DRAFT STATE RULES under Section 49 of the HIV and AIDS (Prevention & Control) Act, 2017 for Gujarat

Please send your suggestions/Comments/opinions on Draft State Rules on The HIV/AIDS Act 2017 at email id of Gujarat State AIDS Control Society (Health & Family Welfare Department, Govt. of Gujarat) sacsgujarat@gmail.com on or before 31st May’2019. Please write subject matter of email is : Suggestions on State Draft Rules

G.S.R.- In exercise of the powers conferred by the proviso to sub-section (1) The state Government may, by notification, make rules to carry out the provisions of this Act. of section 49 of the Human Immunodeficiency Virus And Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (16 of 2017), the Government of Gujarat hereby makes the following rules, namely:-

Chapter – I
Preliminary

1. Short title, extent and commencement.-
(1) These Rules shall be called the Gujarat Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Rules, 2019.
(2) It extends to the whole State of Gujarat.
(3) 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 (No. 16 of 2017);
(b) "Appropriate Authority" means, unless otherwise notified, the National AIDS Control Organisation in case of the Central Government and the concerned State AIDS Control Society in case of the State Government;
(c) “Child Welfare Committee” means Child Welfare Committee constituted under section 27 the Juvenile Justice (Care and Protection of Children) Act, 2015 (Central Act No. 2 of 2016);
(d) “Complaint” means any information or grievance made orally or in writing to the Ombudsman;
(e) “District” means revenue district of the State;
(f) “Form” means the forms annexed to these Rules and such forms as may be notified from time to time by the State Government to be used for the purposes of the Act and these Rules;
(g) “High burden districts” means districts notified as such by the appropriate authority under the Central Government of India from time to time;

("High burden districts" means district notified as such by the appropriate
authority from time to time or there should be specific mention of organization or sources/Years for declaring the high burden districts for HIV.)

(h) “Ombudsman” means an Officer appointed or designated by the State Government, as the case may be, under section 23 of the Act;

(i) “Rules” means Gujarat Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Rules, 2018;

(j) “Section” means section of the Act;

(k) “Selection Committee” means a committee constituted by the State Government under rule 12 of these rules;

(l) “State Government” means the Government of Gujarat; and

(m) State Level Network (SLN) means community base organization of People living with HIV members, including Gujarat State Network of People living with HIV/AIDS (GSNP+) and their associated District Level Network (“DLN”) in State of Gujarat

(2) All other words and expressions used in these Rules but not defined shall have the meaning respectively assigned to them in the Act.

Chapter – II
Diagnostic Facilities of HIV/AIDS, ART & OI Management

3. Compliance of provisions of the Act.-

The Gujarat State AIDS Control Society shall:

(1) Provide free diagnostic services to all individuals in all Govt. Health Service Centers and Hospitals across the State; (treatment protocol and reporting) to ensure quality of services provided by Private Service provider related to HIV.

(2) ART drugs shall be provided free of cost to all HIV positive people as per the provisions of the Act and guidelines of National AIDS Control Organization;

(3) Opportunistic Infection (OIs) shall also be managed at the level of Institute having ART centre with State Government’s support and it shall be ensured that all Opportunistic Infection drugs are made available as per NACO guidelines free of cost for the People Living with HIV in need from these Institutes as per the provisions of the Act.

Chapter – III
Appointment, Selection and Functions of Ombudsman

4. Appointment & Jurisdiction of Ombudsman:
(1) The State Government shall make appointment of Ombudsman for the following six regions within one month of coming into force of these Rules:

(a) Gandhinagar with jurisdictions of Gandhinagar, Mehsana, Patan, Banaskantha, Aravali, Sabarkantha districts;

(b) Rajkot with jurisdictions of Rajkot, Kutch, Morbi, Junagadh, Porbandar, Devbhunmi Dwarka districts;

(c) Bhavnagar with jurisdictions of Bhavnagar, Amreli. Botad, Junagadh and Gir Somnath districts;

(d) Ahmedabad with jurisdictions of Ahmedabad, Kheda, Anand and Surendranagar;

(e) Surat with jurisdictions of Surat, Navsari, Valsad, Dang & Tapi; and,

(f) Vadodara with jurisdictions of Vadodara, Chota Udaipur, Dahod, Bharuch, Narmada, Panchmahal and Mahisagar districts.

The respective jurisdiction shall be in line of existing Regional Administrative Mechanism under the Health & Family Welfare Department of the Government of Gujarat.

The Office of the Ombudsman shall be situated at either Office of Regional Deputy Director (Health and Medical services) or Jilla Panchayat Office.

(2) Selection of Ombudsman:

(a) The Ombudsman (He/She/TG) shall be appointed by the State Government on the recommendation of the Selection Committee constituted by the State Government by following the prescribed eligibility criteria prescribed hereinafter; (People Living with HIV and People from the community with the same qualification and experience will be encouraged to apply). The Ombudsman shall be from any gender i.e. Female, Transgender or Male.

(b) The Selection Committee shall be constituted by the Secretary, Health and Family Department, Government of Gujarat, Gandhinagar.

(c) The Selection Committee shall comprise of the following Members:

(i) Chairperson : Principal Secretary, Public Health and Family Welfare Department, Government of Gujarat;
(ii) Member Secretary: Project Director-Gujarat SACS/Additional Project Director, GSACS;

(iii) Members:

1) Secretary, Law & Justice Department

2) Representatives of State Level Network of People Living with HIV/AIDS (only Governing Body Member)

3) Representative of Civil Society/ NGO’s / CBO’s (Only Trustees)

A list of potential candidates for the Ombudsman by following the criteria mentioned in the State Rules would be prepared by the Member Secretary with consultation of State Legal and Personnel Department within one month of the notification of formation of the Selection Committee. The details of selection process mentioned in section 12 of state rules.

3) Eligibility Criteria:

There shall be following eligibility criteria for selection of the Ombudsman:

- Age: The applicant shall not be less than 40 years of age and not more than 65 years of age at the time of appointment;

- Educational Qualification:
  The applicant shall have a bachelor degree in psychology or sociology or social work with at least 10 years of work experience in the health sector or welfare activities; or Retired District level Judge who has experience

4) The select committee would select and recommend the name of Ombudsman by following the provision made in aforesaid Rule (4) and provisions of the Services Rules of State Government.

5. Term of Office of Ombudsman:

(1) The term of the Office of the Ombudsman selected under Sub rule (2) of Rule 4 of these Rules shall be three years.

Provided that the State Government may, after giving him a reasonable opportunity of being heard, remove such Ombudsman before the expiry of the said period, if in the opinion of the State Government, he/she is not desirable to be continued as an Ombudsman.
(2) The Ombudsman shall not hold the Office for more than two terms. No Ombudsman shall hold office after he/she has attained the age of 65 years;

(3) The Ombudsman selected under Rule 4 of these Rules shall be granted extension for another term subject to appraisal of his/her performance conducted by the Secretary, Legal Department of Government of Gujarat;

(4) If any complaint is received against the Ombudsman in any form, then, the same shall be dealt with in accordance with the procedure prescribed in the Gujarat Civil Service Rules.

(5) The Gujarat AIDS Control Society may recommend to the State Government for removal of any Ombudsman, after holding necessary inquiry, who -

   (i) has so abused his position as to render his/her continuance as an Ombudsman prejudicial to the public interest;

   (ii) fails to attend his office consecutively for three months without any valid reason; or
   (iii) has been adjudged insolvent; or
   (iv) has become physically or mentally incapable of acting as an Ombudsman; or
   (v) has been convicted of an offence, which in the opinion of the Gujarat AIDS Control Society, involves moral turpitude; or

(6) The Ombudsman may resign at any time, by giving one month’s notice in writing to the State Government. Such resignation shall come into effect after its acceptance by the State Government;

(7) Any vacancy of the Ombudsman shall be filled in by the State Government by making appointment of another person as an Ombudsman within 30 days of the vacancy or prior of vacant post. In case of any long leave taken by the Ombudsman or post remaining vacant for long time, the State Government may assign the charge of such Ombudsman or vacant post of Ombudsman to any other nearby Ombudsman.

(8) The salaries and allowances payable to Ombudsman and other terms and conditions of service shall be such as may be prescribed by the State Government. The rank of Ombudsman will not be below the rank of Director (Public Health);

(9) The State Government shall provide to the Ombudsman with such human resource and infrastructural support as may be necessary for the efficient performance of his
functions. Every office of ombudsman to be provided one Data-Entry Operator cum office assistant with all basic office infrastructure to perform the duty effective way. The ombudsman may utilize the services of para legal aid clinics and DALSA/SALSA.

(10) The Ombudsman shall also be an ex-officio member of the State Grievances Redrasal Mechanism constituted under the National HIV Prevention and Care Programme of National AIDS Control Organization.

5. **Functions and responsibilities of the Ombudsman.**— (1) The Ombudsman shall perform the following functions, namely:

   (1) Take cognizance of complaints and conduct inquiry into the violations of the provisions of the Act, in relation to acts of discrimination mentioned in section 3 and providing of healthcare services by any person including child affected by HIV, in such manner as may be prescribed by the State Government.

   (2) If any protected person not willing to file a complaint to Ombudsman directly due to fear or stigma issues, District Level Network of People Living with HIV/AIDS and other State level Grievance Redressal committee may be intervene with written consent of such protected person. District Level Network of People Living with HIV and State Grievance Redressal Committee can make a complaint on behalf of protected person with the Ombudsman for justice. The Health Department, Gujarat Government shall provide the travel expenses to complainant for visiting the ombudsman office.

   (3) Adjudicate and dispose of complaint of violations in Relation to section 3 and provisions of health care services in a manner as prescribed by the State Government as per provisions of the Act and these Rules;

   (4) Ensure that the rights and entitlements of child affected by HIV or HIV-affected person or HIV-positive person are protected;

   (5) Transfer the complaints or matters concerning the child affected by HIV or HIV-affected person or HIV-positive person to other competent authorities like Child Welfare Committee of the respective districts working as per Juvenile Justice Act and concerned Ombudsman having jurisdiction in the matter;

   (6) Conduct regular inspection visits of healthcare provider and institutions where child affected by HIV or HIV-affected person or HIV-positive person are living and recommending action for improvement in quality of services to the State Government;

   (7) Take suo motto cognizance of cases and reaching out to child affected by HIV or HIV-affected person or HIV-positive person.

   (8) Deal with cases referred by the State Government or other authorities;

   (9) Order the police for registration of first information report for offences committed against any child affected by HIV or HIV-affected person or HIV-positive person;
(10) Access appropriate legal services for child affected by HIV or HIV-affected person or HIV-positive person;

(11) Issue of recommendations to State Government for effective implementation of Act and Rules;

(12) Co-ordinate with the health, medical, police, social welfare department and other agencies involved in the welfare of child affected by HIV or HIV-affected person or HIV-positive person;

(13) Passing necessary advisory to authorities for protection of rights of the child affected by HIV or HIV-affected person or HIV-positive person;

(14) Ombudsman shall refer cases to Judicial Magistrate as define in section 41 of Act dealing with the non-compliance of provisions of Act and these rules;

Chapter – IV
Inquiry and disposal of complaints by Ombudsman

6. Inquiring into complaints by Ombudsman.- (1) The Ombudsman shall act in an objective and independent manner when inquiry into complaints made under the Act and these rules;

(2) On receipt of a complaint or while taking sou motto cognizance, the Ombudsman shall hold an inquiry in such manner as deemed;

(3) The inquiry shall satisfy the basic principles of natural justice and the complainant shall be given an opportunity to be heard and accused opinion shall be taken into consideration;

(4) The Ombudsman shall conduct the inquiry in a friendly manner and will not use adversarial or accusatory words or words that adversely impact the dignity or self-esteem of the complainant;

(5) While inquiry into complaint under the Act and these rules, the Ombudsman shall give a reasonable opportunity to concerned parties to be heard and in appropriate cases receiving evidence on affidavits, provided that cross-examination shall be permitted in inquiries before the Ombudsman;

(6) 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;

(7) The Ombudsman shall have the power to pass interim orders in cases of medical emergency including directing admissions, operations or treatment and the provision of universal precautions:

Provided that the Ombudsman shall, as soon as may be, after the passing of such interim orders, consider the representations of the parties by giving them a reasonable opportunity to be heard, and in appropriate cases may receive evidence on affidavits, and pass appropriate orders;
(8) The Ombudsman shall, within a period of thirty days of the receipt of the complaint and after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons therefor (as per section 26 of Act);

(9) The Ombudsman shall inform the complainant of the action taken in relation to the complaint and shall be responsible for ensuring that the complaints, their number and nature, and the action taken and orders passed in relation to such complaints are published on the website of the Ombudsman. The Ombudsman shall preserve strict confidentiality of the protected person while publishing the orders on the website.

(10) The Ombudsman shall provide all parties to the complaint with copies of the written order within 7 days of deciding the complaint;

(11) The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman’s order;

(12) The Ombudsman shall submit a quarterly report to Department of Health & Family Welfare, Department of Legal & State AIDS Control Society on the nature of disposal of cases and pendency of cases to the State Government in the manner as may be prescribed, for review of pendency of cases;

(13) All proceedings before the Ombudsman shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code (45 of 1860).

7. Orders passed by Ombudsman.- (1) The Ombudsman on being satisfied through the inquiry, may, pass one or more of the following orders, namely:—

I. Pass orders for the withdrawal and rectification of the violation;

II. Pass orders directing the person who has committed the violation to undergo a fixed period of counselling related to the violation committed and a fixed period of social service, which shall include working with a non-governmental organisation working on HIV, a protected person’s network, or the appropriate authority under the State Government;

III. Direct specific steps or special measures or both to be taken;

IV. Direct any person who has committed the violation to make regular reports to the Ombudsman regarding implementation of the Ombudsman’s order;

V. Make such orders as to cost as are considered reasonable and such cost shall be utilized for welfare of HIV positive people;

VI. Directions to healthcare provider or persons or institutions or facilities in whose care the child affected by HIV or HIV-affected person or HIV-positive person is placed, regarding care, protection and rehabilitation of the said person, including directions relating to immediate treatment and services such as medical attention, therapy, psychiatric and psychological support including need-based counselling, occupational therapy etc.;

VII. Any other order related to any other function;
8. Manner of making complaints and maintaining records by Ombudsman.- (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 person making the complaint became aware of the alleged violation of the Act and these rules; 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;

(i) All complaints shall be made to the Ombudsman in writing in accordance with the form attached to these rules;

(ii) District Level Network of People Living with HIV (DLN)/ State Level Network of People Living with HIV (SLN)/NGO’s/Civil society/Government Officers may complain to Ombudsman on the behalf of the protected person if he/she/TG feel fear of confidentiality with written consent of protected person.

(iii) The Ombudsman may receive complaints made in person, via post, telephonically, or through electronic form through the Ombudsman’s website;

(iv) Where a complaint cannot be made in writing the Ombudsman shall render all reasonable assistance to the complainant to reduce the complaint in writing;

(v) After 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;

(vi) On receipt of the complaint, acknowledge it including by sending the unique complaint number by SMS or e-mail to the complainant where available;

(vii) Record the time of the complaint and the action taken on the complaint in the register;

(viii) Maintain the register of complaints in a manner that ensures confidentiality; and also shall comply with data protection measures in accordance with section 11 of the Act.

9. Disseminate information about the 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) Dissemination shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities.

10. Manner of recording pseudonym and providing suppression of identity in legal proceedings.- (1) In any legal proceeding where a court, pursuant to section 34(1)(a) 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;

(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 protected 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;

(8) The Ombudsman also, while holding the inquiry, shall protect the identity of the protected person by following above mentioned provisions.

CHAPTER V
MISCELLANEOUS

11. Care and protection of children.-
(1) State Government shall take appropriate measures for care and protection of all children affected by HIV or HIV-positive children which also includes HIV prevention, counseling and testing activities;
(2) State Government shall also ensure free healthcare services and treatment to all children affected by HIV or HIV-positive children who are living in child care institutions established under Juvenile Justice (Care and Protection of Children) Act, 2015;
(3) The Child Welfare Committee shall take appropriate measures for safe keeping documents related to the property of children affected by HIV or AIDS;
(4) State Government, within three months of notifications of these rules, shall lay-down the mechanism and procedure for protection of property of children affected by HIV or AIDS;
(5) The Ombudsman shall establish effective linkages with Child Welfare Committee and transfer the cases falling in their jurisdiction;
(6) The Appropriate authority shall disseminate information about the Child Welfare Committee to all children affected by HIV or HIV-affected persons or HIV-positive persons;

12. Selection of Ombudsman.- (1) The Member Secretary of the Selection Committee shall initiate the process of filling up the vacancy six months prior to the incumbent demitting office: Provided that if a vacancy arises on account of resignation or death of the Ombudsman, the Member Secretary of the Selection Committee shall immediately initiate the process for filling up such vacancy.
(2) For selection of Ombudsman, the State Government through the Member Secretary of the Selection Committee shall call for applications through public advertisement in the local and national newspapers and official website of the Department implementing the Act.
(3) The Member Secretary shall screen all the applications received and place the applications which fulfil the basic eligibility requirements before the Selection Committee.
(4) The Selection Committee shall evaluate the candidates on the basis of qualifications, experience of working in the area of HIV Prevention and Treatment and personal interview with the candidate.
(5) Ombudsman selected by the Selection Committee shall not:

- Have any past record of violation of human rights;
- Have been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;
- Has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
- Be holding such full-time occupation that may not allow the person to give necessary time and attention to the work of the Ombudsman as per the Act and rules;
- Hold any office of profit
(vi) Be insolvent.

(6) Where the Selection Committee is required to consider an application for renewal of tenure of Ombudsman, it shall evaluate the application on the basis of the following criteria, namely:

(i) Performance appraisals of the Ombudsman carried out by the State Government as per a specified format, a copy of which shall be made available to the Chairperson and Members of the Selection Committee by the Member Secretary;

(ii) Complaints if any, received and addressed by the Selection Committee against the Ombudsman; and

(7) The Selection Committee shall, on the basis of the evaluation procedure and criteria, select and forward a panel of names in order of merit to the State Government for appointment as Ombudsman.

(8) The list of finalized names shall be duly signed by all members of the Selection Committee present at the time of selection and the Member Secretary of the Selection Committee shall forward the finalized list to the State Government for appointment.

(9) If any complaint is made against an Ombudsman, the Selection Committee shall hold necessary inquiry.

(10) The Selection Committee shall complete the inquiry and submit its report within a period of one month to the State Government. The State Government shall take appropriate action based on the report of the inquiry by the Selection Committee within two months.

(11) If a criminal case is registered against the Ombudsman, State Government may suspend the appointment for such term as appropriate after due inquiry.

13. Procedure in inquiries, appeals and revision proceedings.- Ombudsman while holding any inquiry under any of the provisions of the Act and these rules, shall follow such procedure as may be prescribed and subject thereto, shall follow the procedure laid down for Civil Court under Code of Civil Procedure (CPC), 1908.

14. Report be treated as confidential- All reports related to any child affected by HIV or HIV-affected person or HIV-positive person and considered by the Ombudsman or officer or healthcare provider or institution shall be treated as confidential:

Provided that the Ombudsman may, if it so thinks fit, allow access to case record, orders and relevant papers of any child affected by HIV or HIV-affected person or HIV-positive person

15. Public awareness on provisions of Act and these rules- The State Government shall take necessary measures to ensure that—
(a) The provisions of the Act and these rules are given wide publicity through media including television, radio and print media at regular intervals so as to make the general public, child affected by HIV or HIV-affected person or HIV-positive person aware of such provisions;

(b) The officers of the State Government and other concerned, persons are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

16. Ombudsman to be public servants.- The Ombudsman shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

17. Protection of action taken in good faith- No suit, prosecution or other legal proceeding shall lie against the Ombudsman or officer of the State Government or any person acting under the directions of the Ombudsman or State Government, as the case may be, in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules made thereunder.

18. Non-Compliance of the Act and Rules- Any Ombudsman or officer or healthcare provider or institution who fails to comply with the provisions of the Act and the Rules framed thereunder, the State Government may take action against such Ombudsman or officer or healthcare provider or institution etc. after due inquiry and simultaneously make alternative arrangements for discharge of functions for effective implementation of the Act and rules.

Secretary to Government of Gujarat
Form for making Complaint to Ombudsman

For Official Use only:

Unique Complaint Number: ________________________________

In-Referral: Self/State Level Networks/DLN/NGOs/Other

Name: _________________________ (Optional) Date: __________________

Phone/MobileNo: ______________________________________________________

Email: ______________________________________________________________

Fax: ________________________________________________________________

Address for communication: ____________________________________________

___________________________________________________________________

___________________________________________________________________

Date of Incident ______________________

Place of Incident ______________________

Description of incident ________________________________________________

___________________________________________________________________

___________________________________________________________________

Person/Institution responsible for the incident: _____________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

Signature/Thumb Impression of Complainant*
Note: Suggestion/Comment sent on Gujarat State AIDS Control Society (Health & Family Welfare Department, Govt. of Gujarat) email id sacsgujarat@gmail.com till 31st May’2019