THE PHILIPPINE HIV AND AIDS POLICY ACT OF 2018

A primer

TLF SHARE COLLECTIVE, INC.
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SERBISYONG SAPAT
PARA SA LAHAT

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THE HIV AND AIDS SITUATION IN THE PHILIPPINES

Based on the latest figures from the UNAIDS,[1] the Philippines is in an alarming state when it comes to the HIV and AIDS situation. As shown in Figure 1 below, the Philippines registers the highest percentage change in new HIV infections in Asia and the Pacific during the past decade.

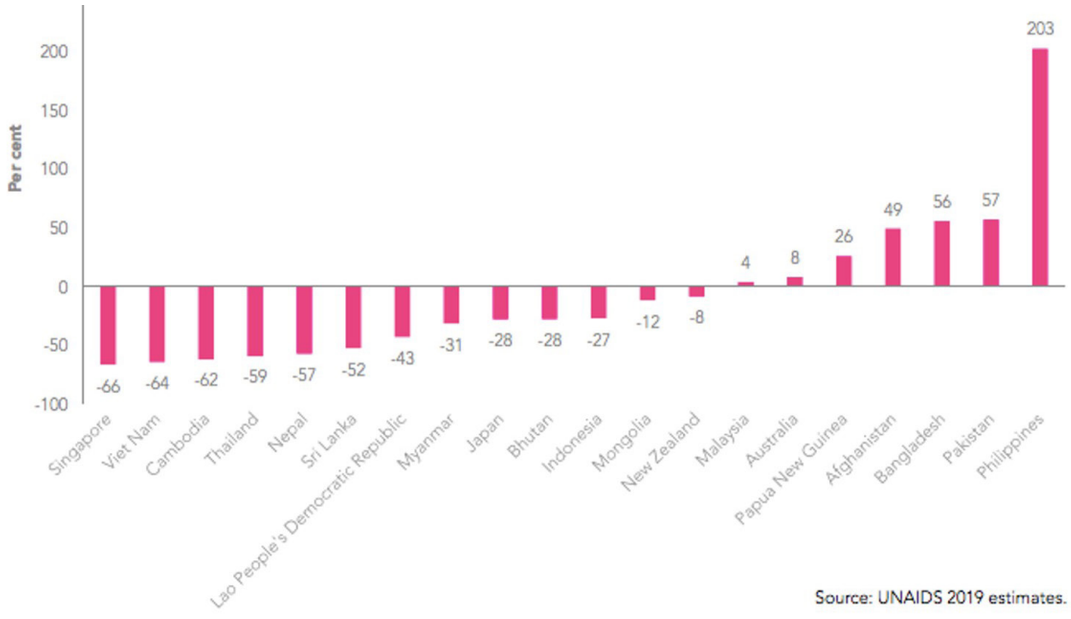

Figure 1. Percentage change in new infections, by country, in Asia and the Pacific, 2010-2018.[2]

In June 2019 alone, there were 1,006 newly confirmed HIV-positive individuals based on the HIV/AIDS & ART Registry of the Philippines (HARP).[3] Young persons account for the highest proportion of total estimated new HIV infections, with the Philippines registering 69% of new HIV cases belonging to the 15-24 age group as shown in Figure 2.

[1] UNAIDS, UNAIDS Data 2019, available at: https://www.unaids.org/sites/default/files/media_asset/2019-UNAIDS-data_en.pdf (last accessed 18 September 2019), hereinafter UNAIDS 2019.
[2] *Id.*, at 139.
[3] Department of Health, *HIV/AIDS & ART Registry of the Philippines June 2019, available at* https://www.aidsdatahub.org/sites/default/files/ publication/EB_HARP_June_AIDSreg2019.pdf *(last accessed 2 October 2019)*, hereinafter HARP, June 2019.

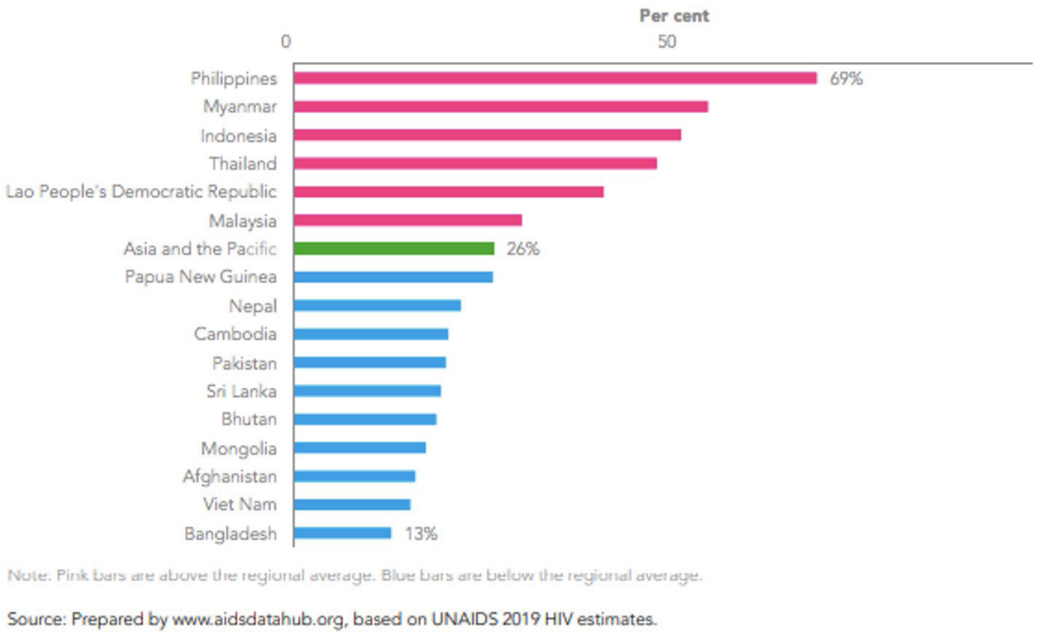

Figure 2. Proportion of young people among total estimated new HIV infections, Asia and the Pacific 2018.[4]

Since 1984, the HIV and AIDS epidemic trend shifted from predominantly females to predominantly males, including people who were assigned male sex at birth but identify as women (transgender women).[5]

While the rest of Asia and the Pacific have shown a modest decline at nine percent for new HIV cases, the Philippines has faltered in its prevention programs and saw a steep increase in new HIV infections.[6]

According to the United Nations Development Programme (UNDP) – Philippines, the uptrend is attributable to "less than optimal programme coverage for most-at-risk populations."[7] The country's prevention coverage ranges only from five to 63 percent, below the target mark of 80 percent, with the key populations of men having sex with men (MSM) and people who inject drugs (PWID) suffering the most from the lack of sufficient prevention coverage.[8]

[4] UNAIDS 2019, *supra* note 1, at 136-7.
[5] HARP, June 2019, *supra* note 3.
[6] *Id.*
[7] UNDP, *Country AIDS Situation, available at* http://www.ph.undp.org/content/philippines/en/home/ourwork/hiv_aids/in_depth.html (last accessed 14 September 2019), *hereinafter* UNDP.
[8] *Id.*

Stigma and discrimination against people living with HIV (PLHIV) create an environment that makes it harder for people to get tested and seek care, and as high as 71.2 percent of women aged 15-49 reported discriminatory attitudes towards PLHIV.[9] Based on the 2019 PLHIV Stigma Index Study,[10] many PLHIV experience being the topic of gossip of other people and receiving discriminatory remarks. There are incidents when the discriminatory remarks come from family members who also gossip about the PLHIV. There are also cases of verbal harrassment, refusal of employment, and incidents of blackmailing.

Further, expanding HIV prevention measures such as condom use and cascading HIV testing and treatment remain to be a country challenge.[11] Only 16.1 percent of men who sex with men (MSM) know their status, while only 14.7 percent of transgender (TG) women has undergone HIV testing to know their status.[12] The figures are worrisome as most of the new HIV cases occur among MSM and TG.[13]

The HIV epidemic has shown that the previous law (Republic Act 8504 or the Philippine AIDS Prevention and Control Act of 1998) had serious gaps which led to structural deficiences in implementing prevention and control programs in the Philippines.[14] The problem areas included structural ambiguity in the HIV and AIDS law which conflicts with other laws such as the Dangerous Drugs Act and the Anti-Trafficking Law; unclear delineation of functions among the Philippine National AIDS Council, Secretariat, and the working committees; poor public investment in the HIV response; and the law's inability to address persistent stigma and discrimination.[15]

Health advocates are now placing their hopes on Republic Act (R.A.) No. 11166 or the Philippine HIV and AIDS Policy Act of 2018 to address the HIV and AIDS crisis in the Philippines. The challenge includes ensuring that the new law is fully funded and implemented to provide access to preventive and curative measures most especially to the key affected populations.

[9] UNAIDS, *Communities at the Centre The Response to HIV in Asia and the Pacific, available at* https://www.unaids.org/sites/default/files/ media_asset/2019-global-AIDS-update_asia-pacific_en.pdf (*last accessed* 19 September 2019).
[10] Klariness Tanalgo, et al., *2019 PLHIV Stigma Index Study,* (forthcoming). For more information about this study, please contact TLF Share.
[11] UNDP, *supra* note 7, at 61.
[12] *Id.*
[13] Department of Health, *Philippines Addresses Rising Trend in New HIV Infections, available at* https://www.doh.gov.ph/node/10649 (*last accessed* 14 September 2019).
[14] Jonas Bagas, *A Policy Brief on the HIV and AIDS Legal Framework, PLCPD Policy Brief, available at* http://www.plcpd.org.ph/wp-content/uploads/ 2014/08/HIV-AIDS-policy-brief.pdf (*last accessed* 2 October 2019).
[15] *Id.*

THE PHILIPPINE HIV AND AIDS POLICY ACT OF 2018 AT A GLANCE

On 20 December 2018, R.A. 11166 was signed into law. After 20 years of experience with the first HIV and AIDS law, the Philippines has enacted a new law which aims to address the gaps in the old law which was hardly enforced. Prior to R.A. 11166, the "capacities of key institutions to carry out their mandates remain weak, programmes are unfunded or under funded, and programme implementation, monitoring and coordination has been largely at the 'project' level."[16]

The Implementing Rules and Regulations (IRR) was adopted by the Philippine National AIDS Council (PNAC) on 12 July 2019. The new law and its IRR are clearly a product of multi-sectoral consultations compared to the old law, which was expressly repealed by R.A. 11166.

As a landmark legislation of its time, R.A. 11166 is anchored on the principles of human rights and upholding human dignity. The new law is multi-faceted and looks into wide-ranging social, political, and economic repercussions of the HIV and AIDS situation. The prohibition against discrimination extends to perceived or actual HIV status, and also protects persons regardless of sex, gender, sexual orientation, gender identity and expression, age, economic status, disability, and ethnicity. The new law also categorically defined HIV and AIDS education and information as forming the right to health which is a crucial part of health promotion efforts. R.A. 11166 promotes the meaningful inclusion and participation of persons affected by the HIV and AIDS situation, and retained the principles of confidentiality and non-compulsory nature of HIV testing. Access to health services are expanded to cover not only HIV and AIDS treatment, but also to cover opportunistic infections.

[16] UNDP, *supra* note 7.

The new law reconstituted the PNAC and placed the agency under the aegis of the DOH. R.A. 11166 champions a multi-sectoral approach involving various sectors such as local communities, civil society organizations, and PLHIV. The old law was largely considered to be health sector-led, and it is hoped that the more expansive composition of the PNAC will encourage greater participation from various sectors to mobilize the campaign against HIV and AIDS using a whole-of-society approach to health.

Information, education, and communication campaigns must be based on up-to-date evidence and scientific strategies as recommended by the DOH. Since the new law defined HIV and AIDS education as integral to right to health, educators are now under obligation to provide age-appropriate, culture-sensitive and gender-responsive strategies that promote safer sex practices that reduce risk of HIV infection – including consistent and correct use of condom especially among key populations. Education on HIV and AIDS has been expanded to cover workplaces, even for Filipinos going abroad.

The new law allows for the establishment and enforcement of rights-based mechanisms to promote HIV status disclosure to partners, and encourages partner notification without any corresponding criminal penalty for non-disclosure. R.A. 11166 also protects health service providers since the law prohibits the presence of used or unused prophylactics as basis for conducting raids or police operations in sites and venues of HIV prevention interventions.

For HIV screening and testing, the law retained the voluntary nature of testing as a matter of policy. As an important innovation, minors aged 15 to below 18 may consent to voluntary HIV testing even without the consent of a parent or guardian. Further, the new law adopted the mature minor doctrine which allows any young person below 15 to consent to HIV testing provided that the minor is engaged in high risk behavior or is pregnant.

Health and support services are expanded to ensure that PLHIV will have free and accessible anti-retroviral treatment (ART). The new law also provides free and accessible medications to address opportunistic infections.

Confidentialy of HIV status and privacy of any individual remain to be an important aspect of any HIV and AIDS policy, and the law penalizes disclosures that violate confidentiality and privacy. R.A. 11166 also incorporates the Cybercrime Prevention Act of 2012 and the Data Privacy Act of 2012 to address media disclosures including in the social media platform.

Finally, the new law expanded the list of prohibited discriminatory acts and practices in the workplace and in learning institutions. Restrictions on travel and habitation, on shelter, and prohibition from seeking or holding public office by virtue solely or partially on the basis of actual, perceived, or suspected HIV status are banned. The law protects PLHIV against insurance providers which exclude patients from insurance services by virtue of HIV status. Further, discrimination in hospitals and health institutions, denial of burial services, acts of bullying, and similar or analogous discriminatory acts are penalized.

There is a need to increase awareness about R.A. 11166 in order to fully realize the merits and benefits of the new law. Further, legal literacy promotes access to effective programs and services with the ultimate goal of comprehensively responding to the HIV and AIDS epidemic. This primer is created specifically to addess this purpose. The primer uses a Question and Answer format with the main objective of addressing common topics of confusion and concern among various sectors, including PLHIV and key affected populations.

IMPLEMENTING RULES AND REGULATIONS

RULE 1
Title and Application

Section 1 *Title*. This resolution shall be known as the "Implementing Rules and Regulations of the Philippine HIV and AIDS Policy Act".

Section 2 *Purpose*. The Implementing Rules and Regulations (IRR) shall prescribe guidelines, procedures and standards for the implementation of the mandates and objectives of R.A. No. 11166, and to ensure and facilitate compliance to its provisions.

Section 3 *Declaration of Policies*.

a) The Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) are public health concerns that have wide-ranging social, political, and economic repercussions. Responding to the country's HIV and AIDS situation is therefore imbued with public interest and shall be anchored on the principles of human rights upholding human dignity.

b) Policies and practices that discriminate on the basis of perceived or actual HIV status, sex, gender, sexual orientation, gender identity, age, economic status, disability, and ethnicity hamper the enjoyment of basic human rights and freedoms guaranteed in the Constitution and are deemed inimical to national interest.

c) The State shall respect, protect, and promote human rights as the cornerstones of an effective response to the country's HIV and AIDS situation. Hence, HIV and AIDS education and information dissemination shall form part of the right to health.

d) The meaningful inclusion and participation of persons directly and indirectly affected by HIV and AIDS, especially persons living with HIV, are crucial in eliminating the virus. Thus, unless otherwise provided in this IRR, the

confidentiality, and the non-compulsory nature of HIV testing and HIV-related testing shall always be guaranteed and protected by the State.

e) Towards this end, the State shall ensure the delivery of non-discriminatory HIV and AIDS services by the government and private HIV and AIDS service providers and shall develop redress mechanisms for persons living with HIV to ensure that their civil, political, economic, and social rights are protected.

f) Accordingly, the State shall:

1. Establish policies and programs to prevent the spread of HIV and deliver treatment, care, and support services to Filipinos living with HIV in accordance with evidence-based strategies and approaches that uphold the principles of human rights, gender-responsiveness, and age-appropriateness, including meaningful participation of communities affected by HIV and AIDS situation;

2. Adopt a multi-sectoral approach in responding to the country's HIV and AIDS by ensuring that the whole of government approach, local communities, civil society organizations, and persons living with HIV are at the center of the process;

3. Ensure access to HIV and AIDS-related services by eliminating the climate of stigma and discrimination that surrounds the country's HIV and AIDS situation and the people directly and indirectly affected by it; and

4. Positively address and seek to eradicate conditions that aggravate the spread of HIV infection, which include poverty, gender inequality, marginalization, and ignorance.

Section 4 *Definition of Terms*. For the purposes of this IRR, the following terms shall be defined as follows:

a) *Acquired Immune Deficiency Syndrome (AIDS)* refers to a health condition where there is a deficiency of the immune system that stems from infection with the Human Immunodeficiency Virus (HIV) making an individual susceptible to opportunistic infections;

b) *Act* refers to Republic Act No. 11166;

c) *Anti-retroviral therapy (ART)* refers to the treatment that stops or suppresses viral replication or replications of a retrovirus, like HIV, thereby slowing down the progression of infection;

d) *Bullying* refers to any severe or repeated use by one or more persons of a written, verbal or electronic expression, or a physical act or gesture, or any combination thereof, directed at another person that has the effect of actually causing or placing the latter in reasonable fear of physical or emotional harm or damage to one's property; creating a hostile environment for the other person; infringing on the rights of another person; or materially and substantially disrupting the processes or orderly operation of an institution or organization;

e) *Civil Society Organizations (CSOs)* refers to groups of non-governmental and non-commercial individuals or legal entities that are engaged in non-coerced collective action around shared interests, purpose and values;

f) *Community-based research* refers to studies undertaken in community settings and which involve community members in the design and implementation of research projects;

g) *Comprehensive Health Intervention for Key Populations* refers to evidence-based policies, programs and approaches that aim to reduce transmission of HIV and its harmful consequences on health, social relations and economic conditions;

h) *Compulsory HIV testing* refers to HIV testing imposed upon an individual characterized by lack of consent, use of force or intimidation, the use of testing as a prerequisite for employment or other purposes, and other circumstances when informed choice is absent;

i) *Culture-sensitive* refers to the quality of the implementation of HIV programs and services being compatible and appropriate to the culture, beliefs, customs and traditions, indigenous systems and practices;

j) *Discrimination* refers to unfair or unjust treatment that distinguishes, excludes, restricts, or shows preferences based on any ground such as sex, gender, age, sexual orientation, gender identity and expression, economic status, disability, ethnicity, and HIV status, whether actual or perceived, and all other similar or analogous cases, and which has the purpose or effect of nullifying or impairing the

recognition, enjoyment or exercise by all persons similarly situated, or all rights and freedoms;

k) *Evolving capacities of the child* refers to the concept enshrined in Article 5 of the Convention on the Rights of the Child recognizing the developmental changes and the corresponding progress in cognitive abilities and capacity for self-determination undergone by children as they grow up, thus requiring parents and others charged with the responsibility for the child to provide varying degrees of protection and to allow their participation in opportunities for autonomous decision-making in different contexts and across different areas of decision-making;

l) *Gender expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, communication or speech pattern, or body characteristics;

m) *Gender identity* refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with the physiological characteristics of the opposite sex;

n) *Gender-responsive* refers to the ability to substantively address gender issues identified through gender analysis of sex-disaggregated data and gender-related information;

o) *Gender-sensitive* refers to the ability to recognize and acknowledge the differences in roles, needs, and perspectives of women and men, possible asymmetries in their relationship, and the possibility that actions or interventions will have different effects on, and results for, women and men based on their gender, but do not actively seek to address these issues;

p) *Health Maintenance Organization (HMO)* refers to juridical entities legally organized to provide or arrange for the provision of pre-agreed or designated health care services to its enrolled members for a fixed pre-paid fee for a specified period of time;

q) *High-risk behavior* refers to a person's involvement in certain activities that increase the risk of transmitting or acquiring HIV;

r) *Human Immunodeficiency Virus (HIV)* refers to the virus, of the type called retrovirus, which infects cells of the human immune system, and destroys or impairs the cells' function. Infection with HIV results in the progressive deterioration of the immune system, leading to immune deficiency;

s) *HIV counseling* refers to the interpersonal and dynamic communication process between a client and a trained counselor, who is bound by a code of ethics and practice, to resolve personal, social, or psychological problems and difficulties, whose objective in counseling, in the context of an HIV diagnosis, is to encourage the client to explore important personal issues, identify ways of coping with anxiety and stress, and plan for the future (keeping healthy, adhering to treatment, and preventing transmission); and in the context of a negative HIV test result, to encourage the client to explore motivations, options, and skills to stay HIV-negative;

t) *HIV and AIDS counselor* refers to any individual trained by an institution or organization accredited by the Department of Health (DOH) to provide counseling services on HIV and AIDS with emphasis on behavior modification;

u) *HIV and AIDS monitoring* refers to the documentation and analysis of the number of HIV and AIDS infections and the pattern of its spread;

v) *HIV and AIDS prevention and control* refers to measures aimed at protecting non-infected persons from contracting HIV and minimizing the impact of the condition of persons living with HIV;

w) *HIV-Negative* refers to the absence of HIV or HIV antibodies upon HIV testing;

x) *HIV-Positive* refers to the presence of HIV infection as documented by the presence of HIV or HIV antibodies in the sample being tested;

y) *HIV Testing* refers to any facility-based, mobile medical procedure, or community-based screening modalities that are conducted to determine the presence or absence of HIV in a person's body. HIV testing is confidential, voluntary in nature, and must be accompanied by counseling prior to and after the testing, and conducted only with the informed consent of the person;

z) *HIV-related Testing* refers to any laboratory testing or procedure done on an individual in relation to a person's HIV condition;

aa) *HIV Testing Facility* refers to any DOH-accredited on-site or mobile testing center, hospital, clinic, laboratory, and other facility that has the capacity to conduct voluntary HIV counseling and HIV testing;

bb) *HIV Transmission* refers to the transfer of HIV from one infected person to an uninfected individual, through unprotected sexual intercourse, blood transfusion, sharing of contaminated intravenous needles, or which may occur during pregnancy, delivery, and breastfeeding;

cc) *Informed Consent* refers to the voluntary agreement of a person to undergo or be subjected to a procedure based on full information, whether such permission is written or conveyed verbally;

dd) *Indigent* refers to a condition when a person does not have the financial means to pay for their medical expenses and/or practical support as determined by a licensed social worker through a needs based assessment;

ee) *Key Affected Populations* or *Key Population* refers to those groups or persons at higher risk of HIV exposure, or affected populations whose behavior make them more likely to be exposed to HIV or to transmit the virus;

ff) *Laboratory* refers to an area or place, including community-based settings, where research studies are being undertaken to develop local evidence for effective HIV response;

gg) *Mature minor doctrine* refers to the legal principle that recognizes the capacity of some minors to consent independently to medical procedures, if they have been assessed by qualified health professionals to understand the nature of procedures and their consequences and to make a decision on their own;

hh) *Medical confidentiality* refers to the core duty of medical practice where the information provided by the patient to health practitioners and his/her health status is kept private and is not divulged to third parties. The patient's health status can, however, be shared with other medical practitioners involved in the professional care of the patient, who will also be bound by medical confidentiality. Medical confidentiality applies to the attending physician, consulting medical specialist, nurse, medical technologist, and all other health workers or personnel involved in any counseling, testing or professional care of the patient. It also applies to any person who, in any official capacity, has acquired or may have acquired such confidential information;

ii) *Opportunistic infections* refer to illnesses caused by various organisms many of which do not cause diseases in persons with healthy immune system;

jj) *Outpatient HIV and AIDS Treatment (OHAT)* refers to the benefit package for outpatient treatment of HIV and AIDS offered by PhilHealth;

kk) *Partner notification* refers to the process by which the "index client", "source", or "patient", who has a sexually transmitted infection (STI), including HIV, is given support in order to notify and advise the partners that have been exposed to infection. Support includes giving the index client a mechanism to encourage the client's partner to attend counseling, testing and other prevention and treatment services. Confidentiality shall be observed in the entire process;

ll) *Person Living with HIV (PLHIV)* refers to any individual diagnosed to be infected with HIV;

mm) *Persons with Disabilities* refers to those who are suffering from restriction or different abilities, as a result of a mental, physical, or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being as defined in Republic Act No. 7277, as amended by Republic Act No. 9442, otherwise known as the "Magna Carta for Disabled Persons";

nn) *Pre-exposure prophylaxis* refers to the use of prescription drugs as a strategy for the prevention of HIV infection by people who do not have HIV and AIDS. It is an optional treatment which may be taken by people who are HIV-negative but who have substantial, higher-than-average risk of contracting an HIV infection;

oo) *Pre-test counseling* refers to the process of providing an individual with information on the biomedical aspects of HIV and AIDS and emotional support to any psychological implications of undergoing HIV testing and the test result itself before the individual is subjected to the test;

pp) *Post-exposure prophylaxis* refers to a preventive medical treatment started immediately after exposure to a pathogen (HIV) in order to prevent infection by the pathogen and the development of the disease;

qq) *Post-test counseling* refers to the process of providing risk-reduction information and emotional support to a person who has submitted to HIV testing at the time the result is released;

rr) *Private sector* refers to groups, associations, schools, colleges, and universities, business enterprises owned and operated by private individuals or groups, and other organizations and establishments, including individuals, which are not part of the government and CSOs as defined in this IRR;

ss) *Prophylactic* refers to any agent or device used to prevent the transmission of an infection;

tt) *Provider-initiated counseling and testing* refers to a health care provider initiating HIV testing to a person practicing high-risk behavior or vulnerable to HIV after conducting HIV pre-test counseling. A person may elect to decline or defer testing such that consent is conditional;

uu) *Redress* refers to an act of compensation for unfairness, grievance, and reparation;

vv) *Safer sex practices* refer to choices made and behaviors adopted by a person to reduce or minimize the risk of HIV transmission. These may include postponing sexual debut, non-penetrative sex, correct and consistent use of male or female condoms, and reducing the number of sexual partners;

ww) *Sexually Transmitted Infections (STIs)* refers to infections that are spread through the transfer of organisms from one person to another as a result of sexual contact;

xx) *Sexual orientation* refers to the direction of emotional and sexual attraction or conduct towards people of the same sex (homosexual orientation) or towards people of both sexes (bisexual orientation) or towards people of the opposite sex (heterosexual orientation), or to the absence of sexual attraction (asexual orientation);

yy) *Social protection* refers to a set of policies and programs designed to reduce poverty and vulnerability by promoting efficient labor markets, diminishing people's exposure to risks, and enhancing their capacity to protect themselves against hazards and interruptions on or loss of income;

zz) *Stigma* refers to the dynamic devaluation and dehumanization of an individual in the eyes of others, which may be based on attributes that are arbitrarily defined by others as discreditable or unworthy and which results in discrimination when acted upon;

aaa) *Treatment hubs* refers to private and public hospitals or medical establishments accredited by DOH to have the capacity and facility to provide treatment and care services to PLHIV;

bbb) *Voluntary HIV testing* refers to HIV testing done on an individual who, after having undergone pre- test counseling, willingly submits to such test;

ccc) *Vulnerable communities* refer to communities and groups suffering from vulnerabilities, such as unequal opportunities, social exclusion, poverty, unemployment, and other similar social, economic, cultural and political conditions, making them more susceptible to HIV infection and to developing AIDS; and

ddd) *Workplace* refers to the office, premise or work site where workers are habitually employed and shall include the office or place where workers, with no fixed or definite work site, regularly report for assignment in the course of their employment.

RULE 2
The Philippine National AIDS Council

Section 5 *Philippine National AIDS Council (PNAC).*

a) The PNAC shall ensure the implementation of the country's response to the HIV and AIDS situation.

b) The PNAC shall be an agency attached to the DOH with a separate budget under the General Appropriations Act (GAA). It shall have its own Secretariat and staffing pattern, and shall be headed by an Executive Director.

Section 5.1 *Functions.*

a) The PNAC shall perform the following functions:

1. Develop and regularly review an AIDS Medium Term Plan (AMTP) in collaboration with relevant government agencies, LGUs, CSOs, the PLHIV community, and other stakeholders. The AMTP shall include the following:

i. The country's targets and strategies in addressing the HIV and AIDS situation;

ii. The prevention, treatment, care and support, and other components of the country's response;

iii. The operationalization of the program and identification of the government agencies that shall implement the program, including the designated office within each agency responsible for overseeing, coordinating, facilitating and monitoring the implementation of its HIV and AIDS program from the national level to the local level; and

iv. The budgetary requirements and a corollary investment plan of each government agency and CSOs specified in the AMTP, and shall identify the sources of funds for its implementation.

2. Ensure the operationalization and implementation of the AMTP;

3. Strengthen the collaboration between government agencies and CSOs involved in the implementation of the national HIV and AIDS response, including the delivery of HIV and AIDS related services;

4. Develop and ensure the implementation of the guidelines and policies provided in this Act, including other policies that may be necessary to implement the AMTP;

5. Monitor the progress of the response to the country's HIV and AIDS situation and actively seek good practices from all stakeholders;

6. Monitor the implementation of the AMTP, which includes the AMTP investment plan, undertake mid-term assessments, and evaluate its impact;

7. Mobilize sources of funds for the AMTP;

8. Direct and require its members to conduct monitoring and evaluation in all of the HIV-related programs, policies, and services undertaken within their respective mandates, and to submit an annual report. In relation to this, other government agencies, LGUs, CSOs, the PLHIV community, and other stakeholders are enjoined to submit similar reports to the appropriate PNAC member;

9. Coordinate, organize, and work in partnership with foreign and international organizations regarding funding, data collection, research, and prevention and treatment modalities on HIV and AIDS, and ensure that foreign-funded programs are aligned to the national plan and response;

10. Advocate for policy reforms to Congress and other government agencies to strengthen the country's response to the HIV and AIDS situation;

11. Submit an annual accomplishment/progress report on the accomplishments under the AMTP to the Office of the President, Congress and members of the Council;

12. Identify gaps in the national response on the part of government agencies and its partners from the civil society and international organizations in order to develop and implement the initial interventions required in these situations; and

13. Recommend policies and programs that will institutionalize or continue the interventions required in addressing the gaps identified in the national response to the HIV and AIDS situation of the country.

b) In addition to the powers and functions enumerated under the preceding paragraph, the members of the PNAC shall also develop and implement individual action plans which shall be anchored to and integrated in the AMTP. Such action plans shall be based on the duties, powers, and functions of the individual agencies as identified in Rule 4 to Rule 10 of this IRR.

Section 6 *Membership and Composition.*

a) The following shall be represented in the PNAC:

1. Department of Health (DOH) - Secretary of Health as permanent Chairperson
2. Department of Education (DepEd);
3. Department of Labor and Employment (DOLE);
4. Department of Social Welfare and Development (DSWD);
5. Department of the Interior and Local Government (DILG);
6. Department of Budget and Management (DBM);
7. Civil Service Commission (CSC);

8. Commission on Higher Education (CHED);

9. National Youth Commission (NYC);

10. Philippine Information Agency (PIA);

11. Chairperson of the Committee on Health and Demography of the Senate of the Philippines or his/her representative;

12. Chairperson of the Committee on Health of the House of Representatives or his/her representative;

13. Two (2) representatives from organizations of Persons Living with HIV and AIDS (PLHIV);

14. One (1) representative from the private organization with expertise in standard setting and service delivery; and

15. Six (6) representatives from NGOs working for the welfare of identified key populations.

b) The Vice Chairperson shall be elected from among the government agency members of the PNAC.

c) The PNAC may, as deemed necessary, invite to its meetings and activities other government agencies, NGOs, and experts, who have relevant expertise that may be useful to accomplish its mandate and mission under this IRR.

Section 6.1 *Selection Criteria.*

a) The selection and appointment of the members of PNAC shall be based on the following general criteria:

1. Government agencies or CSOs with direct contribution to the performance of the core functions of the PNAC (oversight, direction-setting and policy-making);

2. Government agencies or CSOs with existing programs, services and activities that directly contribute to the achievement of the AMTP;

3. Government agencies or CSOs with existing constituencies that are targeted by the AMTPs objectives and activities.

b) The heads of government agencies may designate an official representative to the PNAC whose rank shall not be lower than Assistant Secretary or its equivalent.

Section 6.2 *Meetings and Quorum.*

a) The PNAC shall meet at least once every quarter at any venue, the notice of the meeting, including the agenda for the meeting, shall be sent to the PNAC members at least one (1) month before the scheduled meeting, except on emergency basis, in which case a forty-eight (48) hour notice shall be sufficient.

The presence of the Chairperson or the Vice Chairperson of the PNAC, and at least ten (10) other PNAC members and/or permanent representative shall constitute a quorum to do business, and a majority vote of those present shall be sufficient to pass resolutions or render decisions.

b) Decisions made and resolutions passed by the PNAC shall be signed by majority of members of the PNAC, and attested by the Executive Director of the PNAC Secretariat.

Section 6.3 *Terms of Office.*

a) The Vice Chairperson shall serve for a term of three (3) years.

b) Members representing the CSOs shall serve for a term of three (3) years, renewable upon the recommendation of the Council for a maximum of two (2) consecutive terms.

Section 6.4 *Committees.*

a) The PNAC shall establish committees to conduct its work based on the AMTP.

b) The PNAC shall determine the role, functions, and membership of each committee and shall allocate the respective agenda and topic of their coverage based on the provisions of this IRR and the AMTP. Each committee shall have representatives from the CSO and a CSO representative as a co- chairperson.

c) The PNAC may, as deemed necessary, invite to its meetings and activities other government agencies, CSOs, and stakeholders, who have relevant expertise that may be useful in accomplishing its mandate and work.

RULE 3
Secretariat

Section 7 *PNAC Secretariat.*

a) The PNAC shall be supported by a secretariat consisting of personnel with the necessary technical expertise and capability whose appointments shall be issued subject to Civil Service law and rules. The Secretariat shall be headed by the Executive Director.

b) The PNAC Secretariat shall perform the following functions:

1. Coordinate and manage the day-to-day affairs of the PNAC;

2. Assist in the formulation, monitoring, and evaluation of policies and the AMTP;

3. Provide technical assistance, support, and advisory services to the PNAC and its external partners;

4. Assist the PNAC in identifying and building internal and external networks and partnerships;

5. Coordinate and support the efforts of the PNAC and its members to mobilize resources;

6. Serve as the repository of relevant information and data in relation to HIV and AIDS;

7. Disseminate updated, accurate, relevant, and comprehensive information to the members of the PNAC, the policy-makers, and the media on the situation of HIV and AIDS in the country;

8. Provide administrative support to the PNAC; and

9. Coordinate, fund and implement, as directed by the PNAC, the interventions required for the identified gaps in the implementation of the AMTP, in cooperation with the CSOs and the PLHIV community.

Section 8 *Executive Director.* The Executive Director shall be appointed by the President of the Philippines and under the direct supervision of the Chairperson of the PNAC.

Section 9 *The Role of DOH.*

a) The NASPCP, which shall be composed of qualified medical officers or medical specialists and support personnel with permanent appointments and with adequate yearly budget, shall coordinate with the PNAC for the implementation of the health sector's HIV and AIDS and STI response, as identified in the AMTP.

b) The Epidemiology Bureau shall maintain a comprehensive HIV and AIDS monitoring and evaluation program that shall serve the following purposes:

1. Determine and monitor the magnitude and progression of HIV and AIDS in the Philippines to help the PNAC evaluate the adequacy and efficacy of HIV prevention and treatment programs being employed;

2. Receive, collate, process, and evaluate all medical reports related to HIV and AIDS, including HIV-related deaths and relevant data, from public and private hospitals, various databanks or information systems: Provided, That it shall adopt a coding system that ensures anonymity and confidentiality; and

3. Submit, through the PNAC Secretariat, quarterly and annual reports to the PNAC containing the findings of its monitoring and evaluation activities in compliance with this mandate.

Section 10 *Protection of Human Rights.*

a) The country's response to the HIV and AIDS situation shall be anchored on the principles of human rights and human dignity. Public health concerns shall be aligned with internationally-recognized human rights instruments and standards.

b) The members of the PNAC, in cooperation with the CSOs, and in collaboration with the Department of Justice (DOJ) and the Commission on Human Rights (CHR), shall ensure the delivery of non- discriminatory HIV and AIDS services by government and private HIV and AIDS service providers.

c) The DOJ and CHR, in coordination with the PNAC and other relevant government agencies, shall take the lead in developing redress mechanisms for PLHIV, and any person who experience discrimination on the basis of perceived or suspected HIV status to ensure that their civil, political, economic, and social rights are protected.

d) The PNAC, in coordination with the DILG, shall collaborate and cooperate with local government units (LGUs) to strengthen existing mediation and reconciliation mechanisms at the local level through the Local AIDS Councils or its equivalent entity.

RULE 4
Information, Education and Communication

Section 11 *Prevention Program.*

a) The PNAC shall develop an HIV and AIDS prevention program to educate the public on HIV and AIDS and other STIs, with the goal of reducing risky behavior, lowering vulnerabilities, and promoting the human rights of PLHIV and eliminating stigma and discrimination.

b) The PNAC shall promote and adopt a range of measures and interventions, in partnership with CSOs that aim to prevent, halt, or control the spread of HIV in the general population, especially among the key populations and vulnerable communities. These measures shall likewise promote the rights, welfare, and participation of PLHIV and the affected children, young people, families, and partners of PLHIV.

c) The HIV and AIDS education and prevention programs based on up-to-date evidence and scientific strategies, as recommended by the DOH shall be conducted by concerned implementing agencies in an age-appropriate, culture-sensitive and gender-responsive manner. The HIV and AIDS education and prevention programs shall actively promote:

1. Safer sex practices among the general population, including sexual abstinence, sexual fidelity, and consistent and correct use of condom especially among key populations;

2. Other practices that reduce risk of HIV infection;

3. Universal awareness of and access to evidence-based and relevant information and education, and medically safe, legally affordable, effective and quality treatment; and

4. Knowledge of the health, civil, political, economic and social rights of PLHIV and their families.

Section 12 *Education in Learning Institutions*.

a) Using standardized information and data from the PNAC, the DepEd, CHED, and the Technical Education and Skills Development Authority (TESDA) shall integrate basic and age-appropriate, culture- sensitive and gender-responsive instruction on the causes, modes of transmission and ways of preventing the spread of HIV and AIDS and other STIs in their respective curricula taught in public and private learning institutions, alternative and indigenous learning systems, including training institutions catering to Persons with Disability. The learning modules shall include human rights-based principles and information on treatment, care and support to promote stigma reduction and prevent discrimination.

b) The learning modules to be developed to implement this provision shall be done in coordination with the PNAC and stakeholders in the education sector. Referral mechanisms, including but not limited to, the DSWD Referral System, shall be included in the modules for key populations and vulnerable communities.

c) The DepEd, CHED, and TESDA shall ensure the development and provision of psychosocial support and counseling in learning institutions, for the development of positive health, and promotion of values and behavior pertaining to reproductive health, in coordination with the DOH. For this purpose, funds shall be allocated by the concerned government agencies for the training and certification of teachers and school counselors for the effective implementation of this provision.

Section 13 *Education for Parents and Guardians*. The DepEd, in coordination with parent-teacher organizations in schools and communities, shall conduct awareness-building seminars in order to provide parents and guardians with a gender-responsive and age-sensitive HIV and AIDS education.

Section 14 *Education as a Right to Health and Information*. HIV and AIDS education and information dissemination shall form part of the constitutional right to health.

Section 15 *HIV and AIDS information as a Health Service*.

a) HIV and AIDS education and information dissemination shall form part of the

delivery of health services by health practitioners, workers and personnel. The knowledge and capabilities of all public health workers shall be enhanced to include skills for proper information dissemination and education on HIV and AIDS.

b) It shall be the civic duty of health providers in the private sector to provide the public with necessary information to prevent and control the spread of HIV and AIDS and to correct common misconceptions about the disease.

c) The training of health workers such as doctors, nurses, barangay health workers and other practitioners shall include, but not limited to, ethical issues related to HIV and AIDS, such as confidentiality, informed consent, and the duty to provide treatment.

Section 16 *Education in the Workplace.*

a) The PNAC shall develop standardized and key messages on the prevention and control of HIV and AIDS based on current and updated information on the disease.

b) All public and private employers and employees, including members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), shall be regularly provided with standardized basic information and instruction on HIV and AIDS, including topics on confidentiality in the workplace and reduction or elimination of stigma and discrimination. The DOLE for the private sector, the CSC for the public sector, and the AFP and PNP for the uniformed service shall implement this provision.

c) The standardized basic information and instruction shall be conducted by the DOLE for the private sector at no cost to the employers and employees.

Section 17 *Education for Filipinos Going Abroad.*

a) The State shall ensure that all overseas Filipino workers and diplomatic, military, trade, labor, tourism and other government officials and personnel to be assigned overseas shall attend a seminar on the causes, manner of prevention, and impact of HIV and AIDS before being granted a certification for overseas assignment: Provided, That the seminar shall be conducted at no cost to the overseas Filipino workers or to the officials concerned.

b) The DOLE, including the Philippine Overseas Employment Agency (POEA) and the Overseas Workers Welfare Administration (OWWA), the Department of Foreign Affairs

(DFA), the Commission on Filipino Overseas (CFO), and other relevant government agencies, in collaboration with the DOH, shall require all departing personnel prior to deployment or assignment abroad to undergo seminar, orientation, or training on the causes, manner of prevention, and impact of HIV and AIDS.

Section 18 *Information for Tourists and Transients.*

a) Educational materials on the causes, modes of transmission, prevention, and consequences of HIV infection and list of HIV and AIDS counseling and testing facilities shall be adequately provided at all international and local ports of entry and exit in the Philippines.

b) The PIA, together with Department of Tourism (DOT), the Department of Transportation (DOTr), and other relevant government agencies, in coordination with the PNAC and stakeholders in the tourism industry, shall lead the implementation of this section.

Section 19 *Education in Communities.*

a) The DILG, the Union of Local Authorities of the Philippines (ULAP), the League of Provinces of the Philippines (LPP), the League of Cities of the Philippines (LCP), the League of Municipalities of the Philippines (LMP), and Liga ng mga Barangay sa Pilipinas through the Local AIDS Councils (LAC) or the local health boards, Local Council for the Protection of Children (LCPC) in coordination with the PNAC, shall implement a locally-based, multi-sectoral community response to HIV and AIDS through various channels on evidence-based, culture-sensitive and gender-responsive, age-appropriate, and human rights-oriented prevention tools to stop the spread of HIV and AIDS. The community response shall also give due focus to Indigenous Peoples (IP) communities, geographically isolated and disadvantaged areas (GIDA), as well as individuals who are not employed and not enrolled in any learning or training institutions.

Other formal organizations such as Sangguniang Kabataan and Association of Barangay Captains, are enjoined to likewise implement a similar community response to HIV and AIDS.

Gender and Development (GAD) funds of the implementing agencies and other sources may be utilized for this purpose.

b) The DILG and the DSWD, in coordination with the National Commission on Indigenous People (NCIP), shall establish a plan for a locally-based multi-sectoral community response to HIV and AIDS in IP communities and GIDA.

c) The DILG, in coordination with the DSWD and the NYC, shall also conduct age-appropriate HIV and AIDS education for persons who are "Not in Education, Employment, or Training" (NEET).

d) The Komisyon ng Wikang Pilipino in coordination with DepED, DILG, CHED, and NCIP, and other relevant government agencies, the academe, and local government units (LGUs), shall be in charge of the translation of educational materials to local languages in IP and GIDA communities.

e) The National Council on Disability Affairs (NCDA), shall ensure the promotion and provision of and coordination for technical assistance in the production of educational materials in various accessible formats for persons with various types of disabilities, with different concerned institutions (government and private).

Section 20 *Education for Key Populations and Vulnerable Communities*.

a) To ensure that HIV services reach key populations at higher risk, the PNAC, in collaboration with the LGUs and CSOs engaged in HIV and AIDS programs and projects, shall support and provide funding for HIV and AIDS education programs, such as peer education, support groups, outreach activities, and community based research that target these populations and other vulnerable communities.

b) The DOH, in coordination with appropriate agencies and the PNAC, shall craft the guidelines and standardized information messages for peer education, support group, and outreach activities.

Section 21 *Information on Prophylactics*. The DOH, through the Food and Drug Administration (FDA), shall establish guidelines in printing or attaching appropriate information to every prophylactic offered for sale or given as a donation. Such information shall be legibly printed in English and Filipino, and contain literature on the proper use of the prophylactic device or agent and its efficacy and adverse effects against HIV and STI.

Section 22 *Misinformation on HIV and AIDS*. Any misinformation on HIV and AIDS shall be strictly prohibited. Misinformation includes false and misleading advertising and claims in any form of media, including traditional media, internet and social platforms, and

mobile applications; or the promotional marketing of drugs, devices, agents or procedures, without prior approval from the DOH through the FDA and without the requisite medical and scientific basis, including markings and indications in drugs and devices or agents, claiming to be a cure or a fail-safe prophylactic for HIV infection.

RULE 5
Preventive Measures, Safe Practices and Procedures

Section 23 *HIV Prevention Measures*.

a) The PNAC, in coordination with the DOH, LGUs, and other relevant government agencies, private sector, CSOs, faith-based organizations, and PLHIV, shall implement preventive measures, including but not limited to the following:

1. Creation of rights-based and community-led behavior modification programs that seek to encourage HIV risk reduction behavior among PLHIV and Key Populations;

2. Establishment and enforcement of rights-based mechanisms, which include psychosocial counseling: A. to promote HIV status disclosure to partners; and B. to strongly encourage newly tested HIV-positive individuals to conduct partner notification;

3. Establishment of standard precautionary measures in public and private health facilities;

4. Accessibility of ART, prophylactics and age-appropriate management of opportunistic infections;

5. Mobilization of communities of PLHIV and their families for public awareness campaigns and stigma and discrimination reduction activities; and

6. Establishment of comprehensive human rights and evidence-based policies, programs, and approaches that aim to reduce transmission of HIV and its harmful consequences to members of key affected populations.

b) The enforcement of this section shall not lead to or result in the discrimination or violation of the rights of PLHIV and of the service provider implementing the program including peer educators and community- based testing providers.

Section 24 *Comprehensive Health Intervention for Key Populations.*

a) The DILG and DOH, in partnership with CHR, the key populations, which may be represented by CSOs and youth-led organizations, shall establish a human rights-based and evidence-based HIV prevention policy and program for people who have higher risk of HIV infection and other key populations.

b) The presence of used or unused prophylactics shall not be used as basis to conduct raids or similar police operations in sites and venues of HIV prevention interventions. The DILG and DOH, in coordination with LGUs shall establish a national policy and develop necessary guidelines.

Section 25 *Preventing Mother-to-Child HIV Transmission (PMTCT).*

a) The DOH shall establish a program to prevent mother-to-child HIV transmission that shall be integrated in its maternal and child health services.

b) The PMTCT program shall include universal voluntary HIV testing, counseling, and referrals to HIV treatment and care.

c) The PLHIV pregnant women shall have access to prenatal care, correct information on the mode of delivery and newborn feeding to be provided by the attending physician and other health workers to prevent mother-to-child transmission.

Section 26 *Standard Precaution on the Donation of Blood, Tissue, or Organ.* The DOH shall enforce the following guidelines on the donation of blood, tissue, or organ:

a) Donation of tissue or organ, whether gratuitous or onerous, shall be accepted by a laboratory or institution only after a sample from the donor has been tested negative for HIV;

b) All donated blood shall be subjected to HIV testing;

c) All donors whose blood, organ or tissue has been tested positive shall be deferred from donation, notified of their HIV status, counselled, and referred for care and clinical management as soon as possible;

d) Donations of blood, tissue, or organ testing positive for HIV may be accepted for research purposes only and shall be subject to strict sanitary disposal requirements; and

e) A second testing may be demanded as a matter of right by the blood, tissue, or organ recipient or his/her immediate relatives before transfusion or transplant, except during emergency cases. For transfusion, a second testing must only be done in selected designated DOH-licensed Blood Service Facilities.

Section 27 *Testing of Organ Donation*. Lawful consent to HIV testing of a donated human body organ, tissue, or blood shall be considered as having been given when:

a) A person volunteers or freely agrees to donate one's blood, organ, or tissue for transfusion, transplantation, or research; and

b) A legacy or donation is executed in accordance with Sections 3 and 4 respectively, of Republic Act No. 7170, otherwise known as the "Organ Donation Act of 1991".

Section 28 *Guidelines on Medical Management, Surgical, and Other Related Procedures*.

a) The DOH, in consultation with concerned professional organizations and hospital associations, shall issue guidelines on medical management of PLHIV and protocol on precautions against HIV transmission during surgical, dental, embalming, body painting or tattooing that require the use of needles or similar procedures.

b) The necessary protective equipment, such as gloves, goggles, gowns, and post exposure prophylaxis shall be prescribed and required, and made available to all physicians and health care providers, tattoo artists, embalmers, undertakers and high risk personnel similarly exposed personnel at all times.

c) The DOH shall issue guidelines on the handling and disposal of cadavers, body fluids, or wastes of persons known or believed to be HIV-positive.

RULE 6
Screening, Testing and Counselling

Section 29 *HIV Testing*.

a) The State shall encourage voluntary HIV testing as a matter of policy. Written consent as evidenced by the signature or a thumbmark as the case may be from the person taking the test must be obtained before HIV testing.

1. In keeping with the principle of the evolving capacities of the child as defined in Section 4 (k) of this IRR, if the person is fifteen (15) to below eighteen (18) years of age, consent to voluntary HIV testing shall be obtained from the child without the need for the consent of a parent or guardian.

2. In keeping with the mature minor doctrine as defined in Section 4 (gg) of this IRR, any young person age below fifteen (15) years, who is pregnant or engaged in high risk behavior, shall be eligible for HIV testing and counseling with the assistance of licensed social worker or health worker. Consent to voluntary HIV testing shall be obtained from the child without the need for the consent of a parent or guardian.

3. In all other cases not covered by paragraph (b) of this section, consent to voluntary HIV testing shall be obtained from the child's parents or legal guardian if the person is below fifteen (15) years of age or is mentally incapacitated. In cases when the child's parents or legal guardian cannot be located despite reasonable efforts, or if the child's parents or legal guardian refuse to give consent, it shall be obtained from the licensed social worker or health worker. To protect the best interest of the child, the assent of the minor shall also be required prior to the HIV testing.

b) In every circumstance, proper counseling shall be conducted by a social worker, health care provider, or health care professional accredited by the DOH or the DSWD.

c) The HIV testing guidelines issued by the DOH shall include guidance for testing minors and for the involvement of parents or guardians in the HIV testing of minors. The guidelines shall be developed in coordination with NYC, DSWD and Council for the Welfare of Children (CWC), including CSOs and other relevant stakeholders within 60 days from the effectivity of this IRR.

d) The DOH, in coordination with other relevant government agencies and CSOs and other stakeholders shall continually review and revise, as appropriate, the HIV diagnostic algorithm based on current available laboratory technology and evidence.

Section 30 *Compulsory HIV Testing*. Compulsory HIV testing shall be allowed only in the following instances:

a) When it is necessary to test a person who is charged with any of the offenses punishable under Articles 263 (serious physical injuries), 264 (administering injurious substances or beverages), 265 (less serious physical injuries) and 266 (slight physical injuries), or Article 338 (simple seduction) of Act No. 3815, or the "The Revised Penal Code (RPC)", as amended, or under Art. 266-A (rape) of the RPC, as amended by R.A. 8353, otherwise known as "The Anti-Rape Law of 1997";

b) When it is necessary to resolve relevant issues under Executive Order No. 209, otherwise known as "The Family Code of the Philippines"; and

c) As a prerequisite in the donation of blood in compliance with the provisions of Republic Act No. 7170, otherwise known as the "Organ Donation Act of 1991", and Republic Act No. 7719, otherwise known as the "National Blood Services Act of 1994".

Section 31 *Mechanisms and Standards on Routine Provider-Initiated and Client-Initiated HIV Counseling and Testing*.

a) The DOH shall establish mechanisms and standards on routine provider-initiated and client-initiated HIV counseling and testing.

b) To implement this section, the DOH shall:

1. Accredit public and private HIV testing facilities based on capacity to deliver testing services including HIV and AIDS counseling: Provided, that only DOH-accredited HIV testing facilities shall be allowed to conduct HIV testing;

2. Develop the guidelines within 60 days from the effectivity of this IRR for HIV counseling and testing, including mobile HIV counseling and testing and routine provider-initiated HIV counseling and testing, that shall ensure, among others, that HIV testing is based on informed consent, is voluntary and

confidential, is available at all times, and is provided by qualified persons and DOH- accredited providers;

3. Accredit institutions or organizations that train HIV and AIDS counselors in coordination with the DSWD;

4. Accredit competent HIV and AIDS counselors for persons with disabilities, including, but not limited to, translators, the hearing-impaired, Braille for the visually-impaired clients, in coordination with the National Council for Disability Affairs (NCDA);

5. Set the standards for HIV counseling, and shall work closely with HIV and AIDS CSOs that train HIV and AIDS counselors and peer educators, in coordination with and participation of NGOs, government organizations (GOs), and Civil Society Organizations of PLHIV (CSO-PLHIV); and

6. Ensure access to routine provider-initiated counseling and testing as part of clinical care in all healthcare settings for the public.

c) All HIV testing facilities shall provide free pre-test and post-test HIV counseling to individuals who wish to avail HIV testing, which shall likewise be confidential. No HIV testing shall be conducted without informed consent.

d) The DOH, in coordination with relevant government agencies and CSOs, shall ensure that specific approaches to HIV counseling and testing are adopted based on the nature and extent of HIV and AIDS incidence in the country.

e) Pre-test counseling and post-test counseling shall be done by the HIV and AIDS counselor, licensed social worker, licensed health service provider, or a DOH-accredited health service provider: Provided, that for the government HIV testing facilities, pre-test and post-test HIV counseling shall be provided for free.

Section 32 *HIV Testing for Pregnant Women*. A health care provider who offers pre-natal medical care shall offer provider-initiated HIV testing for pregnant women: Provided, that any pregnant woman who refuses to avail of HIV testing shall not be denied pre- or ante-natal services. The DOH shall provide the necessary guidelines for healthcare providers in the conduct of the screening procedure.

RULE 7
Health and Support Services

Section 33 *Treatment of Persons Living with HIV and AIDS*. The DOH shall establish a program to provide free and accessible ART and medication for opportunistic infections to all PLHIV, who are enrolled in the program. It shall likewise designate public and private hospitals to become treatment hubs. A manual of procedures for management of PLHIV shall be developed by the DOH.

Section 34 *Access to Medical Services by Indigents*. Indigent persons living with HIV shall not be deprived access to health and nutrition services. The DOH and DSWD shall establish a program that will support better access to ART and medication for opportunistic infections to all indigent PLHIV, which includes financial support for necessary health and nutrition services related to the person's HIV condition.

Section 35 *Economic Empowerment and Support*. PLHIV shall not be deprived of any employment, livelihood, micro-finance, self-help, and cooperative programs by reason of their HIV status. The DSWD, in coordination with DILG, DOLE, and TESDA, shall develop enabling policies and guidelines within 60 days from the effectivity of this IRR to ensure economic empowerment and independence designed for PLHIV.

Section 36 *Care and Support for Persons Living with HIV*. The DSWD, in coordination with DOH, shall develop care and support programs for PLHIV, which shall include peer-led counseling and support, social protection, welfare assistance, and mechanisms for case management. These programs shall include care and support for the affected children, families, partners, and support groups of PLHIV.

For PLHIV below eighteen (18) years old/minors or those with mental incapacity, the CWC shall develop a protocol that will include case management and provision of support system.

Section 37 *Care and Support for Overseas Workers Living with HIV*. The Overseas Workers Welfare Administration (OWWA), in coordination with DOH, DSWD, DFA, CFO, CSOs and the Bureau of Quarantine and International Health Surveillance, shall develop a program to provide a stigma-free comprehensive reintegration, care, and support program, including economic, social, and medical support, for overseas workers living with HIV, regardless of employment status and stage in the migration process.

Section 38 *Care and Support for Affected Families, Intimate Partners, Significant Others and Children of People Living with HIV*. The DSWD, DOH, and LGUs, in consultation with CSOs and affected families of PLHIV, shall develop care and support programs for affected

families, intimate partners, significant others, and children of PLHIV, which shall include the following:

a) Education programs that reduce HIV-related stigma, including counseling, to prevent HIV-related discrimination within the family;

b) Educational assistance for children infected with HIV and children orphaned by HIV and AIDS; and

c) HIV treatment and management of opportunistic infections for minors living with HIV, who are not eligible under the Outpatient HIV and AIDS Treatment (OHAT) package of Philippine Health Insurance Corporation (PhilHealth).

Section 39 *Care and Support Program in Prisons and Others Closed-Setting Institutions*.

a) All prisons, rehabilitation centers, and other closed-setting institutions shall have comprehensive STI, HIV and AIDS prevention and control program that includes HIV education and information. HIV counseling and testing, and access to HIV treatment and care services. The DOH in coordination with DILG, DOJ, DSWD, and CHR shall develop HIV and AIDS comprehensive programs and policies, which include the HIV counseling and testing procedures in prisons, rehabilitation centers, and other closed- setting institutions.

b) PLHIV in prisons, rehabilitation centers, and other closed-setting institutions shall be provided HIV treatment, which includes ART, care, and support, in accordance with the national guidelines. Efforts should be undertaken to ensure the continuity of care at all stages, from admission or imprisonment to release. The provision on informed consent and confidentiality shall also apply in closed-setting institutions.

c) In pursuit of the objectives of this IRR and within reasonable conditions, representatives from CHR, DOJ, DOH, and other relevant agencies shall be accorded unimpeded access to PLHIV in prisons, rehabilitation centers, and closed-setting institutions.

Section 40 *Non-discriminatory HIV and AIDS Services*. The members of the PNAC, in cooperation with CSOs and in collaboration with DOJ and CHR, shall ensure the delivery of non-discriminatory HIV and AIDS services by government and private HIV and AIDS service providers.

Section 41 *Protection of HIV Educators, Licensed Social Workers, Health Workers, and Other HIV and AIDS Service Providers from Harassment*. Any person involved in the provision of HIV and AIDS services, including peer educators, shall be protected from suit, arrest or prosecution, and from civil, criminal or administrative liability, on the basis of their delivery of such services in HIV prevention. This protection does not cover acts which are committed in violation of this IRR.

Section 42 *Health Insurance and Similar Health Services*.

The PhilHealth shall:

a) Develop a benefit package for PLHIV that shall include coverage for inpatient and outpatient medical and diagnostic services, including medication and treatment;

b) Develop a benefit package for the unborn, newborn, and minor child of infected mothers;

c) Set a reference price for HIV services in government hospitals;

d) Conduct programs to educate the human resources units of companies on the PhilHealth package on HIV and AIDS;

e) Develop a mechanism for orphans including abandoned and neglected children and foundling living with HIV to access all essential benefit packages that they need; and

f) Ensure that OHAT reimbursements paid to the treatment facilities are utilized for HIV-related expenditures.

The PHIC shall enforce confidentiality in the provision of these packages to PLHIV. The Insurance Commission (IC) shall:

a) Ensure that no person shall be denied life insurance claims if the cause of death is HIV or AIDS under a valid and subsisting life insurance policy.

b) Guarantee that no PLHIV shall be denied or deprived of private health insurance under a Health Maintenance Organization (HMO) and private life insurance coverage of any life insurance company on the basis of HIV status.

The Insurance Commission (IC) shall implement this provision and shall develop the necessary policies to ensure compliance from the effectivity of this IRR.

Section 43 *HIV and AIDS Monitoring and Evaluation*. The DOH shall maintain a comprehensive HIV and AIDS monitoring and evaluation programs that shall serve the following purposes:

a) Determine and monitor the magnitude and progression of HIV and AIDS in the Philippines to help the national government evaluate the adequacy and efficacy of HIV prevention and treatment programs being employed;

b) Receive, collate, process, and evaluate all medical reports related to HIV and AIDS from all hospitals, clinics, laboratories and testing centers, including HIV-related deaths and relevant data from public and private hospitals, various databanks or information systems: Provided, that it shall adopt a coding system that ensures anonymity and confidentiality;

c) Monitor performance commitment of accredited treatment hubs, and ensure provision of all services as stipulated in the treatment guidelines; and

d) Submit to PNAC, through the PNAC Secretariat, an annual report containing the findings of its monitoring and evaluation activities in compliance with this mandate.

RULE 8
Confidentiality

Section 44 *Confidentiality*. The confidentiality and privacy of any individual, who has been tested for HIV, has been exposed to HIV, has HIV infection or HIV-AIDS related illnesses, or was treated for HIV related illnesses shall be guaranteed. The following acts violate confidentiality and privacy:

a) Disclosure of Confidential HIV and AIDS Information

1. Unless otherwise provided in Section 45 of this IRR, it shall be unlawful to disclose, without written consent, information that a person has HIV and AIDS, has undergone HIV-related test, has HIV infection or HIV-related illnesses, or has been exposed to HIV.

2. The prohibition shall apply to any person, natural or juridical, including those whose work or function involves the implementation of this IRR or the delivery of HIV-related services, including those who handle or have access to personal data or information in the workplace, and who, pursuant to the receipt of the required written consent from the subject of confidential HIV and AIDS information, have been subsequently granted access to the same confidential information.

b) Media Disclosure – It shall be unlawful for any editor, publisher, reporter or columnist in case of printed materials, or any announcer or producer in case of television and radio broadcasting, or any producer or director of films in case of the movie industry, or any other individual or organization in case of social media, to disclose the name, picture, or any information that would reasonably identify persons living with HIV and AIDS or any confidential HIV and AIDS information without the prior written consent of their subjects except when the persons waive said confidentiality through their own acts and omissions under Section 4 (a) of R. A. No. 10175, otherwise known as the "Cybercrime Prevention Act of 2012", and Section 25 of R. A. No. 10173, otherwise known as the "Data Privacy Act of 2012".

Section 45 *Exceptions*. Confidential HIV and AIDS information may be released by HIV testing facilities without consent in the following instances:

a) When complying with reportorial requirements of the national active and passive surveillance system, including reports of death, of the DOH: Provided, that the information related to a person's identity shall remain confidential;

b) When informing other health workers directly involved in the treatment or care of a PLHIV: Provided, that such workers shall be required to perform the duty of shared medical confidentiality; and

c) When responding to a subpoena duces tecum and subpoena ad testificandum issued by a court with jurisdiction over a legal proceeding where the main issue is the HIV status of an individual: Provided, that the confidential medical record, after having been verified for accuracy by the head of the office or department, shall remain anonymous and unlinked and shall be properly sealed by its lawful custodian, hand-delivered to the court, and personally opened by the judge: Provided, further, That the judicial or administrative proceedings shall be held in executive session.

Section 46 *Disclosure of HIV-Related Test Results*.

The result of any test related to HIV shall be disclosed by the trained service provider who conducts pre-test and post-test counseling only to the individual who submitted to the test. If the patient is below the age of fifteen (15) years, an orphan, or suffering from mental incapacity, or in comatose state, the result of the test may be disclosed to either of the patient's parents, next of kin, legal guardian, or to a duly assigned licensed social worker or health worker, whichever is applicable considering the best interest of the said

patient: Provided, That when a person below the age of fifteen (15) years, who is not suffering from any mental incapacity, has given voluntary and informed consent to the procedure in accordance with Section 29(a)(2) of this IRR, the result of the test shall be disclosed to the child: Provided, further, That the child should be given age-appropriate counseling and access to necessary health care and sufficient support services.

The DSWD and CWC shall include in its protocol to be developed the case management of these children, including the provision of an immediate support system for children or persons below eighteen (18) who are living with HIV. It shall also include in the protocol the preventive measures for children identified to be engaged in risky behavior and children who are pregnant and tested non-reactive after HIV test.

The result of any test related to HIV and AIDS may also be disclosed to a person authorized to receive such results in conjunction with the DOH Monitoring Body as provided in Section 43 of this IRR.

Section 47 *Disclosure to Persons with Potential Exposure to HIV.*

a) Any person who, after having been tested is found to be infected with HIV, is strongly encouraged to disclose this health condition to the spouse, sexual partners, and/or any person prior to engaging in penetrative sex or any potential exposure to HIV.

b) A person living with HIV may seek help from qualified professionals, including medical professionals, health workers, peer educators, or social workers for disclosing this health condition to one's partner or spouse. Confidentiality shall likewise be observed.

c) Further, the DOH through the PNAC, shall establish an enabling environment to encourage newly tested HIV-positive individuals to disclose their status to partners.

Section 48 *Duty of Employers, Heads of Government Offices, Heads of Public and Private Schools or Training Institutions, and Local Chief Executives.*

a) It shall be the duty of private employers, heads of government offices, heads of public and private schools and training institutions and local chief executives, overall private establishments within their territorial jurisdiction to prevent or deter acts of discrimination against PLHIV and to provide procedures for the resolution, settlement, or prosecution of acts of discrimination. Confidentiality should likewise be observed.

b) Towards this end, the private employer, head of office, or local chief executive shall:

1. Promulgate rules and regulations, prescribing the procedure for the investigation of discrimination cases and the administrative sanctions therefor; and

2. Create an ad hoc committee on the investigation of discrimination cases.

The committee shall conduct meetings to increase the member's knowledge and understanding of HIV and AIDS, and to prevent incidents of discrimination. It shall also conduct the administrative investigation of alleged cases of discrimination.

RULE 9
Discriminatory Acts and Practices and Corresponding Penalties

Section 49 *Discriminatory Acts and Practices*. The following discriminatory acts and practices shall be prohibited:

a) Discrimination in the Workplace – Rejection of job application, termination of employment, or other discriminatory policies in hiring, provision of employment and other related benefits, promotion or assignment of an individual solely or partially on the basis of actual, perceived, or suspected HIV status;

b) Discrimination in Learning Institutions – Refusal of admission, segregation, imposition of harsher disciplinary actions, or denial of benefits or services of a student or a prospective student solely or partially on the basis of on actual, perceived, or suspected HIV status;

c) Restriction on Travel and Habitation – Restrictions on travel within the Philippines, refusal of lawful entry into Philippine territory, deportation from the Philippines, or the quarantine or enforced isolation of travelers solely or partially on account of actual, perceived, or suspected HIV status is discriminatory. The same standard of protection shall be accorded to migrants, visitors, and residents, who are not Filipino citizens;

d) Restrictions on Shelter – Restrictions on housing or lodging, whether

permanent or temporary, solely or partially on the basis of actual, perceived, or suspected HIV status;

e) Prohibition from Seeking or Holding Public Office – Prohibition on the right to seek an elective or appointive public office solely or partially on the basis of actual, perceived, or suspected HIV status;

f) Exclusion from Credit and Insurance Services – Exclusion from health, accident or life insurance, or credit and loan services, including the extension of such loan or insurance facilities of an individual solely or partially on the basis of actual, perceived, or suspected HIV status: Provided, That the PLHIV has not concealed or misrepresented the fact to the insurance company or loan or credit service provider upon application;

g) Discrimination in Hospitals and Health Institutions – Denial of health services, or being charged with a higher fee, on the basis of actual, perceived or suspected HIV status is a discriminatory act and it is prohibited;

h) Denial of Burial Services – Denial of embalming and burial services for a deceased person who had HIV and AIDS or who was known, suspected, or perceived to be HIV-positive;

i) Act of Bullying – Bullying in all forms including name-calling, upon a person based on actual, perceived, of suspected HIV status, including bullying in social media and other online portals; and

j) Other similar or analogous discriminatory acts.

Section 50 *Penalties*.

a) Any person who commits the prohibited act under Section 22 of this IRR on misinformation on HIV and AIDS shall, upon conviction, suffer the penalty of imprisonment ranging from one (1) year but not more than ten (10) years, a fine of not less than Fifty Thousand pesos (P50,000) but not more than Five Hundred Thousand pesos (P500,000), or both, at the discretion of the Court: Provided, That if the offender is a manufacturer, importer or distributor of any drugs, devices, agents, and other health products, the penalty of at least five (5) years imprisonment but not more than ten (10) years and a fine of at least Five Hundred Thousand pesos (P500,000) but not more than Five Million pesos (P5,000,000) shall be imposed:

Provided, further, That drugs, devices, agents, and other health products found in violation of Section 22 of this IRR may be seized and held in custody when the FDA Director-General has reasonable cause to believe facts found by him/her or an authorized officer or employee of the FDA that such health products may cause injury or prejudice to the consuming public;

b) Any person who violates Section 24 (b) of this IRR on police operations vis-á-vis comprehensive health intervention for key populations shall, upon conviction, suffer the penalty of imprisonment of one (1) year to five (5) years and a fine of not less than One Hundred Thousand pesos (P100,000.00) but not more than Five Hundred Thousand pesos (P500,000.00): Provided, That the law enforcement agents found guilty shall be removed from public service;

c) Any person who knowingly or negligently causes another to get infected with HIV in the course of the practice of profession through unsafe and unsanitary practice and procedure, or who compelled any person to undergo HIV testing without his or her consent shall, upon conviction, suffer the penalty of imprisonment of six (6) years to twelve (12) years, without prejudice to the imposition of fines and administrative sanctions, such as suspension or revocation of professional license. The permit or license of the business entity and the accreditation of the HIV testing centers may be cancelled or withdrawn if these establishments fail to maintain safe practices and procedures as may be required by the guidelines formulated in compliance with Section 26, on blood, tissue, or organ donation, and Section 28, on medical management, surgical, and other related procedures of this IRR;

d) Any person who violates Section 41 of this IRR, on the protection of HIV educators, licensed social workers, health workers, and other HIV and AIDS service providers from harassment shall, upon conviction, suffer the penalty of imprisonment of six (6) months to five (5) years and a fine of not less than One Hundred Thousand pesos (P100,000.00) but not more than Five Hundred Thousand pesos (P500,000.00): Provided, That if the person who violates this provision is a law enforcement agent or a public official, administrative sanctions may be imposed in addition to imprisonment and/or fine, at the discretion of the Court;

e) Any person, natural or juridical, who violates the provisions of Section 42 of this IRR on health insurance and similar services shall, upon conviction, suffer the penalty of imprisonment of six (6) months to five (5) years and/or a fine of not less than Fifty Thousand pesos (P50,000.00), at the discretion of the Court, and without prejudice to the imposition of administrative sanctions such as fines, suspensions or revocation of business permit, business license or accreditation, and professional license;

f) Any person who violates the provisions of Section 44 of this IRR on Confidentiality shall, upon conviction, suffer the following penalties:

1. Six (6) months to two (2) years of imprisonment for any person who breaches confidentiality and/or a fine of not less than Fifty Thousand pesos (P50,000.00), but not more than One Hundred Fifty Thousand pesos (P150,000.00), at the discretion of the Court;

2. Two (2) years and one (1) day to five (5) years of imprisonment for any person who causes the mass dissemination of the HIV status of a person, including spreading the information online or making statements to the media and/or a fine of not less than One Hundred Fifty Thousand pesos (P150,000.00) but not more than Three Hundred Fifty Thousand pesos (P350,000.00), at the discretion of the Court; and

3. Five (5) years and one (1) day to seven (7) years of imprisonment for any health professional, medical instructor, worker, employer, recruitment agency, insurance company, data encoder, and other custodian of any medical record, file, data, or test result who breaches confidentiality, and/or a fine of not less than Three Hundred Fifty Thousand pesos (P350,000.00) but not more than Five Hundred Thousand pesos (P500,000.00), at the discretion of the Court.

These penalties are without prejudice to any administrative sanction or civil suit that may be brought against persons who violate confidentiality under this IRR.

g) Any person who shall violate any of the provisions in Section 49 of this IRR on discriminatory acts and practices shall, upon conviction, suffer the penalty of imprisonment of six (6) months to five (5) years and/or a fine of not less than Fifty Thousand pesos (P50,000.00) but not more than Five Hundred Thousand pesos (P500,000.00), at the discretion of the Court, and without prejudice to the imposition of administrative sanctions such as fines, suspension or revocation of business permit, business license or accreditation, and professional license;

h) Any person who has obtained knowledge of confidential HIV and AIDS information and uses such information to malign or cause damage, injury, or loss to another person shall face liability under Articles 19, 20, 21, and 26 of the New Civil Code of the Philippines and relevant provisions of Republic Act No. 10173, otherwise known as the “Data Privacy Act of 2012”; and

i) If the offender is a corporation, association, partnership or any other juridical person, the penalty of imprisonment shall be imposed upon the responsible officers and employees, as the case may be, who participated in, or allowed by their gross negligence, the commission of the crime, and the fine shall be imposed jointly and severally on the juridical person and the responsible officers/employees. Furthermore, the Court may suspend or revoke its license or business permit.

If the offender is an alien, he/she shall, in addition to the penalties prescribed herein, be deported without further proceedings after serving penalties herein prescribed.

If the offender is a public official or employee, he/she shall, in addition to the penalties herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

Section 51 *Penalties Collected*. The penalties collected pursuant to this section shall be put into a special fund to be administered by the PNAC and shall be used for initial interventions required to address gaps in the national response on the part of government agencies and its partners from civil society and international organizations in accordance with Section 5.1 (l) of this IRR.

RULE 10
Final Provisions

Section 52 *Appropriations*.

a) The amount needed for the initial implementation of this IRR shall be charged against the appropriations for the DOH. Thereafter, such sums as may be necessary for the continued implementation of this IRR shall be included in the annual General Appropriations Act (GAA).

b) The DBM, in coordination with the Department of Finance (DOF), DOH, and other relevant government agencies, shall consider the incidence of HIV and AIDS in accordance with the AMTP.

c) LGUs shall allocate a separate budget item for HIV and AIDS program in their respective annual appropriations for the LGU action plans mandated and specified in this IRR.

d) The funding requirement needed to provide for the health insurance package and other services for PLHIV as stated in Section 42 of this IRR shall be charged against the PhilHealth's corporate funds.

e) The funding needed to upgrade or construct government-administered HIV testing and treatment centers shall be funded from the revenues of the sin tax under Republic Act No. 8424, otherwise known as the "National Internal Revenue Code", as amended by Republic Act No. 10351 and shall be prioritized under the Health Facilities Enhancement Program (HFEP) of the DOH.

f) The funds to be appropriated for the operations of the PNAC shall be a distinct and separate budget item from the regular appropriation for DOH and shall be administered by the Secretary of Health. In no circumstance shall the appropriations, savings, and other resources of the PNAC be realigned to the programs and projects of DOH or any other government agency, unless such program or project is related to the implementation of the provisions under this IRR.

Section 53 *Transitory Provisions*. The personnel designated by the DOH as Secretariat of the PNAC under Section 7. of this IRR shall be absorbed as permanent personnel to fill the positions of the Secretariat as provided in this Act.

Section 54 *Amendments*. These Implementing Rules and Regulations may be amended, modified or supplemented when necessary for effective implementation and enforcement of RA 11166.

Section 55 *Separability Clause*. If any provision or part of this IRR is declared unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

Section 56 *Effectivity*. This IRR takes effect fifteen (15) days after its complete publication in the national newspaper of general circulation and the U.P. Law Center.

FAQs

Children & Minors

Can minors now be tested for HIV without parental consent?

Yes, minors aged 15 to below 18 years may consent to undergo HIV testing without the need for the consent of the parent or guardian. For minors aged below 15, they may also consent to undergo HIV testing even without the consent of the parent or guardian provided that they fall under any of the two cases: (1) the minor is pregnant, or (2) the minor is engaged in high risk behavior. The minor aged below 15 shall be assisted by a licensed social worker or health worker.

Who can provide assistance to a minor who wants to undergo HIV testing?

Any licensed social worker or health workers may provide assistance to the minor. “Health workers” is a broad term and this includes nurses and doctors.

Who can assist a minor in giving consent for HIV testing & accessing treatment?

PLHIV who are aged below 18 or those with mental incapacity shall be assisted consistent with the protocol developed by the Council for Welfare of Children which includes case management and provision of support system. The assistance may be provided by a licensed social worker.

Can rescued children who are brought to the Department of Social Welfare and Development consent to HIV testing?

Yes. For rescued children aged 15 to below 18, they may consent without the need for consent of any guardian or parent. For those aged below 15, they may consent provided that the minor is pregnant or engaged in a high-risk behavior. For all other rescued minor children without any parent or guardian, the consent may be given by the licensed social worker or health worker.

HIV Testing & Screening

What are the instances when HIV testing may be done as a mandatory measure?

Mandatory or compulsory HIV testing is prohibited as a general rule, except in three instances: (1) when it is necessary to test a person who is charged with offenses punishable under the Revised Penal Code such as for serious physical injuries, administering injurious substances or beverages, less serious physical injuries, slight physical injuries, simple seduction, or rape (as amended under The Anti-Rape Law of 1997); (2) when it is necessary to resolve issues under The Family Code of the Philippines, such as determining a ground for annulment or determining a circumstance constituting fraud; (3) as a prerequisite in the donation of blood in compliance with the Organ Donation Act of 1991 and the National Blood Services Act of 1994.

Is HIV testing mandatory for pregnant women?

No, pregnancy is not included in the enumeration of instances where HIV testing is mandatory or compulsory. What the law provides is that health care providers offering pre-natal medical care are obliged to offer provider-initiated HIV testing for pregnant women. The law also provides that a pregnant woman who refuses to avail of HIV testing shall not be denied pre- or ante-natal services.

Disclosure

Will PLHIV be required to disclose their status to their sexual partners?

No, the law upholds confidentiality of HIV status and does not require disclosure of status to sexual partners. The PLHIV will be given support in order to notify and advise his or her partners who have been exposed to the infection. The PLHIV will be given a mechanism to encourage the client's partner to attend counseling, testing, and other prevention and treatment services. Nevertheless, confidentiality shall be observed in the entire process.

Is it legal to post online about the HIV status of a PLHIV without her or his consent? What are my remedies when my status is shared online without my consent?

It is unlawful to post online the HIV status of a PLHIV without her or his consent, and this amounts to crimes punishable under the Cybercrime Prevention Act of 2012 or the Data Privacy Act of 2012, whichever is applicable. A PLHIV may file a criminal complaint before the Prosecutor against the person who breached the confidentiality of HIV status.

Can my employer require me to disclose my status as PLHIV before I can be employed?

No, employers should not require PLHIV to disclose their status as a consideration for employment. Doing otherwise would be tantamount to discrimination in the workplace, where the rejection of job application, termination of employment, or other discriminatory policies in hiring, provision of employment and other related benefits, promotion or assignment of an individual is made solely or partially on the basis of actual, perceived, or suspected HIV status. Employers are mandated to prevent or deter acts of discrimination against PLHIV and to provide procedures for the resolution, settlement, or prosecution of acts of discrimination.

Is it legal to inform the warden of the Bureau of Jail Management and Penology that a Person Deprived of Liberty ("PDL") is HIV positive?

Disclosure of HIV status to the warden of the BJMP is legal only if it complies with the confidentiality rule. Thus, the PLHIV must provide consent prior to disclosure; Their status as a PDL is not an exception to the confidentiality rule. It would be ideal to encourage the PLHIV to disclose the status to the health personnel of BJMP so that appropriate treatment services will be provided to him or her. The health personnel would also be covered by the confidentiality rule.

Is it legal to inform the barangay captain of the community if any of his/her constituents is a PLHIV so the barangay can improve access to supportive services?

Disclosure of HIV status to the barangay captain is legal only if it complies with the confidentiality rule. Thus, the PLHIV must provide consent prior to disclosure. The intention of providing improved access to supportive services must be balanced with the spirit of the law protecting the PLHIV against discrimination and creating an inclusive environment for the PLHIV.

Can someone post my HIV status in Facebook or other social media without my consent?

No, that will be a violation of confidentiality. The new law also classifies this act as media disclosure, which can be penalized under the Cybercrime Act of 2012 or the Data Privacy Act, whichever is applicable.

If a person discloses their HIV status in a public event, will someone who posts the information online be penalized under the provision on media disclosure?

It is arguable that the person has already consented to disclosure of his HIV status by announcing it in a public event. Thus, posting the status on social media appears to be non-violative of the media disclosure provision. However, the new law provides that consent should be evidenced by writing, so a contrary interpretation of the law is also possible considering that there is no written consent to disclose the HIV status online.

Health Services

Are anti-retroviral treatment and services now free?

Yes, free and accessible ART shall be provided to all PLHIV enrolled in a program established by the DOH. Outpatient HIV and AIDS Treatment are accessible in various treatment hubs and primary HIV care facilities in the Philippines.[17]

Are treatment and services for opportunistic infections for PLHIV now free?

Yes, free and accessible medications for opportunistic infections shall be provided to all PLHIV enrolled in a program established by the DOH.[18]

Why do we need to be a member of PhilHealth to access HIV treatment?

The HIV and AIDS law does not expressly say that PhilHealth membership is required to access HIV treatment. The law does say however that the PLHIV must be enrolled in a program established by the DOH for PLHIV. Under our system of health financing, PhilHealth membership is a primary means of financing health services under the Universal Health Care Law. Nevertheless, every Filipino is automatically included in the National Health Insurance Program by virtue of citizenship alone. Thus, membership in PhilHealth should not be seen as a barrier for accessing HIV treatment.

[17] For a full list, please see the Annex below.
[18] For a full list, please see the Annex below.

Why is there no provision on Persons With Disability Identification Card protection mechanism in RA 11166?

The provisions relevant for Persons With Disability are provided under the Magna Carta for Disabled Persons, as amended. Under the Magna Carta for Disabled Persons, disability is defined as "(1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment[.]" The status of being PLHIV alone is not necessarily an impairment, or being regarded as such, say in cases of PLHIV with undetectable viral load who are fully functional and do not suffer from any physical or mental impairment. PLHIV may still be given PWD IDs on a case-to-case basis, depending on whether they fall under any of the enumerated disabilities.

Insurance

Can an HMO deny my application for insurance coverage because of my HIV status?

No, exclusion from health, accident or life insurance, including extension of such insurance facilities to an individual solely or partially on the basis of actual, perceived, or suspected HIV status is an act of discrimination that is prohibited under the law.

If a PLHIV applies for a health or life insurance, can the PLHIV omit the fact that she or he is HIV positive?

No, health or life insurance companies often ask for existing medical conditions, and non-disclosure of HIV status can be deemed as fraud. What the law prohibits is denial of insurance services solely or partially on the basis of actual, perceived, or suspected HIV status. Stated differently, an insurance company may not deny a PLHIV insurance services if the PLHIV is otherwise qualified and has paid the premium for the insurance services.

HIV and AIDS Education and Information

What protections do HIV educators have under RA 11166?

HIV and AIDS education and information dissemination is now expressly included as a part of the constitutional right to health. Thus, HIV educators are given mandates to fully inform the population on HIV, AIDS, and other STIs, with the goal of reducing risky behavior, lowering vulnerabilities, and promoting the human rights of PLHIV and eliminating stigma and discrimination. For schools, basic and age-appropriate, culture-sensitive and gender responsive instruction must be included in the curricula taught in public and private learning institutions.

Discrimination

What acts of discrimination are punished under RA 11166?

The law prohibits acts and practices that discriminate against PLHIV, including: (1) discrimination in the workplace; (2) discrimination in learning institutions; (3) restriction in travel and habitation; (4) restrictions on shelter; (5) prohibition from seeking or holding public office; (6) exclusion from credit and insurance services; (7) discrimination in hospitals and health institutions; (8) denial of burial services; (9) act of bullying; and (10) other similar or analogous discriminatory acts.

Is it valid for a local council to adopt an ordinance that penalizes HIV transmission?

No, it is not. R.A. 11166, the national HIV and AIDS law, does not include any penalty for HIV transmission. As a general rule of law, a local ordinance cannot rise higher than the national law. Furthermore, penalizing HIV transmission alone (and not other transmissions of other infections) will be unconstitutional as it will violate the principles of equal protection under the Constitution. From a policy perspective, global experience has shown that penalizing HIV transmission is ineffective, discriminatory, and creates more stigma and discrimination against PLHIV which only aggravates the HIV and AIDS crisis.

ANNEX

List of health facilities providing HIV and AIDS health services

Cordillera Administrative Region
Baguio General Hospital and Medical Center

Region I
Ilocos Training and Regional Medical Center
Mariano Marcos Memorial Hospital and Medical Center
Region 1 Medical Center
Ilocos Sur Provincial Hospital - Gabriela Silang
Lacasandile Medical Clinic and Diagnostic Center

Region II
Cagayan Valley Medical Center
Veterans Regional Hospital
Santiago City Health Office HIV/AIDS Action Team (SCHO-HAT)

Region III
Allied Care Experts Medical Center - Baliwag (EmbrACE Unit)
Bataan General Hospital (Bataan HAVEN)
Bulacan Medical Center (LUNTIANG SILONG)
Dr. Paulino J. Garcia Memorial Research and Medical Center (Sanctuario de Paulino)
Jose B. Lingad Memorial Regional Hospital (Bahay LInGAD)
James L. Gordon Memorial Hospital (LEAD Shelter)
Premiere Medical Center (TAHANAN sa Premiere)
President Ramon Magsaysay Memorial Hospital (Balin Kalinga)
Tarlac Provincial Hospital (TPH Cares)
San Marcelino District Hospital (Shelter of HOPE)
Apalit Doctors' Hospital, Incorporated (ADHopeUnit)
Angeles City Reproductive Health and Wellness Center and Primary HIV Care Clinic (Bale Anuelefio)
Guiguinto RHU II PrimaryHIV Care Clinic (Gintong Kanlungan)
Mabalacat City RHU ll Reproductive Health and Wellness Center and Primary HIV Care Clinic (Amlat Mabalacat)
Maria Aurora Community Hospital
City of San Jose del Monte Primary HIV Care Clinic (Villa Esperanza)
RE De Jesus Mulli-Specialty Clinic and Diagnostic Center (GreenClinic)
Talavera General Hospital (Talavera's HOPE)
Guimba Community Hospital (Balay Ti Namnama)
Jose C. Payumo Jr. Memorial Hospital (HEARTH Unit)
RHU 1 Marilao Bulacan (Kanaryong Silungan)

Region IV-A
Meycauayan City Primary HIV Care Clinic (Home of Bamboo)
Batangas Medical Center
Laguna Medical Center
General Emilio Aguinaldo Memorial Hospital
Quezon Medical Center
Ospital ng Biñan
Calamba Doctors Hospital
Antipolo Social Hygiene Clinic
Dasmariñas City Health Office I (SHC)
Bacoor Social Hygiene Clinic
Imus Social Hygiene Clinic
San Pablo Social Hygiene Clinic
Cainta Reproductive Wellness - Social Hygiene Clinic
Rodriguez Municipal Health Office

Region IV-B
Ospital ng Palawan
Occidental Mindoro Provincial Hospital (ARUGA)
Oriental Mindoro Provincial Hospital (Purple Rain Clinic)

Region V
Bicol Regional Training and Teaching Hospital
Bicol Medical Center

Region VI
Western Visayas Medical Center
Corazon Locsin Montelibano Memorial Regional Hospital
Dr.Rafael Tumbokon Memorial Hospital
The Medical City
Angel Salazar Memorial General Hospital
FPOP Community Health Care Birthing Center and Laboratory, Inc.

Region VII
Vicente Sotto Memorial Medical Center
Negros Oriental Provincial Hospital
Gov. Celestine Gallares Memorial Hospital
Visayas Community Medical Center (Balay Malingkawasnon)
Eversley Childs Sanitarium and General Hospital
Talisay District Hospital
Chong Hua Hospital Mandaue - ART Club 802
Cebu Provincial Hospital - Balamban
Cebu Provincial Hospital - Carcar City
Danao City Social Hygiene Clinic - Get Well Resource Center
Cebu City Social Hygiene Clinic
Mandaue City Social Hygiene Clinic
Talisay City SHC

Region VIII
Eastern Visayas Regional Medical Center
Northern Samar Provincial Hospital
Biliran Provincial Health Office
Hilongos District Hospital
Eastern Samar Provincial Hospital
Felipe Abrigo Memorial Hospital
Ormoc City Health Office

Region IX
Zamboanga City Medical Center
Corazon C. Aquino Hospital
Margosatubig Regional Hospital

Region X
Northern Mindanao Medical Center
Mayor Hilarion A. Ramiro, Sr. Medical Center (Dayon Klinik)
HIV/AIDS Primary Care Services Integration of Maramag, Bukidnon

Region XI
Southern Philippines Medical Center
Davao Doctors Hospital
Davao Regional Medical Center
Davao Reproductive Health and Wellness Center

Region XII
South Cotabato Provincial Hospital
General Santos City Social Hygiene Clinic

Region XIII
CARAGA Regional Hospital
Butuan Medical Center
Adela Serra Ty Memorial Medical Center (SDS Wellness Center)
Democrito O. Plaza Memorial Hospital (Heart Room)

Nacional Capital Region
San Lazaro Hospital
Philippine General Hospital
Sta. Ana Hospital
Research Institute for Tropical Medicine
The Medical City (i-REACT Clinic)
Makati Medical Center
St. Luke's Medical Center - Global City
Manila Doctors Hospital
Dr. Jose N. Rodriguez Memorial Hospital
Mary Johnston Hospital
Quezon City General Hospital
Rizal Medical Center
Asian Hospital and Medical Center
Pasig City Treatment Hub (PATH)
Marikina City Satellite Treatment Hub
Manila Social Hygiene Clinic
Klinika Bernardo
Klinika Novaliches
Klinika Project 7
Project 7 Social Hygiene Clinic
Batasan Social Hygiene Clinic
Love Yourself - Anglo
Las Piñas Social Hygiene Clinic
Mandaluyong City Social Hygiene Clinic
Parañaque Social Hygiene Clinic
Taguig Social Hygiene Clinic
San Juan Social Hygiene Clinic
Valenzuela City Social Hygiene Clinic
Pasay City Social Hygiene Clinic
Malabon City Social Hygiene Clinic

Republic Act 11166:
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