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DEPT. OF SOCIAL WELFARE & DEVT.
LIPACOR, CONSTITUTION HILLS, Q.C.

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Administrative Order No. 159
Series of 2002

SUBJECT: Guidelines on HIV/AIDS Testing of Children Under the Care and Custody of DSWD

I. *Rationale*

Republic Act 8504 otherwise known as, "The Philippine AIDS Prevention and Control Act of 1998" specifically Article III, Section 15, prohibits compulsory Human Immuno-deficiency Virus (HIV) testing on any individual. Compulsory HIV testing refers to "HIV testing imposed upon a person attended or characterized by the lack of vitiated consent, use of physical force, intimidation or any form of compulsion".

The AIDS Registry which is the official record of reported HIV positive and AIDS cases and deaths in the country shows that from January 1984 to January 2002 there were 1,622 recorded cases of HIV infection. Of the total number infected, 1,076 are asymptomatic and 546 are AIDS cases. Thus so far, there have been 239 deaths due to AIDS complication.

Regardless of age and sex, a child under the care of DSWD and its licensed/ accredited agencies is at risk with HIV infection when he/she is under the following circumstances: sexually abused by someone with multiple partners or being born to a woman with HIV.

The DSWD as the legal guardian of abandoned/neglected children who are under their care shall act accordingly in instances wherein an informed consent shall be obtained for a child in need to undergo HIV testing.

In view of the above, the policies and guidelines provided henceforth, shall be adopted by the DSWD Field Offices and its licensed/accredited child caring/placing agencies to ensure that every child under their care and custody is protected of their rights relative to compulsory HIV/AIDS testing in response towards the global concern of HIV/AIDS infection.

II. *Legal Base*

A. International Global Instruments

1. The Declaration of commitment on HIV/AIDS adopted during the United Nations 26th Special Session of the General Assembly last June 2001 confirms the commitment of all countries to take the necessary steps to implement the present Declaration, in strengthened partnership and cooperation with other multilateral and bilateral partners and with civil society to raise awareness of the HIV/AIDS epidemic and to deal with its complex challenges.

REPUBLIKA NG PILIPINAS
KAGAWARAN NG KAGALINGANG PANLIPUNAN AT PAGPAPAUNLAD
(DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT)

BATASAN PAMBANSA COMPLEX, CONSTITUTION HILLS

Section 15. *Consent as a Requisite for HIV Testing* - No compulsory HIV testing shall be allowed. However, the State shall encourage voluntary testing for individuals with a high risk for contracting HIV: Provided, that written informed consent must first be obtained. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of a minor or a mentally incapacitated individual.

Section 17. *Exception to the Prohibition on Compulsory Testing* - Compulsory HIV testing may be allowed only in the following instances:

- (b) When the determination of the HIV status is necessary to resolve the relevant issues under Executive Order No. 309, otherwise known as the "Family Code of the Philippines".

III. Implementing Guidelines

A. Purpose

Children who are considered to be high risk of contracting HIV/AIDS and are under the custody of the DSWD or its licensed/accredited child caring/placing agencies may be recommended for HIV testing to ascertain his/her health status for medical care and appropriate treatment.

In the same manner, the child may be recommended to undergo HIV testing when he/she is being considered for permanent placement either thru local or intercountry adoption and upon the written request of the prospective adoptive parents. It is to be understood, however, that in no way should the child be deprived of the right to alternative family care on the basis on his/her perceived HIV status.

B. Coverage

The following children shall be covered by these guidelines, to wit:

- Children whose legal custody are voluntarily or involuntarily committed to DSWD;
- Children who are under the protective custody of the DSWD in the center or in the community; and
- Children who are under the care of the DSWD and its licensed/accredited child caring agencies for temporary shelter.

2. The United Nations Commission on Human Rights in its Resolution 1995/44 adopted on 3 March 1995/44 confirmed “that discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term or other status in non-discrimination provisions in international human rights tests can be interpreted to cover health status, including HIV/AIDS.
3. UN - Convention on the Rights of the Child (CRC)

Article 2

State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians or family members.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and shall:

- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.

B. Local Laws

1. ***Republic Act 8504, “The Philippine AIDS Prevention and Control Act of 1998”***

Section 2 (b) ***Declaration of Policies*** - The State shall extend to every person suspected or known to be inflicted with HIV/AIDS full protection of his/her human rights and civil liberties. Towards this end,

- Compulsory HIV testing shall be considered unlawful unless otherwise provided in this Act;
- The right to privacy of individuals with HIV shall be guaranteed;
- Discrimination in all its forms and subtleties of having HIV shall be considered inimical to individual and national interest; and
- Provisions of basic health and social services for individual with HIV shall be assured.

C. General Policies

1. An in-depth study on the child's situation is necessary to determine whether the child needs to undergo HIV testing for his/her best interest and welfare. The social worker may only recommend for HIV testing when it is beneficial to the child and is based on the following conditions:
 - 1.1 The mother is known to be HIV positive or have engaged in high risk behaviors (e.g. drug dependent, active sex life with multiple partners, etc.);
 - 1.2 The child is a victim of sexual abuse, especially if the alleged perpetrator is suspected to have engaged in high risk behavior; or
 - 1.3 The child is manifesting symptoms of HIV infection.
2. The primary consideration in submitting the child for HIV/AIDS testing should be for his/her best interest so as to take necessary precautions and to give him/her proper medication and appropriate care if the test turns out positive.
3. In cases of adoption, the prospective adoptive parents should have an official request for HIV testing once matched to a child indicating the reason for such request.
4. The fees/cost for the HIV testing shall be chargeable to the DSWD Field Office/child caring/placing agency responsible for the care and custody of the child or the prospective adoptive parents matched to a child if they requested for such test.
5. The HIV status of a child should not be treated any differently from any other analogous medical condition in making decisions regarding care, support, custody, fostering or adoption.
6. Children found to be HIV positive must be ensured/guaranteed of their right to privacy and the right against discrimination considering that children with HIV/AIDS are victims due to their vulnerability which should not be taken against them.
7. The DSWD shall be responsible to coordinate with the concerned agency or the adoptive parents caring for the child who has been found to be HIV positive to ensure that appropriate care and medical treatment are provided for. The Department of Health (DOH) shall be tapped to provide support to the medical needs of the child.
8. The Department shall maintain linkage with the Department of Health (DOH) or NGOs at the national/regional level to ensure that social workers are trained on HIV/AIDS prevention and case management.

D. Procedures

The general procedure to be strictly adhered to prior to the HIV testing of a child whose case is handled by the DSWD either center-based or community-based and its licensed/accredited child caring/placing agencies are as follows:

1. Pre-requisite for HIV Testing

1.1 Maintaining Confidentiality and Privacy

Confidentiality encompasses all information that directly or indirectly lead to the disclosure of the identity of the child recommended for HIV testing. This information includes, but is not limited to the name, age/date of birth, address, picture, physical characteristics or any other similar identifying characteristics.

The child's right to privacy shall at all times be protected and guaranteed by the Social Worker handling the particular case. In so doing, the Social Worker must ensure confidentiality through the following:

- The child to be tested or is diagnosed to have symptoms of HIV infection shall be given an assumed name or code name instead of the real name;
- The member of the inter-disciplinary team who are critical for the care of the child and management of his/her case has a need to know the child's medical status. This also include the Court which has jurisdiction over the petition of adoption in case one is filed in Court. Provided, further, that the judicial proceedings be held in executive session pursuant to Article VI, Section 31 of R.A. 8504; and
- The result of the HIV testing must be kept in a separate folder from the medical records of the child. Except for a valid medical or legal need for this record, no access shall be allowed to any individual or agency.

Penalties for violating medical confidentiality, as provided in Section 33, Article VI of R.A. 8504 shall be applied.

1.2 Pre-test Counselling

Pre-test counselling is necessary for an individual who shall undergo HIV/AIDS testing. Notwithstanding the age/maturity of the child, he/she must be prepared both physically and emotionally before undergoing the HIV test by the Social Worker who is trained to handle HIV/AIDS cases of children. When the child is of age to understand the situation, the pre-test counselling shall include:

- Purpose of HIV testing.
- What the test is, and what it is not.
- Procedure i.e., how long he/she will wait for the result.
- Implications of the test and the meaning of the result, both negative and positive.
- Informed consent and prohibition of compulsory testing.
- Guarantees of confidentiality and risk-free disclosure.
- Basic information on HIV/AIDS infection.

1.3 Informed Consent

Informed consent as a requisite for HIV testing under RA 8504 refers to the voluntary agreement of a person to undergo or be subjected to a procedure based on full information. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of a child or a mentally incapacitated individual.

- In case of children voluntarily or involuntarily committed to the Department, the Director of DSWD Field Office shall decide upon the recommendation of the Social Worker handling the case if it is deemed necessary for the child to undergo HIV testing. Consequently, the approval for the issuance of a written informed consent of the child shall be the responsibility of the DSWD Field Office Director in their respective regions;
- In instances of children who are under the care of the DSWD but whose biological parent/s has/have not relinquished their parental authority, the Social Worker must consult the parent/s and seek their decision whether to give consent for the HIV testing of the child. The written informed consent shall be obtained from the parent/s once they are agreeable to it; and

- In the event wherein the parent/s of a child can no longer be found, the consent of the nearest kin shall be sought or a petition for involuntary commitment of the child to DSWD shall be filed at the appropriate Court. A Declaration of Abandonment committing the child to the care and custody of the DSWD must be obtained from the Court before the DSWD Field Director can give consent for the child to undergo HIV testing.

The written informed consent to be used shall be in conformity to the prescribed format (Annex A) developed by the DOH as provided for in the Implementing Rules and Regulations of RA 8504.

2. Post-test Counselling

Counselling at this stage is provided to children and prospective adoptive parents for emotional support in case of a positive HIV antibody test.

- It is important that the Social Worker explains the implications of the test result and be able to address psychological reactions to it.
- The Social Worker must identify other medical and social support system needed by the child; and
- The Social Worker must recommend the need for follow-up and appropriate care for the child.

In case of a negative HIV antibody test result, the Social Worker must explain the meaning of a negative HIV test and initiate preventive and continuing care for the child.

IV. Procedural Safeguards

To ensure that rights of children are protected:

1. Testing should only be undertaken to enable prospective adoptive parents to make an informed decision to ensure that the child receive optimal care and NOT to discriminate a child.
2. Disclosure of the test results should only be limited to a selected group which shall include members of the interdisciplinary team in charge of the child's care and management of his/her case and of the committee tasked with matching the child to parents, and the Court which has jurisdiction over the petition of adoption in case one is filed.

3. Custodians of the test results should be bounded by the provision on medical confidentiality under RA 8504.
4. Security measures such as having identification codes on file covers rather than names; separating medical form from administrative files; enforcing a clean desk policy and locking filing cabinets with only authorized personnel to have access should be strictly observed.
5. Any breach of confidentiality involving disclosure should be penalized in accordance with R.A. 8504 and other existing rules and regulations.

V. *Monitoring and Reporting*

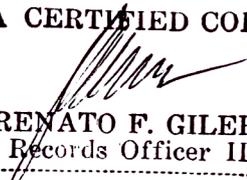
The Field Office shall monitor the strict implementation of these guidelines for HIV testing of children under the care of DSWD and its licensed/accredited child caring agencies.

Likewise, the Field Office is responsible in reporting to the DOH AIDSWATCH in the region any HIV/AIDS related health data for statistical and monitoring purposes without divulging the identity of the child tested and ensure that the result is not traced or linked to him/her.

VI. *Effectivity*

This Order shall take effect immediately.


CORAZON JULIANO-SOLIMAN
Secretary
Department of Social Welfare and Development

A CERTIFIED COPY:

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Records Officer III