

GERMANY

Statistical data

Population size of the country was estimated at 83.784.000⁸⁵ (year 2020).

Estimate number of PLHIV is 91.400.

The state of the 90-90-90 treatment target at the end of 2020⁸⁶ was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 90 %
- Percentage of PLHIV on treatment (second 90 target): 97 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 96 %

Main epidemiological trends⁸⁷

In 2020, 2.454 new cases were confirmed in Germany, equivalent to 3,0 new cases per 100.000 inhabitants. This corresponds to a decrease of 21 % between 2019 and 2020 (in 2019, 3.111 cases were reported). In 2018-2020, the highest incidence rates were reported in the region of North-Rhine Westphalia, followed by Bavaria.

Out of the reported cases, 77,2 % accounted to men. 45,6 % of the new diagnoses were attributed to men who have sex with men (MSM). New HIV diagnoses among MSM in Germany have continuously decreased since 2014 – from a peak value of almost 2.000 new cases to approx. 1.000.

Data related to the various foreign regions of origin shows a further decline in new HIV diagnoses among people from sub-Saharan Africa, significant increases among people from Western and Central Europe and Latin America, moderate increases among people from Eastern Europe and Asia / Oceania, and practically no change in people from North Africa and North America.

Relevant anti-discrimination legislation applicable in healthcare settings

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at multiple legislation levels (constitutional level, primary legislation, and also in some soft law instruments). The legislation is not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The Basic Law of the Federal Republic of Germany, *Grundgesetz*⁸⁸, anchors the principle of equality in its Article 3(1) which provides that all people are equal before the law. Furthermore, Article 3(3) states that:

⁸⁵ UN Department of Economic and social Affairs, Population Division. *World Population Prospects 2019*. Available at: <https://population.un.org/wpp/Download/Standard/Population/>

⁸⁶ As reported by Deutsche Aidshilfe.

⁸⁷ Robert Koch Institut. *Epidemiologisches Bulletin: HIV-Jahresbericht 2019-2020*. Available at: https://www.rki.de/DE/Content/Infekt/EpidBull/Archiv/2021/Ausgaben/31_21.pdf?_blob=publicationFile

⁸⁸The Basic Law of the Federal Republic of Germany. Available at: https://www.gesetze-im-internet.de/englisch_gg/

"3. No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. No person shall be disfavoured because of disability."

Although this provision is not HIV-specific, HIV – even if it is symptom-free – falls under the definition of “disability” (“*Behinderung*”) under German law⁸⁹. This shall ensure the rights of PLHIV are protected and any discrimination against PLHIV is prohibited.

[Primary legislation level](#)

The **General Equal Treatment Act**⁹⁰ has existed in Germany since 2006 and “*aims to prevent and eliminate discrimination based on race or ethnic origin, gender, religion or belief, disability, age or sexual identity*”. To achieve this goal, the persons protected by the law are granted the possibility to make legal claims against employers and private individuals if they violate the legal prohibitions of discrimination – claims for compensation or damages. Beyond the main area of its material scope – employment and occupation – the act is also applicable in situations governed by private or civil law (e.g. access to goods and services).

An HIV+ individual, even if he/she does not show any symptoms, is considered as disabled with the meaning of this act. Other chronic diseases can, due to the obstacles they create in day-to-day life, also be considered as a form of disability.

At the federal level, the **State Anti-Discrimination Act**⁹¹ was adopted in the state of Berlin. Since 2020, this act enables people to take action against discrimination by public authorities in the State of Berlin. HIV is not explicitly mentioned as a discriminatory ground but is included under the characteristics of “disability” and “chronic illness”. The State Anti-Discrimination Act thus closes a gap in protection that the General Equal Treatment Act (which applies nationwide, but only for the area of employment and civil law transactions) left open.

Legislation that may provide basis for discrimination against PLHIV in healthcare settings

No legislation that could directly or indirectly discriminate against or provide basis for discrimination against PLHIV/AIDS was reported. Several bad practices based on soft law guidelines were reported to be used in the police service regarding the handling of personal data related to HIV and in context of examination of work capacity. [see section on “Issues and bad practices in the national context”]

Means of reporting discrimination in healthcare settings (legal and other remedies)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under German law. These include:

- complain to the State Medical Association;

⁸⁹ Judgment of the Federal Labour Court dated December 19th, 2013. No. 6 AZR 190/12.

⁹⁰ The General Equal Treatment Act (Germany). Available at: https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/AGG/agg_gleichbehandlungsgesetz.pdf?__blob=publicationFile

⁹¹ Berlin State Anti-Discrimination Act (Germany). Available at: <https://www.hwr-berlin.de/fileadmin/portal/Dokumente/HWR-Berlin/Organisation/Frauenbeauftragte/LADG.pdf>

- complain to the Complaint Office of the hospital in question;
- complain to the Association of Statutory Health Insurance Physicians;
- complain to the statutory health insurance provider
- complain to the Patient Representatives functioning at the federal state level/ or the Federal Government Patient Commissioner;
- complain to the Federal Anti-Discrimination Agency;
- complain to the Data Protection Officer of the hospital in question/the Federal Data Protection Officer / the Data Protection Officer of the federal state;
- civil lawsuit.

[Complaint to the State Medical Association](#)

In the event of discrimination in a hospital or in a doctor's office, patients can contact the State Medical Association. It checks whether there is a violation of professional law and can impose sanctions (professional law is understood as all legal regulations applicable to the medical profession). This can be the case, for example, if emergency treatment has been refused. The issue is that such complaints take a very long time to process; the procedure is not transparent for the complainant and sanctions are rarely imposed. Especially in the case of everyday discrimination, such as the allocation of last appointments or treatment with unnecessary hygiene measures, these are not considered a violation of professional law; in such cases the doctor is simply asked to proceed differently.

[Complaint to the Association Statutory Health Insurance Physicians](#)

A patient has the possibility to contact the Association Statutory Health Insurance Physicians (/Dentists) when he/she is denied treatment. Complaints are passed onto the accused who are obliged to respond in writing. The association then decides whether a contractual obligation has been breached and communicates the results to the complainant.

[Complaint to the statutory health insurance provider](#)

As the cost bearer of the medical treatment, a statutory health insurance provider can play a significant role in resolving issues of discriminatory conduct. The providers are obliged to advise their clients and support them in reporting treatment errors.

[Complaint to the Patient Representatives functioning at the federal state level/or the Federal Government Patient Commissioner](#)

In some federal states, Patient Representatives have been established. The establishment of such body is regulated by the state laws. They serve the purpose of advocating for the patients' rights and also accepting complaints.

Under Paragraph 140h of the Social Security Code, the Federal Government Patient Commissioner has the task of representing the interests of patients in all relevant political areas. Although the commissioner does not provide individual advice, it may provide guidance regarding possible remedies and contact points for patients.

[Complaint to the Federal Anti-Discrimination Agency](#)

In the event of discrimination under the General Equal Treatment Act, a complaint can be submitted to the Federal Anti-Discrimination Agency. The agency checks whether there is a violation of the General Equal Treatment Act, mediates between the two parties, and tries to reach an amicable agreement.

[Complaint to the Data Protection Officer of the hospital in question/the Federal Data Protection Officer/the Data Protection Officer of the federal state](#)

In accordance with Article 77(1) of the EU General Data Protection Regulation, all individuals have the right to lodge a complaint with a data protection supervisory authority which has the obligation to investigate the complaint and inform the complainant about the results and possible remedies. In Germany, complaints may be lodged with the Federal Data Protection Officer or the Data Protection Officer of the federal state.

Furthermore, also the healthcare facilities must appoint a data protection officer. In the event of violations of personal data protection, such as labelling the patient files externally with the label "HIV+" or with a red dot, a complaint can be submitted to the hospital's data protection officer.

[Civil lawsuit](#)

If there is discrimination under the General Equal Treatment Act, a lawsuit can be filed in accordance with Paragraph 21. A victim of discrimination may demand that the discriminatory conduct be stopped or sue for an injunction. Furthermore, the person responsible for the discrimination shall be obliged to compensate any damage.

However, it is still unclear whether the General Equal Treatment Act is applicable to the doctor-patient relationship. There are different legal opinions on this matter. Under Paragraph 19(1), the General Equal Treatment Act is only applicable, in the area of civil law, to mass transactions (i.e. "bulk business"). It is not clear whether the treatment contract between doctor and patient is a mass transaction. The Federal Anti-Discrimination Agency has clearly positioned itself here and represents the legal opinion that the General Equal Treatment Act can also apply to discrimination in healthcare settings.

Obligation of PLHIV to disclose their HIV+ status in healthcare settings

In Germany, there is no legal obligation for PLHIV that requires them to communicate their HIV+ status in healthcare settings. Medical and nursing staff is generally required to treat all patients as if they were infectious – not only with regard to HIV. If the usual hygienic and occupational safety measures are adhered to (e.g. the wearing of protective equipment and proper disinfection) there is no risk of HIV transmission for either the medical professional or the person being treated.

Confidentiality and accessibility of personal data related to HIV

As institutions dealing with personal data, all healthcare institutions must adhere to the EU General Data Protection Regulation which lays down rules relating to the processing of personal data (e.g. collection, recording, organisation, structuring, storage, etc.). Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such.

Other legal documents that deal with personal data protection in Germany are the Federal Data Protection Act⁹² and the Social Security Code (Book X)⁹³.

Access to sensitive personal data must be limited within each healthcare facility. Only employees who are entrusted with treating the patient are allowed to access health-related data. Files with diagnoses must be kept in such a way that no third party can see them.

Prohibitions and limitations on working in specific healthcare professions for PLHIV

Under German law, there is no prohibition for the employment of PLHIV in the healthcare sector.

However, there are certain special requirements for surgeons who perform particularly invasive and injury-prone operations provided in the recommendation of the German Association for Combating Viral Diseases and the Society for Virology⁹⁴. These activities may only be carried out by surgeons with HIV viral load values ≤ 50 copies/ml (regular check of the viral load must be performed); the surgeon must adhere to special measures including the wearing of double gloves. Regular check of the viral load must be performed.

Private insurance policies concerning PLHIV

In Germany there is a compulsory health insurance. That means everyone has to take out health insurance and the insurance companies have to offer the possibility to do so. Private health insurance providers usually exclude PLHIV. For some years now, however, they have been obliged to offer the so-called "basic tariff" for people who do not have access to statutory or regular private health insurance.

In regard to other health-related insurance policies, private insurance providers conduct a health examination before signing a contract. The HIV+ status cannot be concealed. A case-by-case assessment of a person's state of health is performed; with the primary focus on the viral load, CD₄ count, duration of therapy, etc. After the assessment, PLHIV often encounter increase of insurance premiums or a rejection.

PLHIV do not have access to private insurance policies for instances of incapacity for work. Supplementary insurance, such as personal accident insurance or insurance for dental treatment, should be available.

Anyone who had already taken out a private insurance and is later diagnosed with HIV is not obliged to notify their insurance provider. In addition, the insured does not have to fear that he will lose his insurance cover due to his status.

Common forms of discrimination in healthcare settings

Although instances of discrimination against PLHIV are becoming less frequent in Germany, it is still not uncommon to encounter several different forms of discriminatory conduct in healthcare settings. PLHIV encountered discrimination most frequently in relation to dental practice or oral surgery. Among the common forms of discrimination indicated in the questionnaire, provision of treatment at the end of office hours was reported as

⁹² The Federal Data Protection Act (Germany). Available at: https://www.gesetze-im-internet.de/englisch_bdsgr/

⁹³ The Social Security Code – Book X (Germany). Available at: https://www.gesetze-im-internet.de/sgb_10/

⁹⁴ R Holger F. Rabenau et al. *Empfehlungen der Deutschen Vereinigung zur Bekämpfung der Viruskrankheiten (DVV) e.V. und der Gesellschaft für Virologie (GfV) e.V.* Available at: <https://edoc.rki.de/bitstream/handle/176904/1471/23UOZT6sKnns.pdf?sequence=1&isAllowed=y>

most common, followed by refusal-of-care. Other forms of inappropriate conduct, that might not constitute discrimination, included inappropriate questions, avoidance of physical contact, and adopting special hygienic measures.

In the survey "Positive Stimmen 2.0" (2021)⁹⁵(hereinafter "Survey") the following results were obtained through interviews:⁹⁶

- 8 % of the respondents were refused a health service in the previous 12 months;
- 16 % of the respondents were refused dental care in the previous 12 months.
- 24 % of the respondents were asked inappropriate questions in the previous 12 months;
- 26 % of the respondents were experienced avoidance of physical contact in the previous 12 months;
- 28 % of the respondents reported that a visible mark had been placed on their medical record in the previous 12 months.

From the online part of the Survey, 56 % of the respondents reported experiences of discrimination in healthcare settings; and 21 % reported that they had been given a specific appointment time, generally at the end of the office hours. Once again, these reported instances of discrimination took place over the previous 12 months.

Case studies

No court litigation cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Germany, were reported in the questionnaire.

However, the problem of discrimination against PLHIV is considered to be particularly important by the Federal Ministry of Health. In the Strategy to Contain HIV, Hepatitis B and C and Other Sexually Transmitted Infections⁹⁷ the Federal Ministry of Health aims to reduce existing knowledge deficits and emphasises the topic of tackling discrimination in healthcare settings as important, as limited access to the treatment system can have serious health consequences. The strategy also calls for measures to reduce stigmatization and discrimination.

Good practices in the national context

[Raising awareness about HIV and organisation of courses for medical professionals](#)

The Deutsche Aidshilfe and the 117 local AIDS organizations support PLHIV in the process of filing complaints in relation to discrimination in healthcare settings. In addition, these organisations organise events that

⁹⁵ Deutsche Aidshilfe, Institut für Demokratie und Zivilgesellschaft. *Positive Stimmen 2.0: Living with HIV, breaking down discrimination*. Available at: https://hiv-diskriminierung.de/sites/default/files/documents/broschuere_englisch_final.pdf

⁹⁶ The Survey involved almost 500 HIV+ interviewees and around 1000 online submissions.

⁹⁷ Bundesministerium für Gesundheit. *Strategie zur Eindämmung von HIV, Hepatitis B und C und anderen sexuell übertragbaren Infektionen*. Available at: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/5_Publikationen/Praevention/Broschueren/Strategie_BIS_2030_HIV_HEP_STI.pdf

focus on the empowerment of PLHIV; PLHIV are also regularly being informed about how to defend themselves against discrimination.

The local AIDS organizations in particular offer training courses for hospitals and other healthcare facilities. Nursing schools are also regularly offered seminars about HIV.

In order to increase knowledge about HIV and reduce fear of transmission, the Deutsche Aidshilfe develops training materials for nurses and doctors. In 2016, for instance, an information brochure "Don't be afraid of HIV, HBV and HCV"⁹⁸ was developed together with the Federal Dental Association, as well as an information video "Don't be afraid of HIV in the dental office"⁹⁹. In 2020, a brochure on HIV for medical practice "Information about HIV for medical practice"¹⁰⁰ was published in cooperation with the Federal Medical Association, as well as an information video "Treat HIV+ patients well and with confidence"¹⁰¹. A release of an e-learning programme for medical professionals is also planned.

Issues and bad practices in the national context

[HIV testing for the purpose of employment in healthcare](#)

Although HIV tests are not permitted in the vast majority of cases in a professional context, they are still often offered or asked for in healthcare settings. Not only surgeons, but also nurses or even cleaning staff are often requested to undergo an HIV test. Knowledge of the HIV infection usually has negative effects: people are not hired, they are only allowed to work in certain areas, or they have to undergo regular viral load checks. In Germany, there is no clear ban on HIV testing in a professional context.

[Hiring practices within the police service](#)

On the basis of a decision by the federal and state police doctors, the hiring of PLHIV in the police service is viewed critically. Such applicants were reported to be rejected even before the individual examination of their fitness for work, exclusively based on their HIV+ status. Since the hiring criteria of the police in Germany are a matter for the federal states, the handling of these situations is not uniform. Considering that the discretion of the occupational doctor may play a key role in this context, such conduct falls under bad practices in healthcare.

COVID-19 impact on PLHIV

[Inclusion of PLHIV in the priority vaccination group](#)

COVID-19 vaccination in Germany followed a vaccination scheme that consisted of 4 priority vaccination groups. PLHIV were eligible to receive vaccination within the 3rd priority group "Increased priority".

[Interruption of HIV testing and availability of ARV medication](#)

⁹⁸ Deutsche Aidshilfe. *Keine Angst vor HIV, HBV und HCV!*. Available at: https://www.bzaek.de/fileadmin/PDFs/Fachangestellte/Keine_Angst_vor_HIV.pdf

⁹⁹ Deutsche Aidshilfe. *Keine Angst vor HIV in der Zahnarztpraxis!*. Available at: https://www.youtube.com/watch?v=zOZrJw_aleQ

¹⁰⁰ Deutsche Aidshilfe. *Informationen zu HIV für die medizinische Praxis*. Available at: <https://www.aidshilfe.de/shop/pdf/11879>

¹⁰¹ Deutsche Aidshilfe. *HIV positive Patient*innen gut und vertrauensvoll behandeln (YouTube Video)*. Available at: <https://www.aidshilfe.de/shop/hiv-positive-patientinnen-gut-vertrauensvoll-behandeln-youtube-video>

When lockdown measures were introduced in Germany, community HIV testing in AIDS organisations and in public health testing became unavailable. No significant shortage of ARV medication was reported, people who have health insurance were generally able to continue their treatment without interruptions or delays.