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2015年度

愛滋人權報告

# 前言



2015年是我國第七次對於「人類免疫缺乏病毒傳染防治及權利保障條例」的修正，此次的修正再次的將愛滋感染者的治療與檢驗等醫療費用回歸健保；刪除自1990年以來對外籍人士的愛滋體檢規定等等。同年6月間，我國對於長期照顧政策正式公布了「長期照顧服務法」，該法雖於公布後兩年後正式施行，然部分的長照政策已經開始運轉，我國正式將「失能」與「家庭照顧」納入法規保障與服務。新的法規與政策的施行，仍舊需要一段配合的時間來讓愛滋社群與民眾適應，2015年的愛滋人權報告，我們將針對「愛滋醫療回歸健保」、「刪除外籍（大陸港澳）愛滋感染者入出境我國限制」與「愛滋感染者的長照需求」等三大議題著手分析，新法之後的現實困境與展望。

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# 愛滋人權報告

## ---愛滋醫療費用回歸健保



愛滋醫療費用經本次修正，將於2017年二月起，部分回歸全民健保制度。主要條文為第十六條第三項至第五項<sup>123</sup>，以及第二十七條第二項<sup>4</sup>，另有相關附帶決議一項<sup>5</sup>。

屆時，感染者服藥後兩年內之愛滋醫藥費用，由疾病管制署公務預算支應；兩年後則回歸全民健保，而依全民健保規定，在愛滋治療需民眾自費部分，仍由疾管署支應。亦即，對於個別感染者而言，不論處於服藥兩年內或兩年後，在愛滋治療的支應費用部分，皆有疾管署公務預算抑或其與全民健保的協力支持。

2015年12月14日衛生福利部發佈命令<sup>6</sup>，依條例第十六條第五項，修正「人類免疫缺乏病毒檢驗預防及治療費用給付辦法」，



名稱並修正為「人類免疫缺乏病毒感染者治療費用補助辦法」。

新修正之人類免疫缺乏病毒感染者治療費用補助辦法，明  
疾管署以公務預算補助者，為我國有戶籍國民與曾提起申覆<sup>7</sup>  
通過者，後者限於外籍配偶與合法居台之我國無戶籍國民兩類。

1. 第十六條第三項：感染者自確診開始服藥後二年內，以下費用由中央主管機關予以全額補助：  
一、人類免疫缺乏病毒門診及住院診察費等治療相關之醫療費用。二、抗人類免疫缺乏病毒之藥品費。三、抗人類免疫缺乏病毒藥品之藥事服務費。  
四、病毒負荷量檢驗及感染性淋巴球檢驗之檢驗費。五、其他經中央主管機關指定之項目。
2. 第十六條第四項：前項費用於感染者確診開始服藥二年後，全民健康保險保險對象應自行負擔之費用及依全民健康保險法未能給付之檢驗及藥物，應由中央主管機關編列預算支應之。
3. 第十六條第五項：前兩項補助之對象、程序、廢止及其他應遵行事項之辦法，由中央主管機關定之。
4. 第二十七條第二項：本條例第十六條第三項及第四項之修正條文，自公布後二年施行。
5. 建請衛生福利部疾病管制署及中央健康保險署於本法第十六條修正案通過後六個月內邀集專業學會、民間團體、指定醫院代表與全民健康保險會開始協商，訂定變遷相關醫療、藥品、檢驗等費用之總額部門、預算分配方式與支付標準（含藥品給付規定），其抗病毒藥物治療之準則應以實證醫學為依據，以獨立於醫院部門之專款支應、部分負擔由中央主管機關編列預算支應。經濟弱勢等感染者之費用補助辦法與相關配套措施，由中央健康保險署與疾病管制署於修正案通過六個月內，邀集上開團體進行協商，由疾病管制署編列預算支應之。
6. 衛生福利部2015年12月14日部授疾字第1040101156號。
7. 原人類免疫缺乏病毒傳染防治及感染者權益保障條例第二十條，本次修法已刪除。全文條：依第十八條第二項規定令其出國（境）者，如係受本國籍配偶傳染或於本國醫療過程中感染及我國無戶籍國民有二親等內之親屬於臺灣地區設有戶籍者，得以書面向中央主管機關提出申覆。前項申覆，以一次為限，並應於出國（境）後於六個月內為之。但尚未出國（境）者，亦得提出，申覆期間得暫不出國（境）。申覆案件經確認符合前二項規定者，中央主管機關應通知外交部或入出國管理機關於受理申覆者申請簽證、停留、居留或定居許可時，不得以其人類免疫缺乏病毒抗體檢驗陽性為唯一理由，對其申請不予許可。



同辦法第四條規定，除無戶籍國民乙類以外，其餘身份類別者，疾管署核發之全國醫療服務卡為永久有效，無戶籍國民類則依其所持有之居留證效期，有特殊情形得申請延長。

亦即，以上幾類之外的身份對象，疾管署將不給予補助，最大宗的將會是「外籍人士」。

部分民間愛滋機構對於疾管署未將外籍人士納入補助範圍有異議，並且對於申覆辦法隨本次修法而廢止，使受本國籍配偶感染之外籍配偶等人失去既有的救濟途徑，也認為不妥。

對於相關爭議，本會認為，疾管署補助個人之愛滋醫藥費用，來源為國家公務預算，外籍人士非我國國民，公務機關對其本無照顧義務；惟愛滋傳染不分國籍身份，而給予愛滋



感染者適當的治療，或使其有能力取得基本治療，絕對有助於疾病防治，對外籍人士本身、以及我國長居國民都有益處。故此，若國家預算有餘裕，或其他預算名目有所符節，照顧外籍人士為合理合法，效益必然可期。

以個人而論，一位長期居台的外籍人士，更期待的應是全民健保是否給付愛滋醫藥費用。我國全民健康保險含納疾病種類甚多，也規定領有外僑居留證者，居留期滿六個月即應加入健保，甚至為合法受雇者，自受雇日即加保。一旦愛滋回歸健保，有加保之外籍人士理當同受保障。

此外，補助辦法第二條明訂，醫師為一位感染者首次開立處方日，為感染者「開始用藥」起算時間點，用藥兩年後，



回歸健保制度。顯然，若一位感染者在兩年內將個人健康狀態順利提升，則回歸健保後，除非意外情況，應不至因愛滋而有龐大醫藥費用發生。

我們關切的是，健康狀態能夠順利提升，藥品有效與用藥規律是重要關鍵，前者需要用藥前抗藥性檢測輔證，而我國目前並不主動提供首次用藥者這項檢測；後者需要感染者個人心理狀態與生活狀態的配合，特別需要醫事人員主動關切並提供有效的協助，使個人能在健康穩定的狀態下回健保。

8. 補助辦法第二條：本條例第十六條第三項及第四項所定感染者確診開始服藥，應自感染者確診後，醫師首次開立抗人類免疫缺乏病毒藥品處方之日起算。

# 愛滋人權報告

## ---取消外籍愛滋限制



「我以為這一次修法取消外籍人士限制之後，他可以留在台灣。但是，我們現在卻在專勤隊做筆錄，他還是要被限令出境，為什麼？！都已經拿到入學通知了！他是多麼希望可以在台灣讀書，為什麼這個法律還是這麼不公平…」我們三個人坐在專勤隊等待著一份處分，而當他問這個問題時我也不知道該怎麼做解釋，因為我也不知道為什麼會這樣，不是修法了嗎？

2015年2月4日在「人類免疫缺乏病毒傳染防治及感染者權益保障條例」（以下簡稱「愛滋條例」）第七次修正施行之後，這次修法的重點就是刪除原愛滋條例的第18條-20條，這是自1991年10月台灣強制外籍勞工施行愛滋病毒篩檢以來，



首次全面取消對外來人口（包含「外籍人士」與「大陸港澳居民」等的統稱）愛滋篩檢與將感染愛滋病毒之外來人口逐出境等規定。

感染愛滋病毒的外來人口等待許久的愛滋條例第七次修法，是否對於台灣境內與境外的外籍愛滋人士開啟了完全解禁的大門？

在第七次修法中的7點附帶決議中第6點即針對刪除第18條-第20條之後的衛生福利部應該會同其他主管機關制訂出因應的措施。詳看附帶決議第6點說明：六、於本法第十八條至第二十條刪除案通過後，衛生福利部應會同外交部及內政部入出國及移民署與相關部會，針對因為感染事實導致逾期居留



之外國人、大陸地區人民或港澳地區居民，以個案審查方式核發效期六個月內之臨時停留許可或其他證明文件，協助其在臺灣重新申請居留，於本法修正施行後一年內為限；申請居留與歸化之體格檢查項目應去除人類免疫缺乏病毒感染檢查。

簡略的歸納出該附帶決議中的幾個重點：

重點一：主管機關有衛生福利部、外交部以及內政部入出國及移民署。這三個部會必須要先研議出如何解決逾期在臺灣外籍人士的去留問題。其中包含到底有多少人是已知的逾期外籍愛滋感染者等。

重點二：此次適用的對象為「因為感染事實導致逾期居留」



者，也就是若同樣為外籍愛滋感染者，若其逾期原因並非由愛滋感染所造成；或者其逾期原因為愛滋感染所造成，但不是在台灣以居留的身份居住，將被排除在外。換言之，在附帶決議中明確的指出，可以接受協助的對象必須是「因發現感染愛滋病毒而喪失居留身份者」。

重點三：需要個案審核，通過審核者可以申請六個月內的臨時停留許可或其他證明文件，六個月內的臨時停留許可，並不是一個正式居留的許可，也無法享有居留許可的相關保障與福利。

重點四：修正所有與外籍人士所有的檢驗規定與表格，因無法源依據可以依循檢驗，愛滋篩檢不再是強制性。



修法之後，外籍愛滋感染者已經可以進入我國觀光、留學、工作與婚嫁皆不會又問題，但針對原本已經逾期停居留於台灣境內的外籍愛滋感染者則因多數的專案 1 條件不符合，依舊逾期停留並且管制入境等。而在外籍人士於台灣地區的愛滋醫療給付部分，仍有未確定性，未來外籍愛滋感染者是否等同於本國愛滋感染者享有同樣的給付標準尚不明朗。修法的背後還未完全達到『愛滋移住平權』的目標，台灣仍給予外籍愛滋感染者於醫療防治上的限制，於身份認定的限制。截至2016年4月1日前，由本會協助的逾期停居留於台灣地區的外籍愛滋感染者中，有7位獲得停居留許可，有8位因為條件資格不符合而仍被要求離境，絕大多數需管制1年以上才



能重新申請入境，這8位中單身2人<sup>2</sup>，有婚姻者4人，有同性  
伴侶者2人，而還有多少需要協助的逾期停留在台灣的外籍  
愛滋感染者無法估計。

1. 內政部移民署以「民國104年8月20日移署移外銘字第10401017231號」令公布，訂定「外來人口感染人類免疫缺乏病毒專案申請六個月效期之臨時停留許可送件須知」

2. 單身者中亦有旁系血親在台定居。

# 愛滋人權報告

## ---看的到吃不到的長期照顧



2014年12月19日本會公布了雙北地區公私立安就養機構是否願意接受愛滋感染者申請安就養的電話訪查結果<sup>1</sup>，愛滋感染者在申請相關安就養資源，普遍會被拒絕。根據本會的工作經驗觀察，多數的愛滋感染者需要申請安就養的服務原因多元，不僅因愛滋感染者老年化，多數愛滋發病者於治療之後需要申請復健、養護等。現有的愛滋照護機構北部僅有兩間<sup>2</sup>，南部一間，其編制的床數有限所能提供的服務無法滿足現有的狀況。我國現有的社會福利政策與社會福利法規中，皆未明文排斥愛滋感染者安就養權利，實際上因對疾病的歧視與恐慌所以罔顧愛滋感染者的安就養權利，由於我國對於安就養機構的約束主管機關與法規太過零散，導致愛



滋感染者即便被拒絕也難以有管道陳情或者申訴。故，2015年3月5日衛生福利部疾病管制署函文公告「第一階段愛滋感染者照顧示範機構名單」全台共有13間，看似增加了不少照顧機構，然.實則並未保留一定名額的床位提供給愛滋感染者也並未經愛滋感染者申請列如優先排為順序，換句話，愛滋感染者申請與一般人一樣需要排隊。在本會幾次轉介的經驗上，愛滋感染者申請照顧示範機構平均需要等待1個月以上才得以申請入住，且13間照顧示範機構所在的區域並非遍及全台，成為看的到但難以使用的政策。

我國長期以來對於照顧的概念一直視為年長者或身心障礙者的需要，然越來越多的青中壯年人口紛紛因為突如其來的



疾病而有照顧服務的需求，故，2015年6月3日公布「長期照顧法」。(以下簡稱「長照法」)，該法的精神就是為了提供「評估失能已達6個月以上(或預期會達6個月以上)」者提供之生活支持、協助、社會參與、照顧及相關之醫護服務。該法明確的將主管機關訂為衛生福利部，也明確的區分機構式照顧、家庭式照顧與個人式照顧通通納入法規內統一規範。此法上有兩年的宣導期，然衛生福利部的政策宣導所傳遞給予民眾的概念，仍舊「以年長者」的照顧服務為主訴求，容易引導民眾誤解該法的精神乃是為了提供「失能者」的服務與保障，也就是年齡不再是限制進入長照的門檻。並且，長期照顧機構的設置亦尚未朝著「去除年齡限制」的方向設計，以現有我國公私



立機構住宿形態共有1560間。若能一一轉型以「失能評估為優先」而非「年齡導向」，未來愛滋失能感染者將有更多的保障與服務。

未來愛滋感染者的平均餘命將會提高，老年愛滋感染者與失能愛滋感染者的需求增加成為一個不可必免得趨勢，如何將愛滋感染者可以回歸台灣長期照顧政策內的一環，不僅是要提高民眾對於愛滋疾病的認識，並且從政策層面著手，推動愛滋感染者去除歧視與標籤回歸社區。本會期盼長照服務法兩年後正式施行，能有助於愛滋感染的照顧服務，同時也能真正兼顧疾病失能者的需求與權益。

1. 2014年8月間，愛滋感染者權益促進會（下稱「本會」）以電話訪查方式，對雙北地區所有公私立安養、養護照顧型機構（共318間，成功訪查共314家）是否有接受愛滋感染者申請入住進行訪查。訪查結果統計，不到一成的機構（26家／314家，8%）願意接受愛滋感染者入住；高達92%（288家）的安養中心拒絕接受愛滋感染者入住，拒絕的原因有「沒有設備」、「工作人員會害怕」、「法規規定不能收」、「愛滋群住會容易感染」等等。「人類免疫缺乏病毒傳染防治及感染者權益保障條例」第四條第一項規定：「感染者之人格與合法權益應受尊重及保障，不得予以歧視，拒絕其就學、就醫、就業、安養、居住或予其他不公平之待遇，相關權益保障辦法，由中央主管機關會商中央各目的事業主管機關訂定之。」本次訪查中，私立機構中僅有1家（1家／306家，0.3%）明確的表示知道法規規定，但還是拒收感染者。
2. 北部：愛惠教育基金會、關愛之家協會照顧愛滋成人；南部：關愛之家協會照顧愛滋成人。
3. 長期照顧政策、老人福利法。
4. 根據2015年3月公告的第一階段照顧機構示範名單中，多以各縣市衛生福利部醫院附設護理之家為主，總計新北地區1間、桃園地區2間、台中地區1間、彰化地區1間、南投地區2間、嘉義地區1間、台南地區2間、高雄地區1間花蓮地區2間。
5. [http://www.mohw.gov.tw/MOHWUpload/doc/1長期照顧服務法\\_0051321001.pdf](http://www.mohw.gov.tw/MOHWUpload/doc/1長期照顧服務法_0051321001.pdf)，衛生福利部設立「長照政策專區」說明
6. [http://www.mohw.gov.tw/cht/LTC/DML\\_P.aspx?f\\_list\\_no=8978&fod\\_list\\_no=0&doc\\_no=50957](http://www.mohw.gov.tw/cht/LTC/DML_P.aspx?f_list_no=8978&fod_list_no=0&doc_no=50957)。
6. 資料來源：衛生福利部長照服務資源地圖<http://lrcgis.mohw.gov.tw/Index/opendata.aspx>，全台養護型機構966間、長期照顧機構61間、護理之家517間、養民之家16間。

# PREFACE



Taiwan saw two major legislative accomplishments in relation to enhancing PLHIVs' access to healthcare and social protection in 2015, including the amendment of the HIV Infection Control and Patient Rights Protection Act (hereafter HICPRPA) for the seventh time and the enactment of the Long-term Care Services Act (hereafter LCSA).

The HICPRPA amendments lifted HIV-positive foreigners' residence restrictions and require that the National Health Insurance (NHI) reassumes its responsibility of shouldering HIV-related medical costs, while the LCSA brings hope to



PLHIVs' improved access to aged and disability services at nursinghomes.

Implementation gaps of the legislations, however, have continued to put barriers to HIV-positive individuals' full enjoyment of their rights. This report by the Persons With HIV/AIDS Rights Advocacy Association (PRAA) seeks to review the pressing issues arising from the difference between laws on books and how they function in reality in a bid to offer recommendation to close the gaps.

# PART I:

## GOVERNMENT COVERAGE FOR HIV MEDICAL COSTS



### **A. Background**

#### **HICPRPA Amendment**

The concern over the NHI's financial predicament prompted Taiwan to shift the responsibility of covering HIV medical costs treatment to the Center for Disease Control (CDC) in 2006.

In response to the warning over CDC's financial capacity and the sustainability of government-financed ARV therapy, the HICPRPA amendment in 2015 requires the NHI to resume again the responsibility for subsidizing HIV-related testing and medication—beyond the two years term of CDC's coverage of such costs from confirmed diagnosis and medication initiation.



The new policy initiative to take effect from 2017 further prescribes that the CDC shall help PLHIVs afford their NHI copayments and any HIV medical procedures or medications at patients' own expense.

The revision of policy was made pursuant to HICPRPA Article 16 (3)<sub>1</sub>(4)<sub>2</sub>(5)<sub>3</sub> and Article 27(2)<sub>4</sub> .

References should also be made to a resolution<sub>5</sub> appended to the amended Act.

### **Regulations on HIV medical subsidy**

Based on Article 16(5) of the amended Act, the Ministry of

1. For the infected, in the two years from confirmed diagnosis and medication initiation, the following expenses shall be totally subsidized by the central competent authorities: HIV treatment-related expenses including diagnostic fees during outpatient and inpatient care; expenses of antiretroviral medications; pharmaceutical service fees on antiretroviral medications; laboratory service fees on tests for HIV viral load and CD4 cell count; other items designated by the central competent authorities.

2. Of expenses mentioned in the preceding paragraph, after the two years from confirmed diagnosis and medication initiation, the central competent authority shall budget for the infected's copayments, in addition to expenses of tests and medications not covered by the National Health Insurance.

3. For the subsidies mentioned in the two preceding Paragraphs, regulations concerning their subjects, procedures, annulment, and other matters shall be formulated by the central competent authority.

4. The amendments to Article 16(3)(4) shall be implemented two years after the promulgation of the amendment.

5. The resolution requires the MOHW and the NHI to invite professional societies, NOGs, hospital representatives and the ministry's National Health Insurance Committee to engage in discussions and negotiations on detailed arrangement of the shared budgets allocated to HIV medicines, treatment and testing, as well as on the scope and guidelines for coverage. Based on the resolution, the CDC would be responsible for covering such medical costs of the underprivileged, with the measures pending discussions by the ministry, CDC and the aforesaid groups.



Health and Welfare (MOHW) announced<sup>6</sup> on Dec.14 2015 that the Regulations Governing Payments for Expenses for Laboratory Testing, Prevention and Treatment of HIV would undergo amendments and be renamed the Regulations Governing Subsidies for Treatment Expenses of HIV-Infected Persons.

According to the ensuing legislative changes, in addition to Taiwanese nationals, non-national whose appeal to return to Taiwan within six months of their deportation due to their positive HIV testing results has been approved<sup>7</sup>, are also entitled to CDC

6. Shou-Chi- Tzu No. 1040101156 of MOHW notice

7. Prior to its removal following the amendment, Article 20 of the Act stipulates that foreigners who have been in Taiwan for more than three months were required to undergo HIV screening, while those whose results are positive were to be deported. Only the following three types of individuals were allowed to apply for their return: Those who were infected by spouses with Taiwan nationality; those who contracted HIV during medical procedures in Taiwan; and those with relatives within two degrees of kinship who have household registration and currently reside in Taiwan. The appellant is restricted to filing an appeal once only. Those who were able to file an appeal before the deportation took place were required to refrain from leaving the country during the review of their case.

Other foreign nationals are excluded from the CDC benefit packages for PLHIVs.

Foreigners who have paid NHI premiums, a requirement for those staying in Taiwan over six months, are entitled to the NHI subsidy of their HIV and ART-related costs, with the proportion of coverage by the insurance scheme pending further decision by the authorities.



coverage of their HIV-related medical costs. In addition, article four of the regulations prescribes permanent certification card for the CDC subsidy to Taiwanese nationals – with nationals without registered permanent residence in Taiwan as an exception. The latter’s HIV medical service cards expire along with their alien residence certificates, but are subject to renewal under special circumstances.



## **B. Recommendation**

### **Drug-resistance and medication adherence**

PLHIVs' stable health condition as a consequence of antiretroviral therapy will help alleviate the NHI's financial challenge, considering the NHI's obligation in rendering financial support to them starting from two years after the initiation of treatment.

As healthcare personnel in Taiwan do not voluntarily introduce drug-resistance testing to PLHIVs before the initiation of HIV medication for the first time, we suggest that proactive monitoring for timely interventions to improve their



medication adherence or respond to drug-resistance must be in place for improved health status – for PLHIVs’ benefit as well as that for the NHI.

### **Subsidy for foreign nationals**

While it may be justifiable to say that the state is not obliged to extend subsidized testing and treatment to all foreigners, Taiwan’s overall HIV prevention and control would undoubtedly benefit from their enrollment in HIV clinical services. In light of this, we suggest the government to consider covering their HIV-related medical costs to the best of its ability.

## PART II:

### RESIDENCE RESTRICTIONS FOR HIV-POSITIVE FOREIGNERS

#### **Background**

.....I thought my boyfriend would be able to stay in Taiwan and pursue his study after the authorities lifted the ban on foreign PLHIVs' residence in Taiwan. He's already got the university admission notification and really looks forward to studying here. Why are we making a police report now at the National Immigration Agency's (NIA) Specialized Operation Brigade then? Why is the law so discriminatory to HIV-positive individuals?

As a social worker, I sat in the brigade's office with the HIV-positive young man from abroad and his boyfriend without



knowing how to explain the challenges facing them.

Frankly, I myself could not understand why he would be facing deportation despite the HICPRA amendment in 2015.

*Janet Yeh, PRAATW Staff*

An essential component of the HICPRA amendment in 2015, was the removal of Article 18 to 20 from the Act, repealing the stipulation for foreign nationals' mandatory HIV screening and their immediate deportation following positive test results since Oct. 1991.

The limited access of foreign PLHIVs to the administrate



remedy that prevents their deportation and allows their application for residence in Taiwan in case they have overstayed their visa, however, remains an issue of concern due to the sixth resolution appended to the amendment. According to the resolution, the MOHW is required to review the application for subsequent continued stay by non-nationals whose “residence” in Taiwan became legal due to their HIV infection, on a case-by- case basis jointly with the Ministry of the Interior and the NIA, subsequent to the removal of Article 18, 19 and 20 from the Act. A temporary stay permit or other certification documents valid for six months to allow



the renewal of their visas without leaving Taiwan will be issued to those whose applications have been approved.

The resolution also states that the aforementioned measure expires after one year from the date the amendment enters into force.

### **Recommendation**

The amendment was intended to offer administrative relief to foreign PLHIVs who have overstayed in Taiwan with the opportunity to continue with their pursuit in Taiwan, with a valid visa. The authorities' narrow interpretation of the text of the resolution, however, rules out non-resident visa holders



whose visas were automatically nullified following their HIV diagnosis as eligible applicants for the assistance, while HIV-positive residence-visa holders whose visa have expired due to other reasons but the nullification following diagnosis are also denied the administrative relief.

As for April 1, 2016, only seven of the 15 foreign PLHIVs who approached PRAA for assistance in the application successfully obtained the said temporary stay permit, while the other eight were deported due to the aforementioned exclusion from the application. Most of those who were forced to leave the country could only apply for re-entry a year after their deportation.



The expulsion resulted in tremendous impact to the deportees' life, as four of them were married and two were in same-sex partnerships.

It is difficult to estimate the exact number of foreign PLHIVs who have lived in Taiwan under the shadow of fear for deportation.

In light of the intent of the amendments and its implementation gap, PRAA suggests the authorities to render assistance to foreign PLHIVs whose stay in Taiwan became illegal due to their HIV status as much as possible to allow them to extend their stay from within the country. Furthermore, the importance of information dissemination regarding the administrative



remedy, so that those who could benefit from it would be able to seek help promptly before the “grace period” of one year starting from the amendment expires.

# PART III:

## LONG-TERM CARE



### **A. Background:**

#### **Unmet care needs**

PLHIVs need long-term services for a number of reasons, among which include aging as well as needs for rehabilitation and nursing care after their treatment. Their acceptability and accessibility to long term care, nonetheless, have always been an issue.

Currently, there are only three nursing homes<sup>9</sup> that were established specifically to address the needs for long-term care of HIV-positive adult individuals. The supply of beds and

9. The Garden of Mercy Foundation (愛慈社會福利基金會) and Harmony Home Association (關愛之家) are the two organizations in Taiwan that founded nursing homes specifically for PLHIVs. The former provides services in northern Taiwan only, while the latter operates two facilities respectively in northern and southern Taiwan.



number of staff caregivers at these nursing homes is far from sufficient.

PLHIVs usually encounter refusals by other long-term care providers due to discrimination, although there are no specific stipulations in Taiwan's social welfare policy or legislation<sup>10</sup> restricting their admission in the long-term care setting.

A telephone survey by PRAA in Aug 2014 finds evidence of service providers' exclusion of PLHIVs. Only 26 of the 314 public and private nursing homes in Taipei and New Taipei City were willing to accept PLHIVs as their residents, while 288 others refused to do so. Their rejection were respectively



attributed to the concern and fear of staff, risks of HIV transmission, excuses such as the lack of proper facilities and misinterpretation of regulations governing HIV prevention and control.

Additionally, a nursing home manager expressed objection at PLHIVs' access to the facility despite knowledge of the prohibition by law<sup>11</sup> of such denial of application solely on the ground of one's HIV status, an apparent example of the influence of stigma and discrimination in service providers' acceptance of PLHIVs by service providers.

To make matters worse, the myriads of regulations and



supervisory agencies governing nursing homes have made the complaint procedures to rectify the issue complicated and discouraging. In an attempt to seek a quick solution, the MOHW on Mar. 5 designated 13 nursing homes affiliated to the ministry's subordinate hospitals last year to join its program for the promotion of PLHIVs' access to long-term care facilities.

### **Long-term care legislation**

The LCSA<sup>12</sup>, promulgated on June 3 in 2015, is the principal legal basis for the nation's development of comprehensive long term care, which it defines as "addressing the needs of 'any individual' whose mental or physical incapacity has lasted or is



expected to last for six months or longer, as well as those of their caregivers.”

More specifically, the law aims to provide the living support, assistance, social participation, care and relevant healthcare services to those in need of long-term care, integrating home-based care, community care and nursing facilities, with the MOHW as the governing authority.

## **B. Recommendation**

### **Service network expansion**

The ministry’s collaboration with only nursing homes of a limited number of its subordinate hospitals has led to geographic



imbalances<sup>13</sup> in the supply of long-term care services to PLHIVs.

Furthermore, the ministry designated the aforesaid nursing facilities to enhance PLHIVs access to long-term care services, but failed to require them to prioritize PHLIVs applications or offer a minimum portion of their beds to HIV-positive applicants.

PLHIVs' applications to long-term care facilities, consequently, are often subjected to either rejection on a pretext of a long queue or extraordinarily vigorous assessments of their applications.

The average waiting period for PLHIVs who were eventually able to admit to nursing homes is one month.

10. Taiwan's long-term care policy and Senior Citizens Welfare Act

11. HICPRPA Article four: the dignity and the legal rights of the infected shall be protected and respected; there shall be no discrimination, no denial of education, medical care, employment, nursing home, housing or any other unfair treatment.

12. [http://www.mohw.gov.tw/MOHW\\_Upload/doc/1長期照顧服務法\\_0051321001.pdf](http://www.mohw.gov.tw/MOHW_Upload/doc/1長期照顧服務法_0051321001.pdf); the Ministry's elaboration on its long-term care policy at [http://www.mohw.gov.tw/cht/LTC/DM1\\_P.aspx?f\\_list\\_no=897&fod\\_list\\_no=0&doc\\_no=50957](http://www.mohw.gov.tw/cht/LTC/DM1_P.aspx?f_list_no=897&fod_list_no=0&doc_no=50957)

13. There is one nursing home in the program available respectively in New Taipei City, Changhua, Chiayi, Kaohsiung, while there are two service providers respectively in Taoyuan; Nantou, Tainan and Hualien.



In light of the above, we recommend the ministry to increase the number of designated nursing homes to promote long-term care services for PLHIVs and to ensure the availability of such facilities towards a more balanced geographic distribution.

Further to that, the designated service providers shall be required to prioritize PLHIVs' applications and spare a portion of their beds to HIV-positive individuals.

### **Disability-centered perspective and approach**

The LCSA regards long-term care as responding to the needs of “any individual” whose mental or physical incapacity has lasted or is expected to last for six months or longer. While



proper publicity and promotion for the act could help correct the common misconception that only the elderly population and those with long-term disability require such services, the ongoing policy promotion before the law comes into effect two years later focuses narrowly on elaborating how the senior population could benefit from the system.

Considering that people below age 65 could also fall prey to sudden illness, and thus require long-term care the reality for many people living with HIV, we suggest that subsequent policy promotion should adequately reflect the purpose of the legislation, which I to ensure care for “any individual” who meet its criteria



for services. This hopefully would help increase willingness of the 1,560 residential care providers<sup>14</sup> across Taiwan to remove the current age restrictions for service applications. As individuals living with HIV are likely to require post-treatment rehabilitation and tend to suffer health conditions associated with aging earlier than HIV-negative peers, changing the age-centered perspective and approach in long-term care is particularly crucial to their access to necessary support and services.

14. <http://itcgis.mohw.gov.tw/Index/opendata.aspx>

出版單位：社團法人中華民國愛滋感染者權益促進會

出版年月：2016年4月

立案字號：台內社字第8690006號

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機構臉書：請搜尋「愛滋權促會」

指導單位：中華社會福利聯合勸募協會

責任編輯：林宜慧、葉珈語

翻 譯：莊紀婷

美術編輯：Alan Yen

印 刷：千傳印刷事業有限公司