so requested:Provided that the State Government shall provide capacity building within thirty days from the date of appointment of the Ombudsman.

5. Manner of inquiring into complaints by Ombudsman (Section 24(1)).

(a)The Ombudsman shall act in an objective and independent manner when inquiring into complaints made under the Act;(b)While inquiring into complaints under the Act, the Ombudsman shall not be bound by any rules of evidence and may follow such procedure as he considers just and proper;(c)No cross-examination shall be permitted in inquiries before the Ombudsman;(d)The Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to HIV, and persons working in the fields of HIV and AIDS, public

health or health delivery systems;(e)The Ombudsman shall have the power to pass interim orders in cases of medical emergency without hearing the parties;(f)The Ombudsman shall have the power to pass orders, including to, withdrawal and rectification of the violation, counseling, social service etc;(g)The Ombudsman shall inform the complainant of the action taken; and(h)The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman's order.

6. Manner of maintaining records by Ombudsman (Section 24(3)).

(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 computerized form;(b)on receipt of the complaint, acknowledge it including by sending the unique complaint number by SMS or e-mail to the complainant where available;(c)record the time of the complaint and the action taken on the complaint in the register; and(d)maintain the register of complaints in a manner that ensures confidentiality of data.(2)The Ombudsman shall comply with data protection measures in accordance with the provisions of section 11 of the Act.

7. Manner of making complaints to Ombudsman (Section 25).

(1)Any person may make a complaint to the Ombudsman within whose jurisdiction the alleged violation took place, within three months from the date that the alleged violation took place:Provided that the Ombudsman 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)All complaints shall be made to the Ombudsman in writing in accordance with the form set out in the Appendix appended to these rules:Provided that where a complainant cannot make a complaint in writing, the Ombudsman shall render all reasonable assistance to the complainant to produce the complaint in writing.(3)In cases of medical emergency, the Ombudsman or his assistant may visit the complainant at the location of the alleged violation or any other convenient place to enable written documentation of the complaint.(4)The Ombudsman may receive complaints made in person, via post, telephonically, or through electronic form through the Ombudsman's website:Provided that the State Government, within seven days of the appointment of the Ombudsman shall establish a website of the Ombudsman.

8. Disseminate information on Ombudsman.

(1)Within thirty days of the appointment of the Ombudsman, the appropriate authority under the State Government shall disseminate information about the office of the Ombudsman, including the Ombudsman's jurisdiction, role, functioning and procedures, and the manner in which complaints can be made to the Ombudsman.(2)Such dissemination shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities.

9. Manner of recording pseudonym and providing suppression of identity in legal proceedings (Section 34(1)(a)).

(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 of the 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; 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 shall provide pseudonyms to protect the persons involved in the legal proceedings 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 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 in all documentation generated by the court in relation to the legal proceeding, including listing of the case on the court Board, interim orders and final judgments. (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 or any other 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 legal proceeding before it under the Act, the court shall comply with data protection measures in accordance with section 11 of the Act. Appendix [See rule 7(2)] Form for making Complaint to Ombudsman

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./email/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.