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Transgender Patients: Toward a More Inclusive Environment of Care

In May 2016, the U.S. Department of Health & Human Services (HHS) Office for Civil Rights issued regulations extending the prohibition against sex discrimination in the healthcare setting to questions of gender identity and sex stereotyping.¹ In addition to this legal ruling, hospitals and other accredited healthcare organizations are also subject to the Joint Commission's patient rights mandates banning discrimination based upon gender identity or expression.²

Despite these protections, there is evidence of continuing bias against transgender patients. In a national survey of transgender individuals, 19 percent of respondents reported that they had been denied care by a provider because of their gender identity, while an even higher proportion – 28 percent – reported that they had encountered verbal harassment in a medical setting.³

An unwelcoming or humiliating atmosphere represents a threat not only to the well-being of transgender patients, but also to healthcare businesses, which are vulnerable to sanctions and claims arising from discriminatory acts. This issue of *Healthcare Perspective* is designed to help healthcare businesses protect transgender patients and themselves by understanding regulatory requirements and liability exposures, reviewing current protocols and practices, and moving toward greater inclusiveness and accommodation. At a moment when transgender rights issues are frequently in the news, healthcare settings that focus on enhancing their communication practices and cultural sensitivity can maximize legal compliance and patient satisfaction while minimizing the potential for negative publicity and litigation.

SOURCES OF LIABILITY

Noncompliance with the anti-discrimination mandate may have significant consequences for healthcare settings and providers. Under the federal regulations, transgender individuals may be able to assert civil rights claims against hospitals, physicians and other healthcare providers who deny them medically necessary care based upon their gender identity. HHS is authorized to suspend or terminate federal funding for noncompliant entities, and may request the U.S. Department of Justice to initiate an inquiry regarding possible criminal offenses.

Discriminatory practices also may expose healthcare providers and business owners to professional liability claims. For example, transgender patients who are subjected to intrusive exams without having given their informed consent to treatment may make allegations of battery or intentional infliction of emotional distress. Similarly, engaging in selective appointment scheduling may result in delayed diagnosis claims. These and other discriminatory actions risk creating a harmful cycle of deferred care, untreated conditions, self-medication, substance abuse, and poor physical and mental health outcomes, which may in turn develop into complaints and/or litigation.

POLICY AND TRAINING CONSIDERATIONS

The first step in reducing liability is to formulate a general policy statement that demonstrates compliance with legal mandates and a commitment to combating inequity – such as, “*This organization does not discriminate against any person on the basis of gender identity or expression.*” Include this statement in employee handbooks, websites and marketing materials, and incorporate it into staff training and educational activities.

Cultural competency training. Providers and staff who have had little exposure to transgender individuals may lack awareness of the special physical and emotional needs of this patient population. Cultural competency training focuses on developing a common

1 HHS, Office of the Secretary, 45 CFR Part 92, RIN 0945-AA02, [Nondiscrimination in Health Programs and Activities](#), May 18, 2016.

2 See The Joint Commission's [Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the Lesbian, Gay, Bisexual, and Transgender \(LGBT\) Community: A Field Guide](#), April 3, 2014.

3 Grant, J. et al. [Injustice at Every Turn: A Report of the National Transgender Discrimination Survey](#). Washington, D.C.: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

core of knowledge and understanding that allows practitioners and others to serve transgender patients in a sensitive and respectful manner. The following organizations provide educational resources in this area:

- Callen-Lorde Community Health Center, [Transgender Health Trainings for Patients, Educators & Providers](#).
- Center of Excellence for Transgender Health, [Transgender Health Learning Center](#).
- National LGBT Health Education Center, [Webinars & Video Training](#).

Along with reinforcing the healthcare setting's general non-discrimination policy, cultural competency training sessions should emphasize that the following behaviors and practices, among others, are expressly prohibited:

- *Use of improper patient names and/or personal pronouns.*
- *Inappropriate questions and/or exams.*
- *Laughter, taunting and mockery, as well as use of what may be perceived as slurs, even in a "humorous" context.*
- *Disrespectful treatment, such as making certain patients wait longer than necessary for care or ignoring their questions or requests.*
- *Breaches of confidentiality in the registration, examination and/or billing process.*
- *Failure to comply with the standard of care relating to gender transition.*
- *Undue restrictions, including bathroom use, room assignments and visitor policy.*

Appropriate terminology. Use of accurate, appropriate and respectful terminology regarding gender status is critical to maintaining a welcoming and courteous environment. The definitions below help clarify some important gender-related concepts and should be presented in training sessions and reviewed by front-line staff, including admitting and registration personnel, nurses, physicians, allied healthcare professionals and security guards.

Medical training. Upon entering the healthcare system, transgender patients sometimes fail to receive quality care due to a scarcity of professionals with proper training in relevant medical and behavioral issues, including gender transition services, hormonal therapy and gender-affirming surgery. To remedy this situation, healthcare business owners may wish to conduct training sessions guided by the following standard resources:

- Center of Excellence for Transgender Health, ["Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People,"](#) second edition, 2016. Deutsch, M., editor.
- The World Professional Association for Transgender Health, ["Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People,"](#) seventh version, 2011.

GLOSSARY OF BASIC GENDER-RELATED TERMS

- **Gender dysphoria** – A psychiatric diagnosis referring to the intense, continuous distress that results from a sense of being assigned the wrong sex at birth.
- **Gender expression** – Modes of dressing, speaking and behaving that reveal one's gender as feminine, masculine, both or neither.
- **Gender identity** – A person's internal sense of being male, female, both or neither.
- **Gender-nonconforming** – Expressions of gender that differ from cultural expectations. A gender-nonconforming person is not necessarily transgender – e.g., a woman who dresses in a stereotypically masculine style but who identifies as female, or a young boy who enjoys playing with girl dolls but identifies as a boy.

- **Genderqueer** – Used by some individuals who identify as neither male nor female, or as both male and female.
- **Gender transition/affirmation process** – The stages of recognizing, accepting and expressing one's gender identity. The term may also refer to the period within which a person makes social, legal and/or medical changes, such as modifying dress and appearance, taking a new name and gender designation, and initiating medical interventions.
- **Transgender** – An umbrella term used to describe people whose gender identity or expression does not conform to what is socioculturally associated with the legal and medical sex to which they were assigned at birth.

Source: [Affirmative Care for Transgender and Gender Non-Conforming People: Best Practices for Front-line Health Care Staff](#). Boston: National Center for Transgender Equality, 2013.

GENDER IDENTIFICATION AND DOCUMENTATION

Registration and intake forms should permit transgender patients to input their preferred gender, name and pronoun, even if these identifiers differ from information on insurance cards or other forms of legal identification. The [Lambda Legal civil rights organization](#) recommends a two-step method for collecting gender data on patient intake forms, as described below:

1. What is your current gender identity? (Check one.)

- Male
- Female
- Female-to-male (FTM)/transgender male/trans man
- Male-to-female (MTF)/transgender female/trans woman
- Genderqueer, neither exclusively male nor female
- Additional gender category (or "other"); please specify:_____
- Decline to answer

2. What sex were you assigned at birth on your original birth certificate? (Check one.)

- Male
- Female
- Decline to answer

In addition to requesting the patient's legal name, intake forms should contain an optional field for "name in use." This field permits providers to use transgender patients' preferred name and pronoun, while ensuring that insurance coverage claims and billing statements are processed under the legally designated name.

For a review of best practices regarding transgender patient intake and registration, see "[How to Gather Data on Sexual Orientation and Gender Identity in Clinical Settings](#)," from the Fenway Institute.

PATIENT PROTECTION AND ACCOMMODATION

Healthcare businesses are obligated to extend the protections guaranteed under the [Patient Bill of Rights](#) to transgender and gender-nonconforming patients. These rights include privacy and confidentiality, as well as respectful, nondiscriminatory treatment.

Privacy. Identifiable information about a patient's transgender status or transition-related services constitutes protected health information under HIPAA. To avoid potential violations, refrain from asking patients about transgender status, sex assigned at birth or transition-related procedures, unless the query is directly related to patient care. If the information is deemed medically necessary, providers should explain to patients why it is relevant to their care and assure them that it will be treated in a confidential manner. In addition, providers should inform transgender patients that they have the right to refuse examination or observation by healthcare personnel who are not directly involved in their care.

Interaction with patients. Once a patient has provided a preferred name, staff must use that name and the patient-designated pronoun in all interactions. Failure to do so may result in allegations of harassment. Staff should also be instructed to avoid asking probing questions or making inappropriate statements about patients' bodies or surgical status – e.g., "What is between your legs?" or "You have a male anatomy, so I will refer to you by your male name." Finally, explain to staff that terms such as *she-male*, *he-she*, *it*, *tranny*, "real" woman or "real" man are offensive and should never be used.

Room assignments. Healthcare settings are required to offer equal access to services or activities to all without discrimination on the basis of sex.⁴ As a matter of policy, rooms should be assigned based upon transgender patients' self-identification, regardless of sex assigned at birth, genitalia, name or sex identifier on intake records.

For additional guidance, see the sample room assignment policy on pages 9-11 of Lambda Legal's "[Creating Equal Access to Quality Health Care for Transgender Patients: Transgender-affirming Hospital Policies](#)."

Restroom access. Guaranteed protections also extend to restroom access. By providing unisex bathrooms, healthcare settings demonstrate their commitment to creating a safe, welcoming environment of care for the transgender population. Marking a single-stall bathroom for unisex use may be the simplest means of achieving compliance.

⁴ See the "[Affordable Care Act Fact Sheet](#)" from the Transgender Law Center.

Complaint management. Disputes between healthcare personnel and transgender patients can expose businesses to vicarious liability for condoning a hostile or discriminatory environment. Business owners may wish to designate “conflict coaches” – i.e., individuals who are skilled in patient relations and have received transgender cultural-competency training – and assign them to mediate any disagreements that may arise over such issues as room assignment, restroom use, insurance coverage and alleged discrimination. In the event of registered complaints or conflicts, a written report should be drafted by the conflict coach and sent to authorized personnel for follow-up.

Bias against transgender patients is against the law. By reviewing and updating policies, enhancing staff training and monitoring compliance, healthcare businesses can demonstrate respect for transgender patients’ rights, needs and dignity, while minimizing risk. For an expanded discussion of transgender rights in clinical settings, see [“Health Care Rights and Transgender People,”](#) from the National Center for Transgender Equality.

QUICK LINKS

- [The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding.](#) Washington, D.C.: Institute of Medicine, 2011.
- Lambda Legal, [“Transgender Rights Toolkit: A Legal Guide for Trans People and Their Advocates,”](#) 2016 and [“When Health Care Isn’t Caring: Lambda Legal’s Survey On Discrimination Against LGBT People and People Living with HIV,”](#) 2010.



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