

# Transgender individuals' access to public facilities

## Background

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Gender identity refers to an individual's concept of self as male, female, a blend of both or neither. Approximately 1.4 million adults and 150,000 youth ages 13 to 17 in the United States identify as transgender, meaning those individuals' gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth.<sup>1</sup> Individuals may also identify as gender expansive, meaning they identify with neither traditional binary gender role nor a single gender narrative or experience.<sup>2</sup> In this document, the term transgender is used inclusive of patients with transgender or gender expansive gender identities.

For many transgender individuals, social transition is a critically important part of medically necessary treatment. Social transition involves living one's life fully in accordance with one's gender identity and typically includes publicly identifying oneself as that gender, adopting a new name, using different pronouns, grooming and dressing in a manner typically associated with one's gender identity and using restrooms and other single-sex facilities consistent with that identity.<sup>3</sup>

Many but not all transgender people experience gender dysphoria, a medical condition defined by the American Psychiatric Association as a "conflict between a person's physical or assigned gender and the gender with which he/she/they identify." Treatment options for gender dysphoria may include counseling, gender-affirming hormone care, puberty suppression and/or gender confirmation surgeries.

## Transgender access to public facilities

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### Nondiscrimination laws

Nineteen states and the District of Columbia have enacted legislation to prohibit discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals in places of public accommodation: California, Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington. These state laws vary in terms of scope; all cover places accessible to the public like restaurants, hotels and medical facilities, and some extend protection to additional categories of accommodation such as credit and education.<sup>4</sup> More than 200 municipalities have adopted similar nondiscrimination ordinances.<sup>5</sup> Often these nondiscrimination laws cover the right to access facilities within those spaces, such as restrooms, in accordance with gender identity.

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1 Andrew Flores et al., Williams Inst., UCLA Sch. of Law, *How Many Adults Identify as Transgender in the United States?* (2016).

2 Joel Baum, et al., Human Rights Campaign & Gen. Spectrum, *Supporting and Caring for our Gender Expansive Youth* (2013).

3 Am. Psychological Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 *Am. Psychologist* 840 (2015).

4 See e.g. Maine Human Rights Act of 2005 (codified in Me. Rev. Stat. tit. 5 § 337).

5 *Know Your Rights: Transgender People and the Law*, Am. Civil Liberties Union, <https://www.aclu.org/know-your-rights/transgender-people-and-law>.

No federal law explicitly protects against discrimination on the basis of gender identity; however, a growing number of federal courts have interpreted laws against discrimination based on sex to apply to discrimination based on gender identity. The U.S. Court of Appeals for the First, Sixth, Ninth and Eleventh Circuits, covering 20 states, have held that sex discrimination prohibited under Title VII includes discrimination based on gender identity, though the Seventh and Tenth Circuits have held that it does not. Title VII, among other things, prohibits discrimination in an employment context. The U.S. Court of Appeals for the Sixth and Seventh Circuits, covering seven states, have also held that sex discrimination prohibited under Title IX includes discrimination based on gender identity.<sup>6</sup>

Title IX, among other things, prohibits sex discrimination in schools that receive federal funding. On February 22, 2017, the U.S. Departments of Justice and Education rescinded guidance issued under the previous Administration that required schools accepting federal funding to protect transgender students' ability to use school restrooms corresponding to their gender identity.<sup>7</sup> In light of this action, the U.S. Supreme Court sent back to a lower court for further consideration a case involving a school's refusal to allow a student to use the bathroom corresponding to his gender identity. This case and several others addressing the scope of Title IX sex discrimination protections, including access to bathrooms corresponding to gender identity, are making their way through the federal and state court systems.

## **Discriminatory laws**

Several states have considered laws to restrict transgender individuals' right to access public restrooms according to their gender identity. Supporters of these laws claim sexual predators will take advantage of public accommodation laws to prey on women and children. No evidence exists to support these claims.

To date, only North Carolina has enacted – and repealed – such a law. The 2016 North Carolina Public Facilities Privacy & Security Act (commonly referred to as House Bill 2) restricted individuals to using only restrooms and locker rooms that correspond to the sex listed on their birth certificate, prohibiting transgender individuals from using the facilities that correspond with their gender identity. The law was repealed in 2017, but the legislature left in place a provision that preempts state agency and local government regulation of access to bathrooms, showers and changing facilities.<sup>8</sup> In 2017, legislation was introduced in sixteen other states to restrict public facility access for transgender individuals. None passed. Some states considered such bills in 2018 and, to date, none have been enacted.

## **Health implications for transgender individuals**

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### **Mental health**

Transgender individuals in the U.S. are up to three times more likely than the general population to report or be diagnosed with mental health disorders, with as many as 41.5 percent reporting at least one diagnosis of a mental health or substance use disorder:

- Over a third of transgender individuals suffer a major depressive episode in their lifetimes;
- 20.2 percent have been diagnosed with suicidality in the past 30 days;
- 7.9 percent have been diagnosed with an anxiety disorder in the past six months;

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<sup>6</sup> The AMA and GLMA, along with 16 other medical and mental health organizations, submitted an amicus brief in support of a transgender student in *G.G. v. Gloucester County School Board*. The case was remanded for further consideration in light of guidance issued by the U.S. Departments of Justice and Education on February 22, 2017.

<sup>7</sup> U.S. Dep't Justice Civil Rights Div. & U.S. Dep't Educ. Office Civil Rights, Dear Colleague letter on Transgender Students (Feb. 22, 2017).

<sup>8</sup> N.C. Gen. Stat. § 143-760.

- 9.8 percent have been diagnosed with post-traumatic stress disorder in the past six months; and
- 15.2 percent have been diagnosed with a substance use disorder in the past year.<sup>9</sup>

Comparatively, 6.7 percent of all U.S. adults have experienced at least one major depressive episode in the past year.<sup>10</sup> The increased prevalence of these mental health conditions is widely thought to be a consequence of minority stress, the chronic stress from coping with societal stigma and discrimination because of one's gender identity and expression.<sup>11</sup> Discrimination in public facilities contributes to these existing mental health disparities.

Evidence confirms that policies excluding transgender individuals from facilities consistent with their gender identity have detrimental effects on the health, safety and well-being of those individuals.<sup>12</sup> These exclusionary policies undermine well-established treatment protocols for gender dysphoria, expose these individuals to stigma and discrimination as well as potential harassment and abuse and impair their social and emotional development, leading to poorer health outcomes throughout life.<sup>13</sup> Surveys have also shown transgender individuals face a greater risk of violence when using a public facility that does not correspond with their gender identity:

- 14 percent of transgender Americans reported being verbally harassed, physically assaulted, or sexually assaulted when accessing a restroom in the previous year; and
- 59 percent of transgender Americans have avoided using public restrooms for fear of confrontation, harassment and assault.<sup>14</sup>

## Physical health

Nine percent of transgender individuals reported that they were denied restroom access in the past year. In addition to psychological harm, denying access to facilities that correspond with an individual's gender identity can cause physical harm from prolonged avoidance of the restroom. Research has demonstrated that:

- Nearly one-third of transgender people report that they limited the amount they ate or drank at least once in the previous year so they did not need to use a public restroom;
- 54 percent of transgender individuals have reported physical problems from avoiding restrooms at work or in public, including dehydration and continence issues; and
- Eight percent of transgender individuals reported having a kidney or urinary tract infection, or another kidney-related medical issue because they avoided restrooms.<sup>15</sup>

9 Sari Reisner, et al., *Psychiatric Diagnoses and Comorbidities in a Diverse, Multicity Cohort of Young Transgender Women: Baseline Findings From Project LifeSkills*, 170 *J. Am. Med. Ass'n Pediatrics* 5, 481–86 (May 2016).

10 Cnt. Behavioral Health Statistics & Quality, Substance Abuse & Mental Health Serv. Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health*, HHS Publication No. SMA 17-5044, NSDUH Series H-52 (Sep. 2017).

11 Stephen Russell & Jessica Fish, *Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth*, 12 *Ann. Rev. Clinical Psychology* 1, 465–87 (Mar. 2016).

12 E.g. Lance Weinhardt et al., *Transgender and Gender Nonconforming Youths' Public Facilities Use and Psychological Well-Being: A Mixed-Method Study*, 2 *Transgender Health* 1, 140–50 (Oct. 2017); Kristie Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 *J. Homosexuality* 10, 1378–99 (Feb. 2016); Carolyn Port et al., *"Kicked out": LGBTQ youths' bathroom experiences and preferences*, 56 *J. Adolescence* 107–12 (Apr. 2017).

13 See e.g. Jody Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 *J. Pub. Mgmt. & Soc. Pol'y* 1, 65–80 (2013); Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012).

14 Sandy James, Jody Herman, et al., *Nat'l Ctr. Transgender Equality, The Report of the 2015 U.S. Transgender Survey* (Dec. 2016).

15 *Id.*; Jody Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 *J. Pub. Mgmt. & Soc. Pol'y* 1, 65–80 (2013).

## Medical society positions

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The American Medical Association (AMA) and GLMA: Health Professionals Advancing LGBT Equality (GLMA) oppose policies preventing transgender individuals from accessing basic human services and public facilities consistent with gender identity, including the use of restrooms. Other medical societies, including the American Psychiatric Association, American Academy of Family Physicians and the American Academy of Pediatrics have policies or statements similarly opposing policies that discriminate against transgender individuals.<sup>16</sup> These medical associations, AMA, GLMA and others have joined amicus briefs supporting this position.<sup>17</sup>

### AMA policy

#### **Access to Basic Human Services for Transgender Individuals H-65.964**

Our AMA: (1) opposes policies preventing transgender individuals from accessing basic human services and public facilities in line with one's gender identity, including, but not limited to, the use of restrooms; and (2) will advocate for the creation of policies that promote social equality and safe access to basic human services and public facilities for transgender individuals according to one's gender identity. (Res. 010, A-17)

#### **Support of Human Rights and Freedom H-65.965**

Our AMA: (1) continues to support the dignity of the individual, human rights and the sanctity of human life, (2) reaffirms its long-standing policy that there is no basis for the denial to any human being of equal rights, privileges, and responsibilities commensurate with his or her individual capabilities and ethical character because of an individual's sex, sexual orientation, gender, gender identity, or transgender status, race, religion, disability, ethnic origin, national origin, or age; (3) opposes any discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin or age and any other such reprehensible policies; (4) recognizes that hate crimes pose a significant threat to the public health and social welfare of the citizens of the United States, urges expedient passage of appropriate hate crimes prevention legislation in accordance with our AMA's policy through letters to members of Congress; and registers support for hate crimes prevention legislation, via letter, to the President of the United States. (CCB/CLRPD Rep. 3, A-14; Reaffirmed in lieu of: Res. 001, I-16; Reaffirmation: A-17)

#### **Nondiscriminatory Policy for the Health Care Needs of LGBTQ Populations H-65.976**

Our AMA encourages physician practices, medical schools, hospitals, and clinics to broaden any nondiscriminatory statement made to patients, health care workers, or employees to include "sexual orientation, sex, or gender identity" in any nondiscrimination statement. (Res. 414, A-04; Modified: BOT Rep. 11, A-07; Modified: Res. 08, A-16; Modified: Res. 903, I-17)

#### **Health Care Needs of Lesbian, Gay, Bisexual and Transgender Populations H-160.991**

1. Our AMA: (a) believes that the physician's nonjudgmental recognition of patients' sexual orientations, sexual behaviors, and gender identities enhances the ability to render optimal patient care in health as well as in illness. In the case of lesbian, gay, bisexual, transgender, queer/questioning, and other (LGBTQ) patients, this recognition is especially important to address the specific health care needs of people who are or may be LGBTQ; (b) is committed to taking a leadership role in: (i) educating physicians on the current state of research in and knowledge of LGBTQ Health and the need to elicit relevant gender and sexuality information from our

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<sup>16</sup> See Am. Psychiatric Ass'n, Position Statement on Discrimination Against Transgender and Gender Variant Individuals (Jul. 2012); Am. Acad. Fam. Physicians, Patient discrimination (2015); Am. Acad. Pediatrics, AAP Statement on Protecting Transgender Youth (Feb. 23, 2017).

<sup>17</sup> See Brief of Am. Acad. Pediatrics, et al., as Amici Curiae Supporting Appellant, *G.G. v. Gloucester County School Board*, No. 15-2056 (2017).

- patients; these efforts should start in medical school, but must also be a part of continuing medical education; (ii) educating physicians to recognize the physical and psychological needs of LGBTQ patients; (iii) encouraging the development of educational programs in LGBTQ Health; (iv) encouraging physicians to seek out local or national experts in the health care needs of LGBTQ people so that all physicians will achieve a better understanding of the medical needs of these populations; and (v) working with LGBTQ communities to offer physicians the opportunity to better understand the medical needs of LGBTQ patients; and (c) opposes, the use of “reparative” or “conversion” therapy for sexual orientation or gender identity.
2. Our AMA will collaborate with our partner organizations to educate physicians regarding: (i) the need for sexual and gender minority individuals to undergo regular cancer and sexually transmitted infection screenings based on anatomy due to their comparable or elevated risk for these conditions; and (ii) the need for comprehensive screening for sexually transmitted diseases in men who have sex with men; (iii) appropriate safe sex techniques to avoid the risk for sexually transmitted diseases; and (iv) that individuals who identify as a sexual and/or gender minority (lesbian, gay, bisexual, transgender, queer/questioning individuals) experience intimate partner violence, and how sexual and gender minorities present with intimate partner violence differs from their cisgender, heterosexual peers and may have unique complicating factors.
  3. Our AMA will continue to work alongside our partner organizations, including GLMA, to increase physician competency on LGBTQ health issues.
  4. Our AMA will continue to explore opportunities to collaborate with other organizations, focusing on issues of mutual concern in order to provide the most comprehensive and up-to-date education and information to enable the provision of high quality and culturally competent care to LGBTQ people. (CSA Rep. C, I-81; Reaffirmed: CLRPD Rep. F, I-91; CSA Rep. 8 - I-94; Appended: Res. 506, A-00; Modified and Reaffirmed: Res. 501, A-07; Modified: CSAPH Rep. 9, A-08; Reaffirmation A-12; Modified: Res. 08, A-16; Modified: Res. 903, I-17; Modified: Res. 904, I-17)

## **GLMA policy**

### **GLMA 070-95-108-18: Protection from Discrimination in Healthcare for Transgender People; Recommendation that Clinicians Follow the WPATH Standards of Care**

GLMA: Health Professionals Advancing LGBTQ Equality opposes discrimination in healthcare for transgender people, and recommends that clinicians follow the WPATH (World Professional Association for Transgender Health) standards of care and/or other evidence-based guidelines. (Approved 1995; Amended & Reaffirmed 2018)

### **GLMA 073-95-111-18: Protection for LGBTQ People from Discrimination in Employment, and Inclusion of Transgender People as a Protected Group**

GLMA: Health Professionals Advancing LGBTQ Equality opposes discrimination of LGBTQ/SGM\* people in employment and supports the inclusion of transgender people as a protected group. \*SGM: Sexual and Gender Minority. (Approved 1995; Amended & Reaffirmed 2018)

For additional information or assistance with advocacy to protect transgender individuals' access public facilities, please visit the [www.ama-assn.org/go/arc](http://www.ama-assn.org/go/arc).

