

**The HIV and AIDS Prevention and Control
Bill, 2008**

**HIV AND AIDS PREVENTION AND CONTROL
BILL, 2009**

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SCHEDULE

Bill for an Act

ENTITLED

THE HIV AND AIDS PREVENTION AND CONTROL ACT, 2008

AN ACT to provide for the prevention and control of HIV and AIDS, protection, counselling, testing, care of persons infected with and affected by HIV and AIDS, rights and obligations of persons infected and affected and for other related matters.

BE IT ENACTED BY PARLIAMENT AS FOLLOWS:

PART 1 – PRELIMINARY

1. Commencement

This Act shall come into force on such date as the Minister may, by statutory instrument appoint.

2. Interpretation

In this Act, unless the context otherwise requires-

“(AIDS)” Acquired Immuno Deficiency Syndrome” means a condition characterised by a combination of signs and symptoms, resulting from suppression of the immune system caused by infection with the Human Immuno-deficiency Virus (HIV);

“Anonymous Testing” refers to an HIV testing procedure where by the individual being tested does not reveal his or her true identity whereby an

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identifying number or symbol is used to substitute for the name and allows the laboratory conducting the test and the person on whom the test is conducted to match the test result with the identifying number or symbol;

“ART” means antiretroviral therapy

“(ARVs)” means antiretroviral drugs used to boost the white blood cell count to fight the progress of HIV in the human body;

“Biomedical research means”

(a) the study of specific diseases and conditions (mental or physical), including detection, cause, prophylaxis, treatment and rehabilitation of persons;

(b) the design of methods, drugs and devices used to diagnose, support and maintain the individual during and after treatment for specific diseases or conditions; or

(c) the scientific investigation required to understand the underlying life processes which affect disease and human well-being, including such areas as cellular and molecular bases of diseases, genetics, immunology

“Commission” means the Uganda AIDS Commission established by section 2 of the Uganda AIDS Commission Act;

“counsellor” means a person who has undergone an HIV and AIDS counselling course approved by the Minister.

“Court” means a Magistrates court

“disclosure” means the act or process of making known something that was previously unknown, a revelation of facts;

“discordance” means a situation where one of the partners in a sexual relationship is HIV positive and the other is HIV negative;

“discrimination” means an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such person is infected with HIV or has a close relationship with an HIV-infected or suspected HIV-infected person;

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“Health unit” includes a private hospital, clinic, nursing home, maternity centre or other specialised establishment as well as Government units of the same nature;

“HIV testing” means the application of medical professional techniques to determine the status of HIV infection in samples of blood or other fluid or tissue from a human body;

“Human Immunodeficiency Virus (HIV)” is the virus that causes immune deficiency syndrome in humans;

“informed consent” means consent given specifically to a proposed intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation and obtained after disclosing to the person giving consent, adequate information including risks and benefits of and alternatives to the proposed intervention in a language and manner understood by the person;

“medical practitioner” means a person registered under the Medical and Dental Practitioners Act to practice medicine, surgery or dentistry;

“Minister” means the Minister in charge of the office of the presidency;

“Minor” means a person who is below the age of 12 years;

“other qualified officer” includes an allied health professional registered under the Allied Health Professionals Act, nurse or midwife registered or enrolled under the Nurses and Midwives Act or any other person as the Minister may by statutory instrument prescribe;

“Partner” means a spouse or a person with whom a person is having a sexual relationship;

‘skin penetrative instruments’ include any sharp object including razor blades, safety pins, syringes, tattooing equipment and surgical tools.

PART II – PREVENTION OF HIV AND AIDS

Prevention

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3. Reasonable care to be taken to avoid transmission of HIV and AIDS

- (1) Every person shall take reasonable steps and precaution to protect him or her self and others from HIV transmission.
- (2) For purposes of subsection (1), a person shall use a condom or other reliable protective measures to protect him or herself and others from infection with HIV during sexual intercourse.
- (3) A person who is aware that he or she is HIV positive shall;
 - (a) inform his or her sexual partner(s) of the HIV status; and
 - (b) observe instructions on prevention and treatment.
- (4) A person who fails or refuses to take reasonable steps and precaution to protect him or her self and others from HIV transmission as provided under subsection (3) commits an offence.

PART III - HIV AND AIDS COUNSELLING AND TESTING

Counselling

4. Pre-test and post-test HIV counselling

- (1) A health unit which carries out an HIV test shall in all cases provide pre-test and post-test counselling to a person undergoing an HIV test.
- (2) A health unit may where necessary and with the consent of the party require the attendance of any other person likely to be affected by the results of such test.
- (3) Pre and post test counselling shall only be carried out by a counsellor.

5. Counselling to be conducted by trained HIV counsellors

Counselling of any person under this Act shall only be conducted by qualified medical practitioners or persons who have completed an HIV

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counselling training programme approved by the Minister responsible for health.

6. Nature of pre-test counselling

A counsellor shall give a person who has consented to be tested for HIV pre- test counselling which shall include-

- (a) information pertaining to the nature of HIV transmission;
- (b) the importance of having an HIV test;
- (c) an explanation of the informed consent form;
- (d) client-centred information tailored to the behaviour, circumstances and special needs of the person to be tested;
- (e) personalized risk assessment;
- (f) possible results and how to handle the situation to reduce transmission; and
- (g) such other relevant information as the counsellor may deem necessary.

7. Nature of post-test Counselling

(1) A counsellor shall give post-test counselling to a person getting negative HIV test results which shall include-

- (a) the test results and the implication;
- (b) importance of further testing; and
- (c) continuing necessity of taking protective measures to avoid contracting HIV.

(2) A counsellor shall immediately give counselling to a person getting a positive HIV test results which shall include-

- (a) test results and the implication;
- (b) the infectious nature of the virus and types of the disease and measures to prevent transmission;
- (c) the importance of notifying his or her partner and other persons in close and continuous contact posing danger of infection;

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- (d) continuing necessity of taking protective measures to avoid contracting other types of infection;
- (e) referral to medical and social services;
- or
- (f) such other information as the counsellor may deem necessary

8. Continuous counselling

A health unit shall, after the post-test counselling, offer continuous counselling sessions to a person whose test results are HIV positive to enable the person to effectively cope with the situation.

Testing

9. HIV testing services

- (1) A health unit providing common healthcare services, ante-natal care, family planning service or special or general treatment, may offer HIV testing services to persons.
- (2) The identity of a person tested under subsection (1) shall be maintained only at the place where the sample for testing is drawn and shall not be disclosed or released to any person except in accordance with the law and medical standards of disclosing or releasing personal medical information.
- (3) The performance of a test shall be carried out by a medical practitioner or other qualified officer.

10. Voluntary HIV Testing

A person may take a voluntary HIV test and the test results may be identified with that person if he or she gives his or her informed consent after discussion

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of the implications of the test with a medical practitioner or other qualified officer during pre-test counselling.

11. Persons incapable of giving informed consent to HIV testing

(1). A person incapable of giving informed consent may be tested for HIV and the test results may be identified with that person, if his or her parent, guardian, caretaker or agent gives informed consent after discussion of the implications of the test with a medical practitioner or other qualified officer during pre-test counselling.

(2). For purposes of subsection (1) a person is incapable of giving informed consent if he or she is:

- (a) unconscious ;
- (b) of unsound mind;
- (c) a minor;
- (d) suffering from any impairment rendering him or her from giving his or her informed consent.

(3) The informed consent shall be in the form specified in form A of the Schedule to this Act.

12. Consent to test for HIV may be dispensed with

Consent to HIV test under section 10 and 11 may be dispensed with where:-

- (a) It is unreasonably withheld; or
- (b) in an emergency due to grave medical or psychiatric condition and the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

13. HIV testing for purposes of criminal investigation.

The following persons shall be subjected to HIV test for purposes of criminal investigation where-

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- (a) a person is convicted of drug abuse or possession of hypodermic instrument associated with drug abuse;
- (b) a person is charged with sexual offence;
- (c) a person is convicted of an offence involving lewdness prostitution;
- (d) a court orders so.

14. Routine HIV testing.

The following persons shall be subjected to routine HIV test for purposes of prevention of HIV transmission-

- (a) the victim of a sexual offence;
- (b) a pregnant woman;
- (c) a partner of a pregnant woman;

15. HIV testing under a court order

Notwithstanding section 10 a person may be subjected to an HIV test under a court order.

16. Provision of ARV to HIV positive woman and the partner.

- (1) A pregnant woman who is tested and found to be HIV positive under section 14 shall be entitled to safe and appropriate ARV regimens and routine medication to prevent transmission of HIV to the child.
- (2) Appropriate care and support in form of ARV regimens and routine medication as provided for under subsection (1) shall also be extended to a man being a partner to the pregnant woman.

17. Testing of the new born child exposed to HIV.

- (1) A child born of a mother who is HIV positive shall within two years be tested for HIV.
- (2) A child who tests HIV positive under subsection (1) shall, be given HIV treatment, care and support.

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18. Efficiency to be ensured in testing

- (1) A health unit or medical practitioner involved in HIV testing shall take reasonable measures to ensure that the testing process is carried out promptly and efficiently.
- (2) A person who contravenes subsection (1) shall be liable to a civil wrong.

19. Release of HIV test results

- (1) The results of an HIV test shall be confidential and shall only be released to the tested person.
- (2) Notwithstanding sub-section (1), the results of an HIV test may be released to;
 - (a) a parent or a guardian of a minor;
 - (b) legal guardian of a person of unsound mind;
 - (c) a person authorised by this Act or any other law;
 - (d) any other person as may be authorised by a court .

20. Confidentiality of test results and counselling information

All health practitioners, workers, employers, recruitment agencies, insurance companies, data recorders, banks and other custodians of any medical records, files, data or test results shall observe confidentiality in the handling of all medical information and documents, particularly the identity and status of persons living with HIV.

21. Exceptions to confidentiality

- (1) Notwithstanding section 19 a person may disclose information concerning the result of an HIV test or related medical assessments of a person tested, under the following circumstances;–
 - (a) with the written consent of that person, or his legal administrator or legal guardian;

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- (b) to a medical practitioner, nursing officer, paramedical staff who is directly involved in the treatment or counseling of that person, where the HIV status is clinically relevant;
 - (d) upon an order of a court where the information is directly relevant to the proceedings before the court; or
 - (e) if authorized by any other law.
- (2) (f) any other person with whom an HIV infected person is in close and continuous contact including but not limited to a sexual partner, if the nature of contact, in the opinion of the medical practitioner, poses a clear and present danger of HIV transmission to that person; Nothing in this section shall prevent disclosure of statistical or other information that could reasonably be expected to lead to the identification of the person to whom it relates.

22. Person tested to be notified on disclosure

The medical practitioner or other qualified officer giving the results of an HIV test to any person shall, except in the case of other professionals involved in the treatment or care of the person tested, inform the person tested of the disclosure giving-

- (a) the nature and purpose of disclosure;
- (b) date of disclosure; and
- (c) the recipient of the information.

23. Partner notification

- (1) A medical practitioner or other qualified officer who carries out an HIV test may notify the sexual partner(s) of the person tested where he or she reasonably believes that the HIV positive person poses a risk of HIV transmission to the partner and the person has been given reasonable opportunity to inform their partner(s) of their HIV positive status and has failed to do so.

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- (2) Subject to subsection (1) before notifying the partner of the HIV positive person a medical practitioner or other qualified officer shall;-
- (a) counsel the HIV positive person and his or her partner;
 - (b) inform the infected person in advance of the intended notification
 - (c) ensure that follow-up is provided to ensure support to those involved as necessary.

24. Organ, tissue, body fluid or part of the body to be identified with test results.

Any person donating any organ, tissue, body fluid or part of his or her body for the treatment of another person or insemination of sperm, shall provide blood for HIV testing.

25. Testing of donated blood

- (1) Donated blood shall as soon as reasonably practicable after donation, be subjected to an HIV test.
- (2) Blood tested under subsection (1) if found to be HIV positive shall be disposed of in accordance with the prescribed guidelines on the disposal of medical waste as soon as is reasonably practicable after such result is obtained.
- (3) A person whose blood has been tested may be counselled and informed of the results as soon as possible.

26. Testing centres to maintain health standards

A health unit carrying out HIV testing shall maintain good health standards as may be prescribed by the Minister.

PART IV - STATE RESPONSIBILITY IN HIV AND AIDS CONTROL

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27. State obligations

The government shall devise practicable measures to;

- (a) ensure the right of access and equitable distribution of health facilities, goods and services including essential medicines on a non-discriminatory basis;
- (b) provide universal HIV treatment to all persons on a non discriminatory basis;
- (c) process, adopt and implement a national public health strategy and plan of action for HIV and AIDS;
- (d) prevent and control of HIV transmission;
- (e) take measures to develop and promote awareness rights and duties imposed on persons under this Act;
- (f) take measures to develop and implement programmes in order to promote the rights of persons;
- (g) promote and ensure involvement of people living with HIV in participating in government programmes;
- (h) mainstream HIV in all government sectors; and
- (i) Provide care and support to persons living with HIV.

PART V HIV AND AIDS RELATED HUMAN BIOMEDICAL RESEARCH

28. Requirements for research

(1) The Ministry in collaboration with the relevant institutions may institute trials on HIV and AIDS vaccines, medicines and other related bio-products within the country.

(2) In carrying out research under subsection (1), the persons responsible shall exercise reasonable care, and adequate compensation shall be awarded to a victim in case the trial goes wrong.

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(2) Subject to subsection (1) research shall be carried out in conformity with requirements under the Uganda National Council for Science and Technology Act or any other written law for the time in force.

29. Consent to research

(1) A person shall not undertake HIV and AIDS related human biomedical research on another person or on any tissue or blood removed from such person except-

- (a) with the written informed consent of that other person; or
- (b) where that other person is a minor or any person incapable of giving consent, with the written informed consent of a parent or legal guardian of the child.

(2) The person whose consent is sought to be obtained under subsection (1) shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

(3) The person who is the subject of the research be provided with research incentives as far as ethical regulations are concerned.

30. Anonymous testing

(1) Any person who submits to anonymous HIV testing shall not be required to provide a name, age, address or any other information that may potentially identify the same.

(2) In the case of voluntary anonymous HIV testing an identifying symbol is substituted for the person's true name or identity.

PART VI- RIGHT TO SAFE WORKING ENVIRONMENT

31. Right to safe working environment

(1) Every person has the right to a safe working environment.

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(2) Every institution providing health care services and every institution where there is a significant risk of occupational exposure to HIV and AIDS, shall provide free of costs:

- (a) International guidelines to all persons working or present in such institution who may be occupationally exposed to HIV and AIDS, including the employees, interns and contract workers, with appropriate training for the use of such universal precautions; and
- (b) Appropriate management including treatment given to people exposed to HIV and AIDS, with appropriate counselling services.

(3) Every institution referred to in sub section (2) shall provide HIV and AIDS related treatment and compensation to persons working in such institution who are occupationally exposed to and acquire HIV and AIDS

(4) Every institution referred to in this section, shall within sixty days of the commencement of this Act:

- (a) Ensure that the universal precautions on post exposure prophylaxis protocols in accordance with the regulations are complied with in the institution and inform all persons in the institution of the details of availability of universal precautions and exposure prophylaxis in the institution and shall make special efforts to ensure that the lower cadre workers in such institutions are trained in using and can access universal precautions; and
- (b) Where applicable, notify and widely disseminate a treatment and compensation policy in accordance with the regulations specifying the procedure for persons to claim treatment or compensation or both as provided in sub section (3) including the medical records, tests and incident reports required to make the claim.

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Provided that such a policy shall not specify mandatory HIV and AIDS testing including pre-employment testing as a requirement for claiming treatment or compensation.

Provided further that any person claiming occupational exposure to HIV and AIDS, in an institution that does not comply with subsection 4(a) and (b), shall be presumed to have been occupationally exposed to HIV and AIDS and shall be entitled to treatment and compensation without any requirement of further proof.

(5) Every health care provider and every other person who may be occupationally exposed or may occupationally transmit HIV and AIDS shall use universal precautions in accordance with the regulations in the course of their work.

(6) Every health care provider and every institution providing health care services shall ensure basic cleanliness and hygiene and the implementation of infection control measures in accordance with the regulations and any other law for the time being in force.

32 . Discrimination in the workplace

- (1) Subject to subsection (2), a person shall not be-
- (a) denied access to any employment for which he or she is qualified; or
 - (b) transferred, denied promotion or have his or her employment terminated, on the ground only of his or her actual, perceived or suspected HIV status.
- (2) Subsection (1) shall not apply in any case where an employer can prove,
- (a) on application to the court that the requirements of the employment in question are not met;

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- (b) that a person be in a particular state of health or medical or clinical condition.

PART – VII DISCRIMINATION ON GROUNDS OF HIV STATUS

33. Discrimination in schools

An educational institution shall not deny admission or expel, discipline, segregate, deny participation in any event or activity, or deny any benefits or services to a person on the grounds only of the person's actual, perceived or suspected HIV status.

34 Restriction on travel and habitation

(1) A person's freedom of abode, lodging, or travel, within or outside Uganda, shall not be denied or restricted on the grounds only of the person's actual, perceived or suspected HIV status.

(2) A person shall not be quarantined, placed in isolation, refused lawful entry or deported from Uganda on the grounds only of the person's actual, perceived or suspected HIV status.

35. Inhibition from public service

A person shall not be denied the right to seek an elective or other public office on the grounds only of the person's actual, perceived or suspected HIV status.

36. Exclusion from credit and insurance services

(1) Subject to this Act, no person shall be compelled to undergo a HIV test or to disclose his or her HIV status for the purpose of gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

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(2) Notwithstanding the provisions of subsection (1), an insurer, re-insurer or health maintenance organization shall, in the case of life and healthcare service insurance cover, devise a reasonable limit of cover for which shall not be required to disclose his or her HIV status.

(3) Where one seeks a cover exceeding the no test limit prescribed under subsection (2) the insurer, reinsurer or health maintenance organization may, subject to this Act, require the applicant to undergo an HIV test.

(4) Where an applicant elects to undergo an HIV test pursuant to subsection (3) and the results thereof are positive-

(a) The applicant shall, at his or her own expense, enter into such agreed treatment programme with the insurer as may be prescribed by the Minister in consultation with Commissioner for Insurance; or

(b) The insurer may impose a reasonable additional premium or lien to the benefits ordinarily purchased; or

(c) The insurer may decline granting the cover being sought.

(5) A person aggrieved by a determination as to what is reasonable for the purposes of this section may appeal to the Commissioner of Insurance in accordance with such procedure as may be prescribed in regulations and the Commissioner of Insurance shall make a determination on the basis of statistical and actuarial principles and other relevant considerations.

(6) A person aggrieved by a determination made under subsection (5) may appeal within thirty days to court.

37. Discrimination in health institutions

A person shall not be denied access to healthcare services in any health units, or be charged a higher fee for any such services, on the grounds only of the person's actual, perceived or suspected HIV and AIDS status.

38. Access to healthcare services

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(1) Every health institution, whether public or private, and every health management organization or medical insurance provider shall facilitate access to healthcare services to persons with HIV without discrimination on the basis of HIV status.

(2) The Government shall take the steps necessary to ensure the access to essential healthcare services, including the access to essential medicines at affordable prices by persons with HIV or AIDS and those exposed to the risk of HIV infection.

39. Penalty for discriminatory acts and practices

A person who contravenes any of the provisions of this Part commits an offence and shall be liable on conviction to imprisonment of **five years** or a fine not exceeding **twenty** currency points or both.

PART VIII – OFFENCES AND PENALTIES

40. Intentional transmission of HIV and AIDS

(1) Any person who wilfully and intentionally transmits HIV to another person commits an offence, and upon conviction shall be liable to life imprisonment.

- (2) A person shall not be convicted of an offence under subsection (1) if-
- (a) the other person was aware of the HIV status of the accused and the risk of infection and he or she voluntarily accepted the risk;
 - (b) the alleged transmission or attempted transmission was through sexual intercourse and a condom or other reliable protective measure was used during penetration;

41. Offences relating to breach of confidentiality

(1) Any health practitioner or any person referred to under section 19 and 20 who

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- (a) breaches medical confidentiality; or
- (b) unlawfully discloses information regarding HIV and AIDS status of any person, commits an offence, and on conviction shall be liable to a fine of not less than **fifty** currency points or to imprisonment for a term of not less than **six months** or to both.

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42. Offences relating to breach of safe practices of HIV prevention

Any person who wilfully breaches any provision relating to safe procedures and practices, commits an offence, and on conviction shall be liable to.-

- (a) in case of an individual, to a fine of not less than forty currency points or to imprisonment for a term of not less than three months or both.
- (b) in the case of a health care facility, to a fine of not less than three hundred currency points.

43. Penalty for offence relating to obstruction

(1) A person who obstructs or prevents any activity related to implementation of provisions of this Act in any manner commits an offence and shall be liable on conviction to a fine of not less than **ten** currency points or to imprisonment for a term not exceeding **5 years** or both.

44. Misleading information or statement

- (1) All statements or information regarding the cure of HIV shall be subjected to scientific verification before they are announced.
- (2) Publication of statements or information referred to under subsection (1) shall be attached with both evidence of pre- and post- cure HIV test results
- (3) A person who makes or causes to be made any misleading statements or information regarding curing, preventing or controlling HIV contrary to this section shall be liable on conviction to a fine of not less than **two hundred** currency points or to imprisonment for a term of **not less** than **eight years** or to both.

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45. General penalty

Any person, who commits any offence against the provisions of this Act shall be liable on conviction for every such offence except wherein any other section a specific penalty is provided to a fine of not less than twenty five currency points or to imprisonment for a term not less than three months or to both such imprisonment and fine.

46. Exemption to creation of risk

The provisions in this Part shall not apply to any transmission of HIV by a mother to her child before or during the birth of the child.

PART IX - MISCELLANEOUS PROVISIONS

47. Regulations

The Minister may make regulations generally for the better implementation of the provisions of this Act.

48. Minister to issue technical guidelines on surgical, dental and other procedures or treatments

The Minister shall;

- (a) issue technical guidelines on precautions against HIV transmission during surgical, dental, embalming, tattooing or similar procedures.
- (b) issue guidelines on the handling and disposal of cadavers, body fluids, or waste of persons known to be infected with HIV.

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FIRST SCHEDULE

Currency point

One currency point shall be equivalent to twenty thousand shillings.

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SECOND SCHEDULE

INFORMED CONSENT FORM

(Section 6)

(Form to be filled by person to be tested or other authorised person*)

1. Name of person to be tested

2. Physical and postal address

3. Age of person to be tested

4. Nature of medical complaint

5. Test required _____

6. Reasons for conducting test

7. Date of discussion with medical practitioner

8. Implication of test identified

9. If third party requesting for the test state service required from third party _____

(Person giving consent other than person being tested)

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Capacity in which the person is giving consent.

*Delete whichever is inapplicable