Transgender Healthcare Discrimination

Hospitals, clinics, doctors' offices, dentists' offices, and therapists' offices are "places of public accommodation" and in New York State, it is against the law for a place of public accommodation to discriminate against transgender and gender non-conforming people according to sex-based discrimination laws and regulations. If you are diagnosed with gender dysphoria, it is also discrimination on the basis of disability if you are denied service or treated less competently than others due to this diagnosis.

See New York State Human Rights Law, 9 NYCRR § 466.13; Administrative Code of the City of New York § 8-107(4).

A healthcare provider may not refuse to treat you solely due to your transgender identity or your gender dysphoria diagnosis. It is legal for a healthcare provider to refer you to another provider because they do not have enough experience in treating transgender people and they want you to have a competent healthcare provider. This should be clearly explained to you.

Remember, harassment is a type of discrimination. **If hospital staff or other providers call you names, insult you, make fun of your body, or refuse to use the right pronouns or name for you (regardless of whether or not you've had a legal name change), that is discrimination.** If the medical providers refuse to touch you or use excessive precautions, blame you for your health status, laugh at you, or violate your rights to confidentiality, disregarding federal HIPAA laws, that is discrimination. Likewise, if you are not allowed to wear clothing that matches your gender identity, are held to exceptionally long waits for care, subjected to inappropriate questions or exams or unnecessary requests to view your genitals, chest, or breasts, prohibitions or challenges to your bathroom use, or room assignments that are inappropriate for your gender identity or of a lower standard than a non-transgender person's rooms, the providers are breaking the law.

See 42 U.S.C. § 1301 et seq (HIPAA); N.Y.S. Patient Bill of Rights, 10 NYCRR § 405.7(a)(1), 405.7(c); New York State Human Rights Law, 9 NYCRR § 466.13; Administrative Code of the City of New York § 8-107(4); Affordable Care Act, 42 U.S.C. § 18117(a)(2010).

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About this Fact Sheet

This fact sheet was developed by the Sylvia Rivera Law Project. It is meant to share general legal information to help transgender and gender non-conforming New Yorkers understand their rights. It is not legal advice. ***If you need legal advice about a problem you have, please contact a lawyer.***

For more information about understanding, exercising, and protecting your rights, please see SRLP's other publications:

- *Your Rights in Extreme Weather*
- *Tips for Trans People Dealing with Cops*
- *How to Legally Change Your Name in New York City*

All of our resources are available online at www.srlp.org/resources or at our office, open each Tuesday 6:00-8:00 pm for membership meetings and Thursdays 1:00-4:30 pm during legal intake.

SYLVIA RIVERA LAW PROJECT

The Sylvia Rivera Law Project works to guarantee that all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.

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KNOW YOUR RIGHTS

Your Healthcare Rights

Trans, Gender Non-Conforming, and Intersex (TGNCI) People in New York State

In this brochure:

- **The Right to Emergency Medical Care**
- **Transgender Healthcare Discrimination**
- **HIV Healthcare Discrimination**
- **Rights to Consent to Healthcare**
- **Rights to Refuse Healthcare**
- **A Note on Self-Care**
- **What to Do About Discrimination**

The Right to Emergency Medical Care

If you have a health emergency and go to a hospital with an emergency room, you have the right to be evaluated, treated, and stabilized. **It is against federal and state law for a hospital with an emergency room to turn you away for any reason, including because you are transgender or gender non-conforming, because you have no way to pay, or because you are an undocumented immigrant. Be aware that not all hospitals have emergency rooms.**

In addition to the rights you have as a TGNCI person, you have the right to be free from discrimination on account of your race, color, religion, national origin, disability, sexual orientation, source of payment, or age. **You have the right to affirming care.** You have the right to be free from an unreasonable discharge or to appeal your discharge and to get your discharge plan in writing. You have the right to an interpreter to understand your rights. You have the right to be free of any unnecessary restraints, be informed of the doctor who will be in charge of your care, know the names, positions, and functions of any staff that are involved in your case, and refuse their treatment, examination, or observation. You have the right to receive complete information about your diagnosis, treatment, and prognosis. You have the right to refuse to participate in research. You have the right to a copy of your medical record and it cannot be denied to you if you can't pay for the copy fees. You have the right to complain to the hospital or the New York State Health Department without retaliation. You have the right to permit family members or other adults to visit you. You have the right to a health care proxy and an order to not resuscitate.

See N.Y.S. Patient Bill of Rights, 10 NYCRR § 405.7(a)(1), 405.7(c); New York State Human Rights Law, 9 NYCRR § 466.13; Administrative Code of the City of New York § 8-107(4); Affordable Care Act, 42 U.S.C. § 18117(a)(2010).

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HIV Healthcare Discrimination

It is against federal, state, and local law for healthcare providers to refuse to treat people because of their HIV status. Refusing to treat someone because they are HIV-positive or because there is an assumption that they are positive is discrimination on the basis of disability.

See Federal Law Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; Americans With Disabilities Act, 42 U.S.C. § 12101 et seq.; New York Human Rights Law, 10 NYCRR § 296; New York City Human Rights Law, Administrative Code of the City of New York § 8-107(4).

Some procedures may not be right for you because of your HIV status, but you have the right to have that explained to you clearly, without discriminatory language, and in a way that you understand. These laws apply to surgeons who provide gender-affirming surgery to transgender people, just as they apply to all other surgeons and healthcare providers. If a surgeon refuses to give you some type of gender-affirming or other medical procedure because of your HIV status, they are breaking the law.

Rights to Consent to Healthcare

In general, anyone over the age of 18 has the capacity to consent to their own healthcare. Even if a court has said that you are not able to make one type of decision - such as managing your money - you may still be able to make another type of decision around your healthcare. If you are found to not have the capacity to make your own healthcare decisions, the court will appoint a guardian to make decisions for you. If you think that your guardian is making decisions that are not in your best interest, you have the right to request a different guardian be appointed.

You can determine who will make healthcare decisions for you in advance by creating a document called a healthcare proxy. You must make this document while you still have the capacity to consent. The healthcare proxy would appoint someone you trust to make healthcare decisions for you and it can also give directions about what types of healthcare you would and would not want to get. You can make a healthcare proxy by filling out a form and signing it in front of two witnesses. The form is the last page of the New York State Patient Bill of Rights and is located online at www.health.ny.gov/publications/1449.pdf.

Rights to Refuse Healthcare

In general, you can always refuse any medical treatment. There are a few exceptions, such as in emergencies or when you are not able to consent, but this rule applies most of the time. Even if you are involuntarily committed to a hospital for a psychiatric issue, you still have a right to a hearing in court before you can be given drugs against your will.

If a medical provider touches you or treats you without your consent, it may be considered an assault. If you wish, you can pursue a lawsuit to hold the provider accountable. You may need to advocate for yourself and be persistent.

You not only have the right to refuse healthcare, you also have the right to have the possibilities for your care explained to you in a way you understand before you make a choice about them. You may be able to bring a lawsuit against your medical provider if they treat you without your informed consent and you are hurt because of it. If you are in a hospital, the Patient Bill of Rights should be given to you that further details your rights; you have the right to request it if you are not provided with a copy.

Please remember, if you are in the middle of an appointment and you become uncomfortable with the way a medical provider is treating you, you have the option to tell the provider to stop, or just get up and leave.

See N.Y.S. Patient Bill of Rights, 10 NYCRR § 405.7(a)(1), 405.7(c).

WHAT TO DO ABOUT DISCRIMINATION

If you think you have been discriminated against based on your gender identity, sex, or gender dysphoria, there are things you can do to protect your rights!

Keep good records.

Write down everything that happened to you right away, including dates and the names and phone numbers of anyone who saw what happened. Ask for copies of all your medical records as soon as you can. Be sure to keep copies of any papers related to what happened. If you have a smart phone, you can record what happened or your interactions with the doctor or facility. With the law, you will often need a lot of evidence to prove what happened to you, such as dates, times, who did what, and what they said. It is helpful to have as many letters, videos, timelines, witnesses, and dates as you can produce of the event.

Get support.

Healthcare discrimination and harassment can be a traumatic. You may want to get help in coping with the stress from friends, support groups, a loved one, or a therapist. Take care of yourself.

Talk to a lawyer.

You may be able to bring a lawsuit based on what happened to you if you have proof or, at the very least, complain to the facility and the State for them to receive training. The time limits about how soon you have to start a lawsuit or give notice of your claim are complicated. It is best to talk to a lawyer as soon as possible so you can better protect your rights. Sometimes it can take a while to find the right lawyer. Even if the first couple of lawyers you talk to cannot take your case, you may still find someone who can help you. Some lawyers may be willing to represent you as long as they get a percentage of the settlement or damage amount, so you may need to be open to a lawyer like this to obtain representation.

File a complaint.

There are a lot of different places where you can file complaints to try to take action about what happened to you. Most hospitals and healthcare providers' offices have an internal way to file a grievance. Some have an office of a patient advocate office that may be able to help you. You may also file a complaint about a provider's unethical acts with a professional association or the organization that licenses the provider. Also, there are local and state government agencies that can enforce discrimination laws if you file a complaint with them, such as the Commission on Human Rights (CHR) in New York City or the Division on Human Rights (DHR) in New York State. You may also complain to the New York State Department of Health. When you file a complaint, the hospital, agency, or government office has a duty to investigate. You may need to check in multiple times to ensure that they are investigating in a timely manner. Be sure to keep copies of the complaints you file as well as any responses you receive.

Organize!

Whether or not you file a complaint or a lawsuit, you can also make an impact in other ways. Working with other people in your community, organizing, participating in a direct action, and speaking out publicly can help end discrimination against all people. Together we can inform each other of our rights, share strategies, and band together to change laws.

A Note on Self-Care

Taking care of yourself throughout this process is incredibly important. Facing discrimination in healthcare is very difficult and can exacerbate any mental healthcare concerns you may also be facing. It can be a good idea to talk to people you trust - a friend or community member - and to not face this on your own. You know better than anybody what you are experiencing, but you aren't alone in this fight either.