



Government of Jammu and Kashmir
Health and Medical Education Department
Civil Secretariat, Srinagar / Jammu.

Notification

Jammu, the 13th August, 2020

²⁵⁴
S.O:- In exercise of the powers conferred by section 49 read with section 23, 24, 25, and 34 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (16 of 2017) the Lieutenant Governor of the Union territory of Jammu and Kashmir hereby makes the following rules for the purpose of provisions of the said Act: -

1.Short title, and commencement.-(1) These rules may be called the Jammu and Kashmir Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2020.

(2) These rules shall come into force on and with effect from 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, unless otherwise notified, the Jammu and Kashmir AIDS Control Society;
- (c) **"Ombudsman"** means an Officer appointed or designated by the Government, as the case may be, under section 23 of the Act;


GA

- (2) Words and expressions used in these rules but not defined shall have the same meaning as assigned to them in the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

3. Provision of Free Diagnostic Facilities of HIV/AIDS, Antiretroviral Therapy/Treatment and Opportunistic Infections Management:-

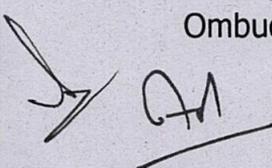
(1) The AIDS Control Society of Union territory of Jammu and Kashmir shall provide free diagnostic services related to HIV/AIDS and other opportunistic infections to all citizens in Government Health Facilities (Primary Health Centres or Community Health Centres or Sub Divisional Hospitals or District Hospitals or Government Medical Colleges and Hospitals).

(2) Anti-Retroviral Therapy / Treatment (ART) drugs shall be provided free of cost at all Government Health Facilities in accordance with the guidelines issued by the National AIDS Control Organisation and J&K AIDS Control Society to all HIV positive persons;

4. Qualification for the appointment of the Ombudsman: -(1) Any person who is a retired District or Sessions Judge may be appointed as Ombudsman under clause (a) of section 23 of the Act, or;

(2) Any Officer not below the rank of Director Health Services from Health and Medical Education Department shall be designated as Ombudsman under clause (b) of section 23 of the Act:

Provided that where a person other than a retired District or Session's Judge is appointed as Ombudsman, the Department of Law Justice and Parliamentary Affairs of Union territory of Jammu and Kashmir shall provide him with the assistance on legal issues that may arise in the course of his work, as and when required by such Ombudsman.

Handwritten signature and initials, possibly 'AM', with a horizontal line underneath.

5. Jurisdiction of Ombudsman: - The jurisdiction of the Ombudsman shall be specified at the time of appointment of the Ombudsman.

6. Terms of Office and Conditions of Services of the Ombudsman:-(1) The Ombudsman shall hold the office for a term of three years from the date on which he / she enters the office and shall be eligible for re-appointment to that office for a further term not exceeding three years:

Provided that no Ombudsman shall hold the office after he has attained the age of 70 years.

- (2) The Ombudsman shall be eligible for salary, allowances equivalent to last pay drawn minus the amount of pension including any commuted pension thereon;
- (3) The salary and allowances of the Ombudsman shall be disbursed by the Health & Medical Education Department of Union Territory of Jammu and Kashmir.
- (4) The Ombudsman may relinquish office by giving written notice of not less than three months to the Government.

7. Removal of Ombudsman: - The Government shall remove an Ombudsman from office who;

- (a) is, or at any time has been, adjudged insolvent;
- (b) has become physically or mentally incapable of acting as Ombudsman;
- (c) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the Government likely to prejudicially affect such person's functions as the Ombudsman; or
- (d) has so abused the position as to render continuation in office detrimental to the public interest:

Provided that an Ombudsman shall not be removed from office without getting a reasonable opportunity of being heard in the matter.

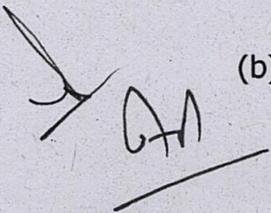
✓
QA

8. Manner of inquiring into complaints by Ombudsman.-(1) The Ombudsman shall act in an objective and independent manner when inquiring into complaints made under the Act;

- (2) 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;
- (3) No cross-examination shall be permitted in inquiries before the Ombudsman;
- (4) 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;
- (5) The Ombudsman may have the power to pass interim orders in cases of medical emergency without hearing the parties;
- (6) The Ombudsman shall have the power to pass orders, including to, withdrawal and rectification of the violation, counselling, social service etc;
- (7) The Ombudsman shall inform the complainant of the action taken; and
- (8) The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman's order.

9. 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 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;

Handwritten signature and initials, possibly 'GA', with a horizontal line underneath.

- (c) record the time of the complaint and the action taken thereby on the complaint in the register;
- (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.

10. Manner of making complaints to 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 alleged violation took place:

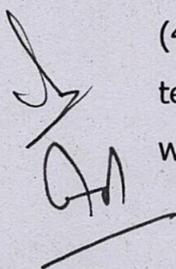
Provided that the Ombudsman may, for reasons to be recorded in writing, extend the time limit to make the complaint by a further period of three months, if he is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period.

(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 submit 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:

Handwritten signature and initials in the bottom left corner of the page.

Provided that the Government, within seven days of the appointment of the Ombudsman shall establish a website of the Ombudsman.

11. Government to disseminate information on Ombudsman:(1)

Within thirty days of the appointment of the Ombudsman, the Appropriate Authority 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;

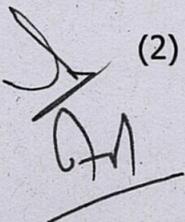
(2) Such dissemination shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities;

12. Manner of 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 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

Handwritten signature and initials, possibly 'AM', written in black ink.

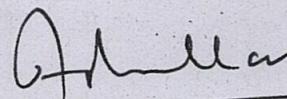
the court in such manner that the identity and identifying details of the protected person involved in the legal proceeding are kept confidential.

- (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.


By Order of the Lieutenant Governor.



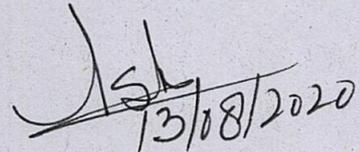
Atal Dulloo (IAS)
Financial Commissioner,
Health & Medical Education Department

No: ME/Legal/Genl/68/2019

Dated: 13-08-2020

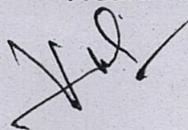
Copy to the: -

1. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
2. Joint Secretary J&K, Ministry of Home Affairs, Government of India, New Delhi.
3. Administrative Secretary, Social Welfare Department, J&K Government.
4. Administrative Secretary, General Administration Department, J&K Government.
5. Administrative Secretary, Department of Law Justice and Parliamentary Affairs, J&K Government.
6. Director SKIMS, Soura Srinagar.
7. Mission Director, National Health Mission J&K.
8. Principal, Government Medical College Jammu / Srinagar / Anantnag/ Baramulla / Doda / Kathua / Rajouri.
9. Director Health Services, Kashmir / Jammu.
10. Director, Family Welfare, MCH & Immunization, J&K.
11. Director, Indian System of Medicine, J&K.
12. Managing Director, J&K Medical Supplies Cooperation Ltd.
13. State Drugs Controller, Drugs & Food Control Organization, J&K.
14. Project Director, AIDS Control Society Organization, J&K.
15. Director Archieves, Archeology & Museum J&K.
16. OSD to the Advisor (B) to Hon'ble Lieutenant Governor, J&K.
17. General Manager, Government Press, Jammu for publication in the next issue of the Government Gazette.
18. Private Secretary to Chief Secretary.
19. Private Secretary to Financial Commissioner, Health & Medical Education Department.
20. Incharge website for hosting the S.O on the official website.
21. Stock File.


13/08/2020

Sajad Amin Shah

Additional Secretary to Government
Health & Medical Education Department



APPENDIX
See rule 10(2)

Complaint

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*