Having to tell: Mandatory disclosure of known HIV-positive status in healthcare settings in the WHO European region

S. Beaumont¹, Edwin J. Bernard¹, Julian Hows¹, Miroslav Marek², Lisa Power¹

¹HIV Justice Network, Amsterdam, Netherlands ²Czech Society AIDS Help, Prague, Czech Republic

INTRODUCTION

Mandatory disclosure of known HIV-positive status in healthcare settings is defined as HIV disclosure in medical settings (other than when accessing HIV care or treatment), where disclosure is required by law or formal regulation, and the service cannot be obtained without the disclosure being made.

Although in some instances, disclosure of HIV status might be recommended to get the best care, a legal obligation to do so should not take precedent over a patient's right to privacy.

UNAIDS/WHO recommend voluntary disclosure to respect the dignity and autonomy of people living with HIV. Mandatory disclosure negates the concept of informed consent and violates the right to confidentiality, potentially placing people with HIV at increased risk of stigma and discrimination.

Fear of being treated differently by healthcare professionals, and having one's HIV status disclosed to others, acts as a barrier to accessing healthcare, thus being detrimental to HIV prevention and treatment efforts.

OBJECTIVES

The research, conducted by the HIV Justice Network on behalf of HIV JUSTICE WORLDWIDE, aimed to discover in which of the 53 countries of the WHO European region* was it mandatory for HIV disclosure by a patient to a physician, a nurse, a dentist and/or to an employee of a healthcare provider (other than those listed above) and if so, what was the legal or regulatory basis for this might be.

HIV JUSTICE WORLDWIDE is a global campaign to abolish criminal and similar laws, policies and practices that regulate, control and punish people living with HIV based on their HIV-positive status

METHODS

A confidential online survey was distributed in four languages (English, French, Spanish and Russian) via existing HIV networks, email lists and social media across the WHO European region from early December 2017 to the end of January 2018. The survey was targeted at organisations familiar with the legal context in their country.

"Mandatory disclosure in healthcare settings" was defined as HIV disclosure in medical settings (other than when accessing HIV care or treatment), where disclosure was required by law or formal regulation and the service could not be obtained without it.

RESULTS

 $37\,$ organisations representing 29 countries across the WHO European region responded to the survey.

Eight countries reported HIV disclosure in healthcare settings as a legal requirement. Mandatory disclosure was reported mainly by Eastern European and Central Asian countries (7/8 EECA respondent countries). Sweden was the only participating Western European country (1/14) where HIV disclosure is mandatory under its Communicable Disease Act.



*WHO Europe comprises the following countries:

Andorra, Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan, former Yugoslav Republic of Macedonia.

RESULTS (continued)

Countries	Disclosure to	Disclosure to	Disclosure to	Disclosure to
	doctors	nurses	dentists	other
				healthcare
				workers
Armenia	No	No	No	No
Austria	No	No	No	No
Belarus	Yes	Yes	Yes	No
Belgium	No	No	No	No
Cyprus	No	No	No	No
Czech Republic	Yes	No	Yes	No
Denmark	No	No	No	No
Finland	No	No	No	No
France	No	No	No	No
Georgia	No	No	No	No
Germany	No	No	No	No
Greece	No	No	No	No
Kazakhstan	Yes	Yes	Yes	Yes
Kyrgyzstan	Yes	Yes	No	Yes
Latvia	No	No	No	No
Lithuania	Yes	Yes	Yes	Don't know
Macedonia	No	No	No	No
Moldova	No	No	No	No
Poland	No	No	No	No
Portugal	No	No	No	No
Romania	Yes, but no	Yes, but no	Yes, but no	No
	penalties	penalties	penalties	
Slovenia	No	No	No	No
Spain	No	No	No	No
Sweden	Yes	Yes	Yes	Yes
Switzerland	No	No	No	No
Tajikistan	No, but an HIV	No	No	No
	status certificate			
	must be provided			
	for surgical			
	intervention			
Turkey	No	No	No	No
Ukraine	Yes	Yes	Yes	Don't know
United Kingdom	No	No	No	No

Spain has established a "duty to tell the truth" when recording medical history or when a risk to the health of third parties existed, but not doing so would not result in withdrawal of services

Respondents from Switzerland reported that in the rare event of occupational exposure to blood or other body fluids, civil or criminal liability could theoretically be incurred for negligent exposure by the HIV-positive person who fails to disclose to a medical professional. Disclosure within 48hrs of exposure shielded the person from criminal liability.

Disclosure was not a legal requirement in Portugal but patients may have to disclose indirectly to access health insurances.

CONCLUSION

HIV-related disclosure policies differ widely across Europe. There is a need to remove all mandatory disclosure requirements and instead create consistent, rights-based policies about HIV-related disclosure in healthcare settings. This requires building consensus around the reasons why and when HIV status disclosure in healthcare settings may be appropriate and/or desirable. Advocacy efforts at regional level, adapted to the national context, should be supported and developed to agree for legislative change in line with best practice.

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INFO@HIVJUSTICEWORLDWIDE.ORG