

Trafficking toolkit: Specific arrangements for the health services

CRIMINAL JUSTICE SYSTEM



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SPECIFIC ARRANGEMENTS AND ADVICE FOR THE HEALTH SERVICES

Responsibilities of the health services

For health care providers, trafficking in persons is best understood as a very serious health risk, because trafficking, like other forms of violence, is associated with physical and psychological harm.

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime establishes the basis of the assistance measures that should be provided for trafficked persons [Article 6 (3)]:

“Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) appropriate housing;
- (b) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) medical, psychological and material assistance; and
- (d) employment, educational and training opportunities.”

Additionally, Article 6 (4) also recognizes the needs of particularly vulnerable groups:

“Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.”

In meeting the requirements of this Protocol, medical and other health providers are a vital link in the chain of care required by persons who are trafficked.

Role of the health services in the National Referral Mechanism

Your role in the process

Identifying victims

A trafficked person may be referred to a health care provider; a patient may disclose a trafficking experience; or a provider may detect signs that suggest an individual has been trafficked. The informed and attentive health care provider can play an important role in assisting and treating individuals who may have suffered unspeakable and repeated abuse. In fact, health care is a central form of prevention and support in the network of anti-trafficking assistance measures.

There are no definitive symptoms by which to identify a person who has been trafficked. However, a health provider may suspect that an individual has been trafficked or has suffered extreme forms of exploitation when she or he presents with industry-related morbidity and post-trauma reactions and reports having migrated for a trafficking-related form of labour.

If a provider suspects or learns that an individual has been trafficked, it is important to be prepared with appropriate and up-to-date referral information and to offer care in a sensitive, confidential way.

Providers should take time to gain trust and learn about the individual's risks and restrictions. They should also make the effort to act in ways that assure individuals that they are respected and not held responsible for the crimes that occurred.

The following are possible questions to ask that may give a better understanding of your patient's situation. Always ask your questions in relation to your patient's health, and in the simplest way possible. React supportively to whatever is reported.

Select those questions that are relevant or adapt any of the following symptoms according to the individual's health conditions:

- > You look very pale. Can you tell me about your diet? What have you eaten this week? Over the last month?
- > You are coughing a lot. I need to know about your home situation. Can you tell me about your home and your bedroom? Are you sharing your room with others? Do you have a window in your room? Can you open it easily?
- > I think you may be suffering from a disease that is not common here. Where are you originally from? How long have you been here?
- > Were you injured while working? Can you tell me about your work and how you were injured? Is this the first time that you were injured or do you have other injuries elsewhere? I need to make sure that you are okay everywhere.

Keeping records

Although most health providers have in place certain security precautions for patient medical files and rules around patient confidentiality, providers caring for persons who have been trafficked will need to institute extra safeguards for written, electronic and verbally communicated information on trafficked persons.

“Health data include all records pertaining to the physical, mental and social health of the trafficked person. A health information system is the way in which health data are collected, organized, stored and communicated.”

As with all patient data, the way information is collected, stored and transferred between providers is important to accurate diagnosis and treatment. Because trafficked persons are particularly likely to face security risks, be referred to other providers and/or transferred from the original care location (eg, internationally) or participate in one or more legal proceedings, it is especially important to follow good data management procedures to ensure the safety of each individual and the quality of follow-up and future care. Trafficking cases may involve organised criminal groups. Health data may be used in court or may be used to support or undermine an asylum claim. Notably, patient files may also identify health care staff involved in providing care.

Central to managing the health data of trafficked persons are: privacy, confidentiality and security. These concepts are fundamental principles in handling trafficking-related data in general and certain sensitive health information (eg, HIV) in particular.

- > Privacy refers to the patients’ right to control how they provide information, the use of this information and their access to it.
- > Confidentiality indicates the right of patients to determine who has or does not have access to their patient information and for trafficked persons, suggests the importance of anonymity.
- > Security suggests the need to safeguard patient files against security breaches during data collection, storage, transfer and use.

In managing data on trafficked persons it is important to recognize and balance the patients’ rights to protect and access their personal data and the need for health care providers to collect, use and disclose personal data in the course of providing care. The framework for protecting the confidentiality and security of HIV information provides a good example of mechanisms for managing the health data of trafficked persons.

In addition to adhering to the overarching principles for managing data, health care providers must also take specific actions throughout, and even after, a patient is in their care. Protecting patient information will often involve a number of individuals in a health care setting (eg, reception staff, nurses, doctors, consultants, managers,

data-entry clerks, etc). All who have a potential role in communicating with trafficked persons, managing information or transferring file data should be made aware of the rules and procedures for patient information.

Data collection

Personal information, including medical history-taking, must be collected in a private setting. Both the patient and the provider must feel safe to speak freely. It is a good idea to ask individuals if they feel comfortable and ready to discuss their health and care needs. Consider, for example, whether the individual wants the door open or closed, discourage other staff from interrupting, and turn off your mobile phone.

Obtain informed consent: The fundamental element of *informed consent* is informing, by providing clear and accurate information. At the first health consultation, providers should offer information about the scope and purpose of the consultation, services that are and are not available and the measures in place to ensure patient privacy and confidentiality.

Once information on data use is provided, an individual may be asked for consent to proceed. Only information covered in the scope of the consent may be requested. If information is to be used for research purposes, this must be disclosed and separate consent may be required. Informed consent is when patients are able to consider the relevant facts (purposes, procedures, uses, risks and benefits) associated with data collection and then agree. If consent cannot be obtained because, for example, the trafficked person is a minor, is in a state of trauma or has a physical or psychological disability that would prevent him or her from giving truly informed consent, the health care provider should, at a minimum, ensure that the patient understands sufficiently and appreciates the specified purpose for which personal data are collected and processed. The condition and legal capacity (eg, if the patient is a minor) of the patient to give consent should be taken into account. The patient must also be allowed to give, withhold and withdraw consent at any time without negative consequences.

Collect pertinent data. Collect only information that is required to assess and respond to care needs, not simply for curiosity's sake. Refrain from asking trafficked persons about the non-health related consequences of the trafficking process.

This may put you in a risky situation and may cause the trafficked person to relive stressful experiences, which may have a negative impact on recovery. Many victims of sexual abuse feel stigmatised by their experience and by certain health problems (eg, sexually transmitted infections or psychological disorders).

Data file storage

Ensure case files are coded. All health data of trafficked persons must be considered highly sensitive. In trafficking cases, data should be classified as confidential and coded, rather than using the individual's name. Coding is a particularly useful way to protect patients, especially when data is shared.

Patient health files should immediately be assigned a unique identification number. Master files connecting individual names matching them to identification code numbers must be kept in a secured location, with access restricted to the key health care provider or designated support person. Refer to individuals by a designated code number on all other documents. Do not use identifiable patient case details and characteristics for published research or reports.

Secure paper files. It is likely that during the course of providing health care, paper copies of confidential health data will be produced. All paper case files:

- > Must be kept secure and under lock and key safe from unauthorized entry at the health care practice;
- > Must never be left unattended on desks, in common areas, etc;
- > Must be disposed of by shredding or through similar disposal method when no longer needed.

Secure electronic files. In addition, electronic health data files should be:

- > Stored in a secure health information system;
- > Protected by individual passwords with access limited to key staff;
- > Never stored on personal computers or in such data storage devices as USB flash drives, compact discs, etc. Personal information should never be disclosed via email.

Even when coding is used, individual patients often can be readily identified by their basic data (demographic background, ethnicity, nationality, date of birth, family data, description of elements of the trafficking process, etc). Only key health care providers and support staff should have access to a patient's primary case file.

Conduct a data risk analysis. Providers caring for trafficked persons may wish to undertake a data risk analysis to consider the implications of what is written in a file, the potential uses and misuses of patient data and to develop strategies to avoid mishandling of data and to deal with information requests.

File information may, for example, be required by law enforcement in relation to a court case against an alleged trafficker or needed for an asylum claim. In more sinister situations, traffickers might try to obtain the trafficked person's file information to locate individuals or learn about their health conditions. It is equally important to remember that personal data (name, work location, phone number, etc) of the health care provider could also be misused. It is therefore important to follow well-designed data security procedures.

Information communication to patient

All trafficked persons have the right to be fully informed of their medical conditions and health needs and should receive copies of their complete medical and health records.

Trafficked persons should be fully informed of their medical conditions, diagnoses, test results, health needs and proposed follow-up procedures, which are also recorded in their file. They should be offered copies of their complete medical records.

Patients should be given an opportunity to verify and rectify their personal data.

Confidentiality

You may sometimes feel pressure from or, in some cases, camaraderie with authorities. When put in the position between the obligations to the patient and requests from officials who may need information for an investigation or an immigration case, the medical ethics code of conduct requires that the practitioner respect the confidentiality and decisions of the patient.

Patient communications and files are private and cannot be transferred to authorities without the express permission of the patient or a judicial order.

Similarly, even when you are attempting to *protect* trafficked persons, do not pressure them to withhold or release evidence or to avoid or collaborate with investigators. Explain options clearly and neutrally to your patients, and let them make their choices freely.

If you suspect or are informed that an individual in your care has been trafficked, you should not contact the police or other authorities (eg, consular staff) without the express permission of the trafficked person. Although you may be tempted to seek help or protection for individuals in your care by contacting authorities, this decision is one that should not be taken without consulting your patient.

Given adequate information and the opportunity to discuss their options, trafficked persons are generally in the best position to assess the risks and benefits of contact with authorities. Similarly, reporting information offered by trafficked persons to law enforcement should take place only with the consent of the trafficked person.

Information sharing

Victims will have been in situations where contact with outsiders is handled with suspicion and in some circumstances endanger the health and safety of themselves or their loved ones. Careless handling of personal information greatly increases that risk. Inter-agency cooperation is essential in correctly identifying and sufficiently supporting victims but the data that gets transferred between agencies must be heavily protected.

You must obtain the consent of the individual before any referral is undertaken, unless there are child protection concerns or serious concerns over harm to selves or others. If you are referring the individual on to another organisation, you must specify what details you will be passing on. It must be remembered that victims could be extremely traumatised, and having to repeat information to a multitude of organisations will be detrimental to their health and well-being.

Sharing case information among health professionals is often necessary for good case management. Health files, electronic data and verbal case information must be transferred to other health practitioners in an efficient and careful manner carefully.

All health care providers and support staff, including interpreters, should adhere to the following:

- > Health files and information should not be disclosed to third persons without the prior consent of the patient;
- > Only *need-to-know* information should be transferred to others. Only information that is pertinent to an individual's safety and care should be disclosed to other internal or external parties, on a *need-to-know* basis and with the consent of the trafficked person;
- > Discuss case information in private and in confidence. Never communicate about a trafficked person's health records in a public or open environment. When health care providers discuss details of a patient's case during peer supervision or in staff meetings, all information shared must be kept strictly confidential;
- > Do not discuss case information with family members unless person is legally designated guardian. A trafficked person's case history should never be discussed with family members, friends, other trafficked persons or third parties without the explicit consent of the individual;
- > Conduct ethical and lawful data collection. Health care providers must be aware of relevant domestic and international laws or guidelines on data protection and mandatory disclosure laws. In certain circumstances, to protect public health or public security you may need to comply with national regulations regarding reporting related to trafficking incidents. In these situations, be certain to learn about your legal rights and obligations as a practitioner and the rights of your patient before divulging private files or information.

What do I do if the patient's health data is requested by a law enforcement agency in relation to a criminal investigation against an alleged trafficker?

Your co-operation might be requested by law enforcement officials for a criminal proceeding against an alleged trafficker, or in relation to an asylum or temporary residency claim by a trafficked person. You may be required to submit a written statement or appear in court. To be certain of your compliance requirements, seek legal counsel.

Guidelines on what to do if you suspect, or someone discloses that they have been trafficked

Do not contact any support organisation or the police without first explaining to your patient how this communication will affect him or her. Discuss available options, and explain how they work and what the benefits are. Act only with your patient's consent.

Only refer individuals on to services which you know are tailored to specifically deal with victims of trafficking, or are catered to provide support for the specific needs of the individual: Different contexts may apply to your patient in terms of his or her rights, depending on his or her immigration and legal status, presence of proper documents, and the type of work engaged in (whether legal or illegal). All of these circumstances may have an impact on the patient's safety. Explain the situation to your patient and help him or her make the best decision.

When you cannot refer your patient but feel confident about your patient's compliance for follow-up assessment and treatment, consider the following:

- > Maintain your professional role as health provider. Provide comprehensive management for your patient, including arranging follow-up care and visits;
- > You may face different circumstances in your next encounter with your patient. Your patient may develop trust and request different assistance;
- > Be prepared at this time with appropriate referral information that can be offered in a safe way.

When referral is not possible because the patient does not desire it, the situation is too unsafe to make a referral, maximize the encounter with the patient because it may be the only chance you have to help improve your patient's condition:

- > Offer the patient as much information as possible related to his or her medical condition, treatment and necessary follow up;
- > Provide information about the crime of trafficking, available support services including hotline phone numbers, details on where your patient can go, and information on whom to call in the future if the patient should wish to take advantage of services at a later time;
- » Be attentive to the form of documentation you provide your patient because there will usually be safety risks involved. Documents may be traced back to you or your health facility; therefore you may want to put this important information on a piece of paper small enough for your patient to hide under clothing (eg, to tuck into undergarments).

- > Provide a complete regimen of prescribed medication in that single encounter, if applicable and possible. Assume that the patient will not be able to come back for follow-up treatment and assessment, or for additional diagnostic examinations;
- > Use single dose therapy whenever possible and provide your patient with a medical summary and referral documents as appropriate.

When urgent assistance is required or imminent danger is present, the following are important points to consider?

- > Ensure your own safety first;
- > If emergency medical referral is needed, you might have to persuade your patient and any companion or minder about this. Focus on the health status of your patient and do not elaborate on the causes of your patient's health deterioration, especially if they may be related to abuse;
- > If your patient is alone and contact with police is desired by the patient or seems necessary to the individual's immediate safety, discuss this slowly and clearly with your patient, making certain that this is the preferred course of action. Refer to a specific trusted police focal point whenever possible.

What support/advice can you offer?

Healthcare professionals may be the first external link that the individual has to get out of a very harmful situation. Recognising this and acting accordingly is crucial if healthcare professionals are to play their part in combating human trafficking. Knowing and understanding the indicators of trafficking and applying that knowledge in day to day work will be vital to identifying potential victims of trafficking, and engaging with relevant experts to refer vulnerable individuals on will ensure that the individual is securely and appropriately supported.

Healthcare staff should be open to having discussions with other agencies in relation to trafficking and should ensure that they know who within the agency can help with further queries.