

SPAIN

Statistical data

Population size of the country was estimated at 46.755.000¹⁷⁴ (year 2020).

Estimate number of PLHIV is 151.387.

The state of the 90-90-90 treatment target in 2019¹⁷⁵ was as follows:

- Percentage of PLHIV diagnosed (first go target): 87 %
- Percentage of PLHIV on treatment (second go target): 97,3 %
- Percentage of PLHIV with undetectable viral load (third go target): 90,4 %

Main epidemiological trends¹⁷⁶

In the period of 2010-2019, a decreasing trend in total numbers of new HIV diagnoses was observed both in relation to men and women. The rates of new diagnoses among the men who have sex with men (MSM) population group stabilized between 2010 and 2017; as of year 2017, this population group has also been showing a steady decrease in numbers of new HIV diagnoses.

In 2019, 2.698 new HIV diagnoses were reported, corresponding to a rate of 5,94 new cases per 100.000 inhabitants. The estimate rate (including corrections made due to delayed notifications) was 7,46 new cases per 100.000 inhabitants. 85,8 % of the new diagnoses were among males. Transmission among MSM was the most frequent at 56,6 %. 36,1 % of the new cases were found among foreigners. A continuation in the trend of late diagnoses was observed; the percentage of late diagnoses remained high at 45,9 % of the new cases.

Relevant anti-discrimination legislation applicable in healthcare settings

Spanish legislation guarantees the protection of PLHIV against discriminations in healthcare settings at multiple levels. The legislation is sometimes formulated as HIV-specific; protection is also provided through general anti-discrimination provisions.

Constitutional level

The foundation of the Spanish anti-discrimination framework is laid down in Article 14 of the Spanish Constitution which provides, "*Spaniards are equal before the law and may not in any way be*

¹⁷⁴ UN Department of Economic and social Affairs, Population Division. *World Population Prospects 2019*.

Available at: <https://population.un.org/wpp/Download/Standard/Population/>

¹⁷⁵ HIV, STI and Hepatitis Surveillance Unit. *Actualización del Continuo de Atención del VIH en España, 2017-2019*. Available at:

https://www.mscbs.gob.es/ciudadanos/enfLesiones/enfTransmisibles/sida/vigilancia/ESTIMACION_DEL_CONTINUO_DE_ATENCION_DEL_VIH_EN_ESPAÑA_Nov2020.pdf

¹⁷⁶ Ministry of Health of Spain. *Vigilancia epidemiológica*. Available at:

<https://www.mscbs.gob.es/ciudadanos/enfLesiones/enfTransmisibles/sida/vigilancia/home.htm>

discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.”

Article 9.2 of the Constitution is also very important, establishing material equality. Equally important is the doctrine of the Constitutional Court which establishes that not all differential treatment is discriminatory and establishes the proportionality test to determine when there is discrimination.

PLHIV may be discriminated against either because of their health status or due to alleged disability; however, these two discriminatory grounds are not explicitly included in the quoted article. The indirect inclusion of both these protected characteristics is done through the demonstrative character of the provision indicated by the reference to “*any other personal or social condition or circumstance*”. The Spanish Constitutional Court has previously recognised, that a “disease” may, under certain circumstances, be considered a discriminatory ground deserving of protection analogous to those grounds that are explicitly mentioned in Article 14 of the Spanish Constitution.¹⁷⁷

The ‘disability’ has also been included by rulings of the Constitutional Court as a discrimination grounds. In Spain, people with HIV, unless they have HIV-HCV coinfection, are not automatically recognized as people with disabilities but must request recognition and obtain a percentage equal to or greater than 33% in a medical examination. [Primary legislation](#)

Protection against discrimination is also present at the primary legislation level. Article 6(1) of **the Law on General Public Health**¹⁷⁸ provides that “*All persons have the right to ensure that public health action is carried out on an equal footing without discrimination on grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, disease or any other personal or social condition or circumstance.”*

In 2018, **the Law on Protection of Consumers and Users**¹⁷⁹ was amended so that a single additional provision titled “*Nullity of Certain Clauses*” was added. The single additional provision states:

“1. Those clauses, stipulations, conditions or agreements that exclude one of the parties for having HIV/AIDS, or other health conditions, are null and void.

2. Likewise, the waiver of what is stipulated in this provision made by the party with HIV/AIDS, or other health conditions, is null and void.”

This HIV-specific amendment shall strengthen the fight against discrimination of PLHIV when they act as consumers.

In 2018, the Insurance Contract Act was also amended to guarantee that people living with HIV could have access to private insurance, such as, health, life, and burial insurance. However, arguably, the number of inquiries received at the Legal Clinic of the University of Alcalá between January 2019 and June 2021 shows that the legal

¹⁷⁷ Judgment of the Spanish Constitutional Court dated May 26th, 2008. No. 62/2008.

¹⁷⁸ Law No. 33/2011, on General Public Health, as amended (Spain). Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-15623>

¹⁷⁹ Law No. 4/2018, which modifies the revised text of the General Law on the Protection of Consumers and Users and other complementary laws (Spain). Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2018-7832>

reform has not been effective because insurance companies continue to practice a class exclusion towards people with HIV.¹⁸⁰

An important milestone can also be seen in the recent adoption of **the Royal Decree-Law on Universal Access to the National Health System**¹⁸¹, which eliminated social security contribution as a requirement for access to the National Health System; and ensured that some migrants in Spain have the right to healthcare under the same conditions as Spanish nationals (even after the reform, part of the migrant population would be excluded though; this includes student visas, family reunification visas and non-lucrative residence visas). The right of all people to access the National Health System is currently ensured under conditions of equity and universality (even though local experts would argue this has not been fully achieved in reality). The significance of this Royal Decree-Law is especially notable in light of the statistics which show that, in 2019, 36,1 % of new HIV diagnoses were found among foreigners.

Protection against discrimination is also provided withing **the Spanish Criminal Code**. Under Article 512 of the Spanish Criminal Code, it is prohibited to deny a person a service to which he is entitled due to one of the discriminatory grounds that are listed. A sanction of special barring from the exercise of the profession, trade, industry, or commerce for a period of one to four years may be imposed.

Article 512 of the Spanish Criminal Code

"Those who, in the exercise of their professional or business activities, were to deny a person a service to which he is entitled due to his ideology, religion or belief, his belonging to an ethnic group, race or nation, his gender, sexual preference, family situation, illness or handicap, shall incur the punishment of special barring from exercise of profession, trade, industry or commerce, for a term of one to four year."

Similar regulation as quoted above can be found in Article 511 of the Spanish Criminal Code aiming at public officials and public employees. Also, Article 22 names discrimination due to illness or disability as one of the aggravating circumstances that should have effect on the punishment.

Interestingly, in Catalonia, Law 19/2020 includes serological status as a cause of discrimination.

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

There is no legislation that would contain provisions that may provide basis for discrimination against PLHIV. Cases of discrimination happening to PLHIV have the form of infringement of local legislation.

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https://www.sanidad.gob.es/ciudadanos/enfLesiones/enfTransmisibles/sida/PACTOSOCIAL/Datos_adjuntos_sin_titulo_00397.pdf

¹⁸¹ Royal Decree-Law No. 7/2018, on Universal Access to the National Health System, as amended (Spain). Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2018-10752>

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

Patients diagnosed with HIV are encouraged to contact the Spanish NGOs that provide support in the area of HIV including the protection of rights and interests of PLHIV. These NGOs commonly provide practical support and guidance to build the patients case and assist them while seeking legal or other remedies.

Complaint procedures

If PLHIV (or any other patients) encounter discrimination by a medical professional, they can contact the Patients Care Center, *Centros de Atención al Usuario*, (hereinafter "User Centre") of the hospital or healthcare facility. All healthcare facilities (private or public) are obliged to establish a User Centre to which a complaint may be submitted by a patient or its family member. Such complaint mainly serves the purpose of making the management of the facility aware of the existing discriminatory practices of its workers and to consider opening an internal investigation; it aims to prevent the reoccurrence of discrimination in the future.

Filing a complaint with the Spanish Medical College Organization, *Organización Médica Colegial*, (hereinafter as "OMC") is another remedy available to patients who faced discrimination. Such complaints are filed at the level of Local Medical Colleges of the OMC. The competence to determine if there was a violation of the relevant ethical standards is given to special committees, established for individual specialties of the medical practice, that are obligated to issue a resolution of the submitted complaints. Similar complaints can be also filed with local nursing or dentist organizations.

Every patient also has the option to file a complaint with the Regional Health Services of the autonomous communities. Such complaint must be filed before resorting to the contentious-administrative jurisdiction.

Legal intervention

Furthermore, legal action can also be a viable remedy in instances of discrimination. A discriminatory conduct may, under certain circumstances, constitute a criminal offense under Article 511 and 512 of the Spanish Criminal Code, therefore a patient who is a victim of grave discriminatory conduct may file a criminal report with the Public Prosecutor's Office, or at the police station (both *Policía Nacional* and *la Guardia Civil*). A patient may also file a civil lawsuit and request to be compensated for the moral damages suffered as a result of discriminatory conduct.

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

In Spain, PLHIV have the obligation to disclose their HIV+ status when they seek healthcare services. Under Article 2(5) of the Law No. 41/2002¹⁸², all patients have the duty to provide information about their state of health in a truthful manner, especially when such information is necessary for reasons of public interests or because of provision of healthcare services. The limitation of the right to personal privacy is acknowledged in Article 18.1 of the Spanish Constitution.

¹⁸² Law No. 41/2002, on the Regulation of Basic Patient Autonomy and Rights and Obligations Regarding Information and Clinical documentation, as amended (Spain). Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2002-22188>

Confidentiality and accessibility of personal data related to HIV

Information about one's health is a protected category of data under the Organic Law No. 3/2018¹⁸³ and under the EU General Data Protection Regulation.

As institutions dealing with personal data, all healthcare facilities 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 and is protected as such. In the area of healthcare, such data is subject to the most rigorous control measures.

Additionally, under Article 7 of the Law No. 41/2002, *"Everyone has the right to have the confidential nature of their health data respected, since no one can access them without prior authorization under the Law"*. PLHIV have the right to limit access of third parties to data related to HIV and to know who accessed such data. When a patient's medical record is accessed for judicial, epidemiological, public-health, research or teaching purposes, the patient's personal identification data must be separated from the data of a clinical nature (see Article 16 of the Law No. 41/2002).

Local experts are aware of a case where a nurse who accessed a person's medical history without having a legitimate interest was sanctioned.¹⁸⁴

Prohibitions and limitations on working in specific healthcare professions for PLHIV

In Spain, the employment of PLHIV in healthcare is not normatively regulated. The generic occupational risk protection regulations established in Law 31/1995, especially article 22, are applied. They are, however, silent on this.

However, there are two recommendations on this matter from the Ministry of Health, published in 1998 and 2001 (hereinafter "Recommendations"). Both Recommendations recognise that infections by blood-borne viruses (including HIV, HBV and HCV) are rare, that the risk of transmission depends on the type of the virus, and that the risk can be minimized by applying general infection control procedures and the so-called "standard precautions" according to which it is to be assumed that blood and other bodily fluids of all people are potentially infectious.

The Recommendations point out that the limitation of activities or tasks should only be relevant for those procedures in which there is a risk that an accident involving a healthcare worker could put their blood in contact with the open tissues of a patient. Due to the fact that the health of third parties may be compromised, it can be justified that an HIV test is mandatory for healthcare workers that perform such invasive procedures (i.e. procedures with a risk of accidental exposure to blood). It shall also be justifiable that in case of an HIV+ diagnosis, a medical worker shall stop performing these procedures. However, the medical worker must be allowed to continue to perform other tasks related to their occupational position.

For many years, the Spanish NGOs have been demanding an update of these Recommendations which should allow for the inclusion of the doctrine of undetectability (i.e. no occupational limitations would apply if a person has an undetectable viral load). Similar developments can be observed in the guidelines of the United States and the United Kingdom. Since 2015, the Ministry of Health includes the task of updating the Recommendations in

¹⁸³ Law No. 3/2018, on Data Protection and Digital Rights, as amended (Spain). Available at:

<https://www.boe.es/buscar/doc.php?id=BOE-A-2018-16673>

¹⁸⁴ TS of March 17, nº 250/2021, rec. 2463/2019.

its annual action plans. In 2020, the Ministry of Health made a commitment to do so, but the execution of this commitment was delayed due to the COVID-19 pandemic.

Regarding the mandatory HIV tests, although the Recommendations indicate the duty of healthcare workers to undergo HIV testing if requested, such requests are not commonly made (they are more frequent in the private sector rather than in the public sector).

Private insurance policies concerning PLHIV

Until recently, all private insurance policies in Spain commonly contained a clause that stipulated an exception for PLHIV, deeming HIV as an “uninsurable” disease. In June 2018, Law No. 4/2018¹⁸⁵ entered into force and modified the local insurance law so that clauses eliminating the insurability of PLHIV (or people suffering from other diseases) are to be considered null and void.

Prior to the adoption of Law No. 4/2018, PLHIV were being automatically rejected when seeking private insurance policies (e.g. life insurance or private health insurance) which also resulted in difficulties when accessing loans, mortgages and other economic services. Moreover, many insurance policies used to include a clause which would deny insurance coverage in case the client was diagnosed as HIV+ after having taken out the insurance.

In its preamble, Law No. 50/1980 (in its amended version) declares that it is necessary to eliminate from the legal system those aspects that limit equal opportunities and promote discrimination for any reason, in this case for living with HIV/AIDS or other health conditions.

Regarding the private insurance field, the fifth additional provision titled “Non-discrimination on the grounds of HIV/AIDS or other health conditions” was added to Law on the Insurance Contract¹⁸⁶. This provision states, *“People with HIV/AIDS or other health conditions cannot be discriminated against. In particular, the denial of access to contracting, the initiation of contracting procedures different from those normally used by the insurer or the imposition of more onerous conditions, due to having HIV/AIDS or other health conditions, is prohibited, unless such steps are founded on justified, proportionate and reasonable causes, which are previously and objectively documented.”* In other words, this provision introduced a general obligation of non-discrimination for reasons of health conditions in regard to insurance contracts.

In contrast, when it comes to the insurance premiums, their amount is still a matter in which insurance providers have some level of autonomy even though the principles of sufficiency of the premium and fairness of the premium must be combined and both observed. Insurance providers still have the option to find out about an HIV+ status of a potential client, because under Article 10 of the Law on the Insurance Contract, a person who seeks an insurance policy is obligated to provide truthful answers to the insurance companies’ questionnaires on his/her state of health for the purposes of risk assessment. A question on HIV status is commonly included (and accepted by local jurisprudence).

When it comes to insurance contracts that were stipulated prior to an HIV diagnosis, since January 1st, 2016, due to the modification of the Law on the Insurance Contract, the insured has no obligation to communicate the

¹⁸⁵ Law No. 4/2018, which modifies the revised text of the General Law on the Protection of Consumers and Users and other complementary laws (Spain). Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2018-7832>

¹⁸⁶ Law No. 50/1980, on the Insurance Contract, as amended (Spain). Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1980-22501>

variation in circumstances related to the state of health. Thus, if a person had entered into an insurance contract and is diagnosed with HIV afterwards, they do not have to inform the insurance provider about the diagnoses.

In 2021, an analysis on the effects of Law No. 4/2018 was published^{187,188} (hereinafter “Analysis”). It provides an assessment of the general conditions of different types of insurance policies from various insurance providers based in Spain. According to the Analysis, the rules stipulated in Law No. 4/2018 have not been fully incorporated in the practices of the analysed insurance providers; many insurance policies’ terms and conditions still contain clauses that maintain either an exclusion of insurance coverage or a limitation of its amount due to HIV/AIDS.

Another issue that mainly affects HIV+ foreigners in Spain is the structural discrimination that is institutionalized since HIV/AIDS is not taken into account when allowing access to health services for people with HIV who came to study or conduct research in Spain.¹⁸⁹ The study visa requires applicants to take out health insurance, public or private, that covers antiretroviral treatment. In light of everything that was mentioned above, it might be difficult to obtain such insurance.

Common forms of discrimination in healthcare settings

According to data provided by the Legal Clinic of the University of Alcalá, specialized in legal literacy for people with HIV, the most common cases of discrimination against PLHIV in the area of healthcare are the following:

- exclusion of PLHIV from contracting private health insurance;
- barriers in the hiring of PLHIV in the health field, especially if they perform invasive procedures that put transmission routes at risk;
- denial or postponement of dental services due to the person’s serological status;
- denial of access to advanced therapy drugs based on autologous blood donation;
- exclusion of people without HIV who live with PLHIV in the blood donation procedure (discrimination by association);

All of these discriminatory practices have had an impact on the country’s legislation and policies. They motivated a legal reform and the adoption of a manual of good practices regarding PLHIV. Moreover, they have been incorporated into the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV, adopted in 2018.

¹⁸⁷ Bitia Buenaño Mora et al. *Evaluación de la implementación y desarrollo de la Ley 4/2018, que modificó la Ley 50/1980, de 8 de octubre, de Contrato de Seguro*. Available at: https://cesida.org/wp-content/uploads/2020/07/INFORME-CESIDA_Valencia.pdf

¹⁸⁸ The access of people with HIV to the contracting of insurance. Available at: https://www.academia.edu/69478944/EL_ACCESO_DE_LAS_PERSONAS_CON_VIH_A_LA_CONTRATACION_DE_SEGUROS

¹⁸⁹ For more detail, one can be referred to a local study: https://www.academia.edu/69489826/_Un_estudiante_extracomunitario_a_tiene_derecho_a_la_asistencia_gratuita_en_Espa%3%B1a

Among the common forms of discrimination indicated in the questionnaire for this report, PLHIV in Spain may come across the following:

- refusal of care;
- separation from other patients;
- provision of treatment at the end of office hours;
- unjustified imposition of higher medical fees on the grounds that facilities and instruments must be subjected to a thorough disinfection.

Such discriminatory treatment may take place in all the facilities indicated in the questionnaire, i.e. the GP clinic, the specialist outpatient care facilities, during hospital stay, or in dental care.

Case studies

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

Good practices in the national context

Adoption of the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV

In 2018, the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV¹⁹⁰ was adopted (hereinafter "Social Pact"). Among its action measures, the Social Pact includes promotion of equal treatment and opportunities for PLHIV as a response to the occurrence of discriminatory practices in healthcare settings.

Support provided to PLHIV by the Legal Clinic of the University of Alcalá

The Legal Clinic of the University of Alcalá (hereinafter "Legal Clinic") offers legal literacy services to PLHIV regarding health, labour, migration, access to insurance and discrimination. The Legal Clinic organises training courses for medical personnel on the rights of PLHIV; organises training courses for societies such as Gesida, Sogasida, Canarian Society of Family and Community Medicine, etc.; carries out legal literacy actions, using the 'Street Law' methodology, for PLHIV in terms of rights in the field of healthcare through various associations (CESIDA, Imagina Más, OMSIDA, CCASIPA); provides legal advice upon submission of individual cases. It also published a series of 38 brochures with summaries of recurring legal issues reported by PLHIV.¹⁹¹

Regarding legal literacy of PLHIV, in 2019, the Legal Clinic published a series of 14 brochures with summaries of recurring issues that PLHIV raise in their submissions when they seek legal advice¹⁹². The brochures provide information about matters such as the right to privacy, criminal liability for transmission of HIV, rights of irregular immigrants, disability, incapacity for work, contracting private insurance, etc.

¹⁹⁰ National AIDS Plan, Ministerio de Sanidad, Consumo y Bienestar Social. *Social Pact for the Equal Treatment and Non-discrimination Associated with HIV*. Available at: <https://pactosocialvih.es/wp-content/uploads/PACTO-SOCIAL-Ingles.pdf>

¹⁹¹ The complete series of brochures of the Legal Clinic of the University of Alcalá is available at: <https://uah-es.academia.edu/ClinicaLegalUniversidaddeAlcala>

¹⁹² The complete series of brochures of the Legal Clinic of the University of Alcalá is available at: <https://masmorbomenosriesgo.es/author/clinicalegaluniversidadalcala/>.

Issues and bad practices in the national context

Apart from the issues described in the previous sections (e.g. non-availability of insurance policies for PLHIV, discriminatory practices, inappropriate questions or behaviour of healthcare professionals, etc.), no other issues or bad practices in the national context were reported in the questionnaire.

COVID-19 impact on PLHIV

Increase in rights' violation

During the first months of the COVID-19 pandemic, some of the measures adopted by companies to prevent the contagion and spread of COVID-19 in workspaces led to an increase in situations of violation of rights of PLHIV. For example, the right to privacy and confidentiality of the worker's HIV+ diagnosis was challenged in favour of their right to health protection (due to their consideration as especially vulnerable workers' group). The same issue was raised when workers were allowed to return to workspaces; during this time, specific measures were being taken to protect the health of workers recognized as especially vulnerable.

Summary of measures adopted

No specific measures were implemented for PLHIV by public administrations, beyond facilitating the dispensing of ARVs by tele-pharmacy or home delivery of the same in some hospitals and, in some Autonomous Communities, rapid linkage to the Health System of people with HIV in an irregular administrative situation through the suppression of administrative procedures. The Ministry of Health provided safety equipment to NGOs from all areas, including those dealing with PLHIV. Still, the lack of protection materials and of communication and coordination with public administrations has been reported as an issue.

The NGOs have supported their target groups mostly through tele-assistance, focusing especially on:

- psychosocial support in chemsex;
- Peer programs;
- Mutual aid groups;
- Emotional and psychological support;
- Information about COVID 19 and HIV or job orientation.

Vaccination priority

After several discussions and reviews, the Government has laid down in Update 5 of the Vaccination Strategy against COVID-19 in Spain, on March 30, that a priority Group 7, "People with very high-risk conditions" included people with HIV infection with less than 200 cells/ml despite effective ART and undetectable viral load. People with these conditions would receive the vaccine within a group 5B (mostly consisting of people between 70 and 79 years of age), or within any later group.

Interruption of service in HIV centres

Some of the largest STI clinics and HIV testing centers in Spain closed during lockdown, while others at least limited their working hours. There are some examples of centers in Madrid and Barcelona that either closed fully, or

restricted their care for emergencies and symptomatic cases. Sites attempted to maintain telephone consultation and support for PrEP users. As a result, HIV testing declined in the first half of 2020.

Access to ART medication

No cases have been reported where PLHIV would be unable to get ART medication on time. Several cases of individual travellers from foreign countries trapped in Spain during lockdown have been reported. These cases have been resolved successfully on an individual basis.