



KEY FACTS

1. In 2014, there were approximately 1.5 million people living with HIV in Tanzania.²
2. In 2014, HIV prevalence amongst 15-49 year olds in Tanzania was 5.3% percent.²

KEY LAWS AND POLICIES

1. Constitution
2. HIV and AIDS Act
3. Standard Operating Procedures for HIV Testing and Counseling Services
4. National Guidelines for the Prevention of Mother-to-Child Transmission of HIV and Keeping Mothers Alive
5. National Guidelines for the Management of HIV and AIDS

REFERENCES

1. UNAIDS, CONSIDERATIONS AND GUIDANCE FOR COUNTRIES ADOPTING NATIONAL HEALTH IDENTIFIERS (2014), available at http://www.unaids.org/sites/default/files/media_asset/JC2640_nationalhealthidentifiers_en.pdf.
2. *United Republic of Tanzania: HIV and AIDS Estimates (2014)*, UNAIDS.ORG, <http://www.unaids.org/en/regionscountries/countries/unitedrepublicoftanzania> (last accessed September 13, 2015).

This AIDS Law Brief is supported by an AIDS Law Brief Background Paper with additional analysis and references.

ISSUE

This AIDS Law Brief Background Paper assesses the legal environment of health information privacy laws in Tanzania relevant to HIV/AIDS services and compares Tanzania's existing legal framework with guidance from UNAIDS' CONSIDERATION AND GUIDANCE FOR COUNTRIES ADOPTING NATIONAL HEALTH IDENTIFIERS.

SUMMARY

- **The primary laws affecting health information privacy in Tanzania are the Constitution and HIV and AIDS Act**
- **Tanzania's Constitution establishes a right of privacy in one's own person, family and matrimonial life**
- **The HIV and AIDS Act states that health practitioners may not breach medical confidentiality or disclose information about a person's HIV or AIDS status, unless an exception applies**
- **Various national guidelines include health information confidentiality and security provisions**

KEY FINDINGS

UNAIDS has issued guidance titled *Considerations and Guidance for Countries Adopting National Health Identifiers* ("UNAIDS Guidance") that includes example elements of a "health data privacy act for individual patients." These elements include: (1) Clear definition of personally identifiable health information; (2) Judicial remedies for privacy violations; (3) Access and correction rights; (4) Notice of privacy practices; (5) Complaint procedures; (6) Breach notification requirements; (7) Limits on data use; (8) Least privileged access; (9) Privacy protections apply to subcontractors; and (10) Enforcement focal point.

1. Constitution

The United Republic of Tanzania's Constitution grants citizens a general right to "the privacy of his own person, his family and of his matrimonial life" that includes "respect and protection of his residence and private communications." To protect the right to privacy, "the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy."

2. HIV and AIDS Act

The Tanzanian Parliament unanimously passed the HIV and AIDS Act in February 2008. The HIV and AIDS Act prohibits the unlawful disclosure of "information regarding HIV and AIDS status of any person" and breaches of "medical confidentiality." Person convicted of violating these prohibitions are subject to a fine, imprisonment, or both. The confidentiality provisions in the HIV and AIDS Act apply to "[a]ll health practitioners, workers, employers, recruitment agencies, insurance companies, data recorders, sign language interpreters, legal guardians and other custodians of any medical records, files, data or test results."

For the purposes of a breach, “all medical information and documents” are considered confidential unless the disclosure falls within a limited set of permissible disclosures. Medical information may be permissibly disclosed when: (1) complying with monitoring and evaluation requirements; (2) informing other health practitioners directly involved or about to be involved in treatment or care of a person living with HIV and AIDS; (3) responding to a court order where the main issue is the HIV status of an individual; or (4) giving information to a member of the deceased’s family.

3. Other Policies Including Confidentiality Provisions

Other guidelines include confidentiality provisions. The Standard Operating Procedures for HIV Testing and Counseling Services states: (1) “Disclosure of [HIV test] results to a third person shall only be done with a written consent from the person tested;” (2) “[C]ounseling will be conducted in private where the conversation between the client and the counsellor cannot be overheard;” and (3) “Individuals’ confidentiality will be protected in conversations between counselors and other staff members.”

The National Guidelines for the Prevention of Mother-to-Child Transmission of HIV and Keeping Mothers Alive state: (1) Only “HCWs who are directly involved in the client's care will have access to the client’s records, and only on a ‘need-to-know’ basis;” (2) medical records must be stored “in a safe, private and secure place, whether or not they include HIV-related information;” (3) “personal and medical information, including HIV test results, are private and will not be shared without clients’ permission;” (4) registration numbers need to “be used to identify clients instead of names;” and (5) critical information that is not recorded should also be kept strictly confidential.”

The National Guidelines for the Management of HIV and AIDS state that a health facility providing HIV services must have: (1) a confidential consultation room; (2) a locked area for medical records with limited access, and (3) a proper patient records and reporting system.

CONSIDERATIONS

The WHO recommends a clear legal framework for the collection, storage, disclosure, and use of health information to protect individual patient data. The UNAIDS example privacy act includes a number of confidentiality, security and enforcement elements that could comprise a comprehensive privacy framework. Some of the elements of the UNAIDS example privacy act are addressed by Tanzania’s HIV and AIDS Act. The Background Paper referenced in the box to the right contains a more thorough comparison. In addition, the policies summarized above include additional privacy protections, but these policies lack the force and effect of law and its associated enforcement mechanisms. To address the elements of the UNAIDS example privacy act, **Tanzania could consider adopting a health privacy act that addresses each of the elements of the UNAIDS’ example privacy act.**

ELEMENTS OF SAMPLE UNAIDS HEALTH INFORMATION PRIVACY ACT¹

1. Clear definition of personally identifiable health information;
2. Judicial remedies for privacy violations;
3. Access and correction rights;
4. Notice of privacy practices;
5. Complaint procedures;
6. Breach notification requirements;
7. Limits on data use;
8. Least privileged access;
9. Privacy protections apply to subcontractors; and
10. Enforcement focal point.

ACKNOWLEDGMENTS

Authors: Jeff Lane, Peter Cooper, Sallie Sanford, Amy Hagopian and Aaron Katz.

This AIDS Law Brief was prepared by the University of Washington and has been supported by the President’s Emergency Plan for AIDS Relief (PEPFAR) through the Centers for Disease Control and Prevention (CDC) under the terms of Cooperative Agreement Number U48-DP001911. The findings and conclusions are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention. This AIDS Law Brief does not constitute legal advice.