

Health Information Privacy & HIV/AIDS in Uganda



KEY FACTS

1. Approximately 150,000 Ugandan children aged 0-14 were HIV positive in 2014.¹
2. As of 2014, approximately 1.5 million people lived with HIV in Uganda with a prevalence rate for persons 15-49 of 7.3%.¹

KEY LAWS & POLICIES

1. HIV and AIDS Prevention and Control Act, 2014
2. Health Service Commission Act, 2001
3. Patients' Charter (2009)

REFERENCES

1. *Uganda: HIV and AIDS Estimates (2014)*, UNAIDS.ORG, <http://www.unaids.org/en/regionscountries/countries/uganda> (last accessed August 10, 2015).
2. UNAIDS, CONSIDERATIONS AND GUIDANCE FOR COUNTRIES ADOPTING NATIONAL HEALTH IDENTIFIERS (2014).

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

ISSUE

This AIDS Law Brief assesses the legal environment of health information privacy laws in Uganda relevant to HIV/AIDS services and compares Uganda's existing legal framework with guidance from UNAIDS' *Considerations and Guidance for Countries Adopting National Health Identifiers*.²

SUMMARY

- **Uganda's Constitution guarantees the right to privacy.**
- **The HIV and AIDS Prevention and Control Act is the primary law protecting health information privacy.**
- **The Ministry of Health's Patients' Charter contains health information privacy provisions, but its enforceability is unclear.**
- **Privacy protections are weakened by laws mandating disclosure of health information in various contexts.**

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. Ugandan Constitution

Uganda's Constitution guarantees the right to noninterference "with the privacy of [a] person's home, correspondence, communication or other property," and the "right of access to information in the possession of the State."

2. HIV and AIDS Act

The HIV and AIDS Prevention and Control Act, 2014 ("HIV and AIDS Act") mandates the confidentiality of HIV test results and HIV status and penalizes breaches of "medical confidentiality" and the unlawful disclosure of a person's HIV status. These confidentiality protections apply to any "person in possession of information relating to the HIV status of any person." Notably, the HIV and AIDS Act permits disclosure of medical information: (1) to a guardian if the person is a minor, legally incompetent, or has given consent; (2) to medical staff directly involved in treatment, to those authorized by the Act, the court, or other laws; (3) to any person exposed to the body fluid of a person tested; and (4) to people that a person living with HIV is in close contact with. In the event that a medical practitioner discloses HIV test information under one of the above exceptions, that medical practitioner must "inform the person tested of the disclosure" by providing "the nature and purpose of disclosure," the date of disclosure, and the recipient of the information.

The HIV and AIDS Act creates an offense for “breach[ing] medical confidentiality” or “unlawfully disclos[ing] information regarding the HIV status of any person.” A health practitioner who violates the confidentiality provisions of the HIV and AIDS Act is subject to a fine, imprisonment or both. The HIV and AIDS Act also requires mandatory HIV testing for: (1) the victim of a sexual offence; (2) a pregnant woman; (3) a partner of a pregnant woman; (4) anyone under a court order; (5) a child born of a mother who is HIV positive; and (6) anyone “apprehended for a sexual offence.” Uganda’s Anti-Homosexuality Act (which was struck down by the Ugandan Supreme Court due to a lack of quorum at the time of its enactment) also contained mandatory HIV testing requirements, including mandatory HIV-status disclosure for anyone charged with “aggravated homosexuality.”

3. The Health Commission Act

The Health Commission Act protects the “confidentiality of information relating to a patient and his or her family.” The Health Commission Act’s privacy provisions apply to “health workers.” A “health worker means a health professional, administrative, scientific and support staff employed in the health service, and designated by the Commission in consultation with the Public Service Commission.” The Health Service Commission Act contains a code of conduct that states that information relating to a patient and his family “shall not be disclosed to anyone without the patient’s or appropriate guardian’s consent *except where it is in the best interest of the patient.*” (emphasis added)

4. Patients’ Charter

In 2009, the Ugandan Ministry of Health adopted a Patients’ Charter, which states that “[p]atients have the right to privacy in the course of consultation and treatment. Information concerning one’s health, including information regarding treatment may only be disclosed with informed consent, except when required by law or on court order.” The Patients’ Charter permits disclosure of health information when: (1) the disclosure is for the purpose of the patient’s treatment by another health worker; (2) disclosure “is vital for the protection of the health of others or the public, and that the need for disclosure overrides the interest in the information’s non-disclosure” or (3) the information is de-identified. The Patients’ Charter also contains access to information rights by stating that “patient[s] shall be entitled to obtain from the clinician or the medical facility medical information concerning himself/herself, including a copy of his/her medical records.” With respect to enforcement, the Patients’ Charter states that each facility must designate a person or committee responsible for overseeing compliance with the Patients’ Charter.

CONSIDERATIONS

UNAIDS recommends a clear legal framework for the collection, storage, disclosure, and use of health information. 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 Uganda’s HIV and AIDS Act and Patients’ Charter. However, a number of the elements from the UNAIDS sample privacy act are not addressed in Uganda’s existing legal framework. The Background Paper referenced in the box to the right provides a more thorough comparison of the UNAIDS elements to Uganda’s existing legal framework. To strengthen its health privacy framework, **Uganda could consider adopting further legal provisions that address 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.**
- *In bold are elements not addressed in Ugandan law.

ACKNOWLEDGMENTS

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This AIDS Law Brief was prepared by the University of Washington and Makerere University 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.