

SESSION 3: CONFIDENTIALITY

Aim of the session:

Session 3 aims to stimulate discussion on the meaning and implications of confidentiality.

LEARNING OUTCOMES:

By the end of this session participants should be able to:

- ✧ Discuss the meaning of confidentiality
- ✧ Discuss legal and ethical aspects of confidentiality
- ✧ Explain how confidentiality is ensured in practice

SESSION CONTENTS:

- ✧ The meaning of confidentiality
- ✧ Legal and ethical aspects of confidentiality
- ✧ Ensuring confidentiality

READING:

- ✧ Department of Health, Republic of South Africa (2005) Data flow and data management protocol. Comprehensive HIV and AIDS care, treatment and management programme
- ✧ National Health Act (Act 61 of 2003)
- ✧ Department of Health, Republic of South Africa (2000) Ethics considerations for HIV and AIDS clinical and epidemiological research.

3.1 The meaning of confidentiality

Confidentiality means that a patient's HIV status is not made known to anyone outside the health service without the patient's consent. Because of the stigma associated with HIV, issues may also arise about confidentiality within the health service.

Confidentiality regarding the medical records of any patient (not only HIV and AIDS patients) has important legal and ethical implications. Confidentiality around HIV is particularly sensitive because of stigma and the social implications of this. Access to information is essential for health care workers to manage patients appropriately. However, it is important to treat this information respectfully, bearing in mind the potential effects on the lives of patients if sensitive information is disclosed.

3.2 Legal and ethical aspects of confidentiality

The South African Constitution (1996)⁵ provides for public services to be governed by the democratic values and principles enshrined in the Constitution. This includes the promotion and maintenance of a high standard of professional ethics.

Similarly the **National Health Act (61 of 2003)**⁶ stipulates in section 14 that all information concerning a health service user, including information relating to his or her health status, treatment or stay in a health establishment is confidential. In section 15 this is reinforced by a statement that no person may disclose such information unless:

⁵ Constitution of the Republic of South Africa (Act No 108 of 1996)

⁶ No 61 of 2003: National Health Act, 2004

- i) the user consents to disclosure in writing; or
- ii) a court order or any law requires that disclosure; or
- iii) non-disclosure of information represents a serious threat to public health.

Other provisions in section 15 relate to access to patient records where it is stated that 'any person working for or on behalf of any health establishment or any health care provider has access to the health records of a user and may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interest of the user'.

The provisions on confidentiality enshrined in the Constitution and the Act are further guaranteed through the **Patient's Rights Charter** whose primary purpose is stated as:

'To ensure the realisation of the right of access to health care services as guaranteed in the Constitution of the Republic of South Africa (Act No 108 of 1996), the Department of Health is committed to upholding, promoting and protecting this right and therefore proclaims this Patient's Rights Charter as a common standard for achieving the realization of this right'.⁷

The Charter aims at further protecting the following rights of patients:

- a. **A healthy and safe environment:** Everyone has the right to a healthy and safe environment that will ensure their physical and mental health or well-being, including adequate water supply, sanitation and waste disposal as well as protection from all forms of environmental danger, such as pollution, ecological degradation or infection.
- b. **Participation in decision-making:** Every citizen has the right to participate in the development of health policies and everyone has the right to participate in decision-making on matters affecting one's health
- c. **Access to healthcare:** Everyone has the right of access to health care services irrespective of ability to pay. They have the right to be treated with dignity and in a non-discriminatory way.
- d. **Knowledge of one's health insurance/medical aid scheme:** A member of a health insurance or medical aid scheme is entitled to information about that insurance or medical aid scheme and the right to challenge, where necessary, the decisions of such health insurance or medical aid scheme relating to the member.
- e. **Choice of health services:** Everyone has the right to choose a particular health care provider for services or a particular health facility for treatment provided that such a choice shall not be contrary to the ethical standards applicable to these health care providers or facilities, and the choice of facilities in line with prescribed service delivery guide lines.
- f. **Be treated by a named health care provider:** Everyone has the right to know the person that is providing health care and therefore must be attended to by clearly identified health care providers.

The Charter further reinforces confidentiality and privacy by providing that information concerning one's health and treatment may only be disclosed with informed consent, except when required in terms of any law or an order of the court.

- g. **Informed consent:** Everyone has the right to be given full and accurate information about the nature of one's illnesses, diagnostic procedures, the proposed treatment and the costs involved, for one to make a decision that affects any one of these elements.
- h. **Refusal of treatment:** A person may refuse treatment and such refusal shall be verbal or in writing provided that such refusal does not endanger the health of others.

⁷ Patient Rights Charter: Department of Health

- i. **Be referred for a second opinion:** Everyone has the right to be referred for a second opinion on request to a health provider of one's choice.
- j. **Continuity of care:** No one shall be abandoned by a health care professional worker or a health facility which initially took responsibility for one's health.
- k. **Complain about health services:** Everyone has the right to complain about health care services and to have such complaints investigated and to receive a full response on such investigation.