

# POLICY BRIEF ON DISCRIMINATION IN THE HEALTHCARE SECTOR AGAINST EMPLOYEES AND PATIENTS LIVING WITH HIV

## INTRODUCTION AND BACKGROUND

### 1. EMPLOYMENT OF PEOPLE LIVING WITH HIV (PLHIV) IN THE HEALTHCARE SECTOR

People living with HIV often struggle with discrimination and stigmatization in employment. Unfortunately, harassment, discriminatory dismissals, and unlawful or unreasonable extra requirements or conditions are common experiences. Healthcare is one sector where this discrimination is all-too-often experienced. PLHIV working in healthcare face considerable stigma and a range of prejudices, often based on misconceptions of the risk of HIV transmission. The situation is often worse for PLHIV who conduct procedures where HIV exposure is a possible risk unless appropriate precautions are taken. However, discriminatory practices are experienced across the whole spectrum of the medical profession, even for those who undertake procedures where there is no risk of transmission.

Globally, since the beginning of the AIDS pandemic there have only been a handful of cases registered where transmission of HIV from healthcare workers to patients has occurred.<sup>1</sup> Data show that the risk of HIV transmission in healthcare settings is negligible.<sup>2</sup> The widespread application of universal precautions has reduced transmission risk even further such that unintentional transmission in healthcare settings is now virtually impossible and occupational health services play a significant role in ensuring that PLHIV can be employed safely in healthcare roles. Thus, measures, recommendations or regulations that result in the disclosure of a healthcare worker's HIV status are of no benefit to patients, but carry a high risk of discrimination for PLHIV working in the healthcare sector.

<sup>1</sup> The Association for the Control of Viral Diseases (DVV) and the Society for Virology. Prävention der nosokomialen Übertragung von humanem Immunschwächevirus (HIV) durch HIV-positive Mitarbeiterinnen und Mitarbeiter im Gesundheitswesen. 2012, available at: <https://edoc.rki.de/bitstream/handle/176904/1471/23UOZT6sKnns.pdf?sequence=1&isAllowed=y>.

<sup>2</sup> Centers for Disease Control and Prevention of the United States. Occupational HIV Transmission and Prevention among Health Care Workers (2015). Available at: <https://www.cdc.gov/hiv/pdf/workplace/cdc-hiv-healthcareworkers.pdf>.

According to research conducted by the European HIV Legal Forum, poor understanding of HIV transmission risk, the lack of transparent regulations, and frequent occurrence of discriminatory practices remain a significant issue across Europe for healthcare workers living with HIV.

The main findings of the research include:

- (a) A lack of HIV-specific legal frameworks within national non-discrimination legislation and the absence of internal guidance from most healthcare providers
- (b) Unjustifiable prohibitions and/or limitations on work in healthcare for people living with HIV
- (c) Policies and practices imposing mandatory universal HIV testing in order for people to be able to work in any healthcare role in countries where this is not legally prohibited.

## 2. DISCRIMINATION AGAINST PEOPLE LIVING WITH HIV (PLHIV) AS PATIENTS IN THE HEALTHCARE SECTOR

The healthcare sector represents an area where people living with HIV are very vulnerable, as they usually have to disclose their HIV-status to their healthcare providers. It could be argued that, of all people, healthcare providers should be able to process this information with respect and confidentiality, and refrain from any discrimination. However, in our research, numerous cases were identified where, in practice, people living with HIV were refused treatment, harassed by staff, or had their rights breached.

The European HIV Legal Forum conducted further research to gain information about applicable legal regulations, good and bad practice, and case studies from various countries in Europe and Central Asia.

The main findings of this research include:

- (a) While laws usually prohibit discrimination on the grounds of a person's HIV status, it still occurs in practice and includes refusal of care. Many healthcare providers do not have procedures in place to address and eliminate discrimination.
- (b) While in most countries PLHIV are not obliged to disclose their HIV status in healthcare settings, some countries still have this obligation and that can lead to discrimination.
- (c) Confidentiality breaches by medical practitioners are a common practice.
- (d) Several gaps in legislation have been found, especially in countries outside the EU, with regards to protection of PLHIV against discrimination.

### 1. EMPLOYMENT OF PLHIV IN THE HEALTHCARE SECTOR

## LEGISLATION

#### LEGISLATION

1. Adopt and implement more HIV-specific and -sensitive legislation on the rights of PLHIV, including those working in healthcare.
2. Specify employer's obligations for occupational health and safety, and employee well-being. Where this already exists, conduct reviews to ensure its relevance for PLHIV and their experiences in employment
3. Abolish limitations and restrictions to employment of PLHIV in the healthcare sector that arise from over- or misinterpretation of legislation
4. Adopt and implement legislation on HIV testing according to the international guidelines and recommendations, refraining from any HIV mandatory testing of employees in the healthcare sector who undertake procedures where there is no risk of HIV transmission.

## PRACTICE

#### PRACTICE

5. Ensure that employers in the healthcare sector do not require any HIV testing of employees who do not undertake procedures where there is no risk of HIV transmission; any such testing should be conducted on a purely voluntary basis, with the data not being shared with the employer. Ensure there are no consequences for employees, students or job candidates who refuse to take an HIV test.
6. Engage chambers/associations of healthcare workers/professionals in disseminating knowledge about the actual extent of HIV transmission risk, and in standing up against HIV stigma to achieve a change of attitudes towards HIV and people living with HIV among medical practitioners. Ensure they engage with PLHIV organisations who can provide expert knowledge in this area.
7. Ensure that employers in the healthcare sector remove unnecessary limitations on, and restrictions to employment of people living with HIV, and make the well-being of these employees a priority.
8. Implement procedures to ensure that occupational healthcare providers observe confidentiality protocols regarding HIV status and do not share this information with employers.. Data protection and privacy must be guaranteed in all sectors of the healthcare system, including during education and training.

## 2. DISCRIMINATION OF PLHIV PATIENTS IN THE HEALTHCARE SECTOR

### LEGISLATION

9. Abolish the requirement for mandatory HIV disclosure in healthcare settings.
10. Clearly articulate in legislation and policy anti-discrimination and confidentiality requirements.

### PRACTICE

11. Include in national medical training curricula and provide mandatory post-graduate education and training for healthcare workers to improve knowledge and understanding of HIV and of the experience of living with HIV.
12. Establish protocols to ensure enforcement of anti-discrimination and confidentiality legislation in practice.
13. Raise awareness and knowledge of PLHIV of their rights as patients and provide appropriate support mechanisms to allow them to seek available remedies if their rights are breached.

