



National Center for  
**TRANSGENDER  
EQUALITY**

# HEALTH CARE RIGHTS AND TRANSGENDER PEOPLE

March 2012

*For the first time, the Affordable Care Act of 2010 banned sex discrimination in many health care facilities and programs. While we still desperately need national laws that explicitly prohibit discrimination based on gender identity and sexual orientation, existing laws such as the Affordable Care Act can provide real protections in many circumstances. This document outlines the health care rights of transgender people and how to file complaints of health care discrimination. Because NCTE does not provide legal services, we encourage anyone who cannot resolve health care or health insurance issues through federal, state, or local complaint processes to seek legal counsel. We also encourage transgender people who have encountered health care barriers to share their experiences with NCTE to aid our advocacy efforts.*

## WHAT LAWS PROTECT YOU?

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The following laws and policies offer protection for transgender people in health care:

- **The Affordable Care Act** prohibits sex discrimination in hospitals and other health programs or facilities receiving federal financial assistance. In recent years, courts have increasingly held that sex nondiscrimination protections prohibit discrimination against people who are transgender or who fail to conform to gender stereotypes.
- **The Health Insurance Portability and Accountability Act (HIPAA)** protects the privacy of individually identifiable health information, including information related to a person's transgender status and transition. It also gives patients the right to access, inspect, and copy their protected health information held by hospitals, clinics, and health plans.
- **Medicare and Medicaid regulations** protect the right of hospital patients to choose their own visitors and medical decision-makers regardless of their legal relationship to the patient. This means that hospitals cannot discriminate against LGBT people or their families in visitation or in recognizing a patient's designated decision-maker.
- **Hospital Accreditation Standards** as established by the Joint Commission require hospitals to have internal policies prohibiting discrimination based on gender identity and sexual orientation.
- **The Nursing Home Reform Act** establishes a set of nursing home residents' rights that include the right to privacy, including in visits from friends or loved ones; the right to be free from abuse, mistreatment, and neglect; the right to choose your physician; the right to dignity and self-determination; and the right to file grievances without retaliation.
- **State and local nondiscrimination laws.** Nearly every state prohibits sex discrimination in public accommodations, which usually includes health care facilities. The following states, as well as more than 150 cities and counties, also currently explicitly prohibit both gender identity and sexual orientation discrimination in health care facilities: California, Colorado, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Maine, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

## WHAT ARE YOUR HEALTH CARE RIGHTS?

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**Which health programs are prohibited from discriminating?** Under the Affordable Care Act, it is illegal for any health program or organization that is funded or administered by the federal government to discriminate against you because you are transgender, or because you are perceived as not conforming to gender stereotypes. The following are examples of places and programs that are covered by the law if they receive federal funding:

- Physicians' offices
- Hospitals
- Community Health Clinics
- Drug rehabilitation programs
- Rape crisis centers
- Nursing homes and assisted living facilities
- School- and university-based clinics
- Medical residency programs
- Home health providers
- Veterans health centers
- Health services in prison or detention facilities

**What types of discrimination are prohibited by law?** It is illegal for health care providers that receive federal money to do any of the following because you are transgender, or because you are perceived as not conforming to gender stereotypes:

- Refuse to admit or treat you
- Subject you to intrusive and medically unnecessary examinations as a condition of treatment
- Refuse to provide you services that they provide to other patients
- Harass you or refuse to respond to harassment by staff or other patients
- Refuse to provide counseling, medical advocacy or referrals, or other support services
- Isolate you or deprive you of human contact, or limit your participation in social or recreational activities offered to others
- Require you to participate in “conversion therapy” for the purpose of changing your gender identity
- Harass, coerce, intimidate, or interfere with your ability to freely exercise your health care rights

The law also prohibits discrimination on the basis of race, color, national origin, age, and disability, including HIV/AIDS status.

### **What are my rights regarding privacy of my health information?**

Patient health information is protected by the Health Insurance Portability and Accountability Act (HIPAA), which applies to most health care providers and to health insurance plans. Information regarding your transgender status, such as your diagnosis, medical history, birth-assigned sex, or anatomy, may constitute protected health information. Such information cannot be disclosed to anyone—including family and friends—without your consent, or unless it is medically relevant and in your best interest. This information also cannot be disclosed without your consent to medical facility personnel, unless it is for the purposes of treatment, payment, or health care operations. If this information is shared solely for purposes of gossip or harassment, it is a violation of HIPAA.

### **What are my rights regarding health insurance?**

The Affordable Care Act (ACA) offers a new standard, for patient protections, referred to as the Patient's Bill of Rights. The Patient's Bill of Rights puts an end to a number of unfair insurance practices, including dropping enrollees from coverage once they get sick and refusing to offer people coverage because of pre-existing conditions. Some of these protections are particularly important for transgender people:

- **Pre-existing condition exclusions.** Beginning in 2014, health insurance plans cannot refuse to cover you because you have a pre-existing condition, including because you are transgender. For people 18

years old and under, this protection is already in effect. Until 2014, the ACA provides for temporary pre-existing condition insurance plans ([www.pcip.gov](http://www.pcip.gov)), which make health insurance available to people who have been denied insurance coverage due to a pre-existing condition and have been without health insurance for at least the last 6 months.

- **Ban on rescissions.** Once you are enrolled in a health insurance plan, the plan cannot cancel your coverage, except in cases of fraud or intentional misrepresentation. This means that your health insurance cannot be canceled because of accidental mistakes or omissions in your application, because of a gender transition, or because of other changes in your health.
- **Coverage denials.** The ACA creates new rights and protections for appealing coverage denials by your plan for any reason. In addition, it may be unlawful for a plan to deny coverage for services that are included in your plan solely because you are transgender or because of the gender under which you are enrolled in the plan. For example, it may be unlawful for a plan that receives federal financial assistance to deny coverage for a prostate screening for a trans woman or a pelvic exam for a trans man if these services are otherwise covered.

### **Can my insurance plan exclude coverage for transition-related care?**

Your plan may exclude coverage for transition-related care in the fine print of your plan documents. An exclusion may be worded very broadly or may be worded narrowly to exclude only hormones and/or surgeries. There is currently no explicit federal legal requirement for group or individual insurance plans to cover transition-related care. While we are working to change this in the future, for now you should check your plan documentation.

**See NCTE's other publications listed below for more information about Medicare, the Veterans Health Administration, and federal employee health benefits.**

## **WHAT CAN YOU DO ABOUT DISCRIMINATION?**

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### **Filing a complaint of discrimination with the U.S. Department of Health and Human Service (HHS) Office for Civil Rights**

If you have experienced one more more of the forms of discrimination described above, you may file a complaint with the HHS Office for Civil Rights (OCR) within 180 days of when you knew the discriminatory action or inaction occurred. OCR also investigates HIPAA privacy violations. The person making the complaint doesn't have to be the person who experienced discrimination. Someone else, like a friend, family member, or local community member, may file a claim on your behalf.

Your complaint with HHS OCR must be filed in writing, either by mail, fax, or email.

- If you wish to email or fax your complaint, you can find your local regional office's contact information here: [www.hhs.gov/ocr/office/about/rgn-hqaddresses.html](http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html).
- Or you can use HHS's Civil Rights Discrimination Complaint Form Package ([www.hhs.gov/ocr/civil-rights/complaints/discrimhowtofile.pdf](http://www.hhs.gov/ocr/civil-rights/complaints/discrimhowtofile.pdf)) and send it to the appropriate regional office or email it to [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov).

For HIPAA complaints, you can use HHS's Health Information Privacy Complaint Form Package ([www.hhs.gov/ocr/privacy/hipaa/complaints/hipcomplaintform.pdf](http://www.hhs.gov/ocr/privacy/hipaa/complaints/hipcomplaintform.pdf)).

Your complaint must name the service provider or other health care program or activity involved and describe the acts or omissions you believe were discriminatory. **If you experienced discrimination because you are transgender, make sure to mark or write "sex discrimination" on your complaint.** Your complaint will be more effective if you can present solid factual information. Write down the date, time, location, witnesses, and people involved in any events that were discriminatory or disrespectful. Also keep any documents that the discriminating entity gives you. If you present your situation in an organized way, you increase the chance of your complaint getting the attention it deserves.

## WHAT CAN YOU DO ABOUT DISCRIMINATION (CONTINUED)

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Once you file a report of discrimination, HHS OCR will contact you to discuss your situation and determine whether the agency can undertake a formal investigation. Based on its findings, OCR may direct the discriminating entity to take appropriate corrective actions, such as changing policies or practices or providing services that were denied to you. A full explanation of the HHS complaint process can be found at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html).

The Affordable Care Act also permits you to bring a discrimination lawsuit directly in federal court. You do not need to file a complaint with OCR first to do this. However, a lawsuit can be a lengthy and expensive process, and it will be difficult to succeed without an attorney. Alternatively, if you file a complaint with OCR and the agency does not find reason to believe discrimination occurred, you can later file a lawsuit in federal court.

### **Other options for filing discrimination complaints**

If you have encountered discrimination based on gender identity or sexual orientation by a hospital, you may also file a complaint with the Joint Commission, which accredits most hospitals. You can find more information or submit a complaint online at [www.jointcommission.org](http://www.jointcommission.org).

If you think your rights as a resident or applicant have been violated by a nursing home, board and care home, or assisted living facility, you may also contact your local long-term care ombudsman. You can locate an ombudsman here: [www.ltombudsman.org/ombudsman](http://www.ltombudsman.org/ombudsman).

If you think you have been improperly denied insurance benefits, you may also file an appeal with your insurance plan and have it reviewed by an independent review organization. You can find more information about insurance appeals here: [www.healthcare.gov/using-insurance/managing/appealing-denials/index.html](http://www.healthcare.gov/using-insurance/managing/appealing-denials/index.html).

If you believe you have been subjected to discrimination based on your gender identity or sexual orientation by an employee of the US Department of Health & Human Services, you may also contact the relevant Operating Division's Equal Employment Opportunity (EEO) Office or the Department's EEO Compliance and Operations Division (<http://www.hhs.gov/asa/eeo/opdivs/index.html>).

## GETTING HELP

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Resolving a case of health care discrimination can be a complicated and stressful process. Don't hesitate to seek help from a local community organization or an attorney (or both). While NCTE does not provide legal services or referrals, there are many other groups that may give you referrals or maintain lists of local attorneys. You can try your local legal aid or legal services organization, or national or regional organizations such as the National Center for Lesbian Rights, Lambda Legal, the Transgender Law Center, the ACLU, and others listed on NCTE's website (<http://transequality.org/Resources/links.html>).

## SHARE YOUR STORY

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If you are facing discriminatory treatment, consider sharing your story with NCTE so we can use it in advocacy efforts to change policy, improve education, and reduce future discrimination. If you successfully resolve a health care situation, and especially if any of the resources here helped, we want to hear about that as well. Please visit [http://transequality.org/discrimstories\\_form2.htm](http://transequality.org/discrimstories_form2.htm) to share your story.

## **Additional Resources**

### **National Center for Transgender Equality**

*Medicare Benefits and Transgender People*

[http://transequality.org/Resources/MedicareBenefitsAndTransPeople\\_Aug2011\\_FINAL.pdf](http://transequality.org/Resources/MedicareBenefitsAndTransPeople_Aug2011_FINAL.pdf)

*Veterans Health Administration Transgender Healthcare Directive*

[http://transequality.org/PDFs/VHA\\_Trans\\_Health.pdf](http://transequality.org/PDFs/VHA_Trans_Health.pdf)

*Transgender Federal Employees: Your Workplace Rights*

[http://transequality.org/Resources/FederalEmployees\\_Feb2012.pdf](http://transequality.org/Resources/FederalEmployees_Feb2012.pdf)

*Legal Organizations*

<http://transequality.org/Resources/links.html>

### **Human Rights Campaign**

*Hospital Visitation Guide for LGBT Families*

<http://www.hrc.org/resources/entry/hospital-visitation-guide-for-lgbt-families>

*Healthcare Equality Index 2011*

[www.hrc.org/files/assets/resources/HealthcareEqualityIndex\\_2011.pdf](http://www.hrc.org/files/assets/resources/HealthcareEqualityIndex_2011.pdf)

### **National Senior Citizens Law Center**

*LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*

[www.lgbtlongtermcare.org](http://www.lgbtlongtermcare.org)

### **Joint Commission**

*Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for Lesbian, Gay, Bisexual, and Transgender (LGBT) Community: A Field Guide*

[www.jointcommission.org/assets/1/18/LGBTFieldGuide.pdf](http://www.jointcommission.org/assets/1/18/LGBTFieldGuide.pdf)

*Report a Complaint*

[http://www.jointcommission.org/report\\_a\\_complaint.aspx](http://www.jointcommission.org/report_a_complaint.aspx)

### **Department of Health & Human Services**

Office for Civil Rights

<http://www.hhs.gov/ocr/office/index.html>

Healthcare.gov

<http://www.healthcare.gov>