

CHAPTER VII

Overcoming Health Care Discrimination

Ambulance workers jeered at and refused to treat Tyra Hunter, a transgender woman seriously injured in a car accident outside Washington, DC who later died from her wounds. The same kind of hate-fueled medical negligence killed Robert Eads, a transgender man with ovarian cancer whom 20 separate doctors wouldn't treat; one said the diagnosis should make Eads "deal with the fact that he is not a real man."

It's stories like these that scare many transgender people away from needed care, and cause them to suffer disproportionately from untreated medical conditions. There's also reason to fear a provider will share your transgender status with people who have no need to know; ask invasive and irrelevant questions; or purposefully use the wrong name or pronoun. Seventy percent of the transgender or gender-nonconforming (TGNC) people polled in a 2009 Lambda Legal survey experienced some sort of health care discrimination.

Yet individual mistreatment is just part of the problem.

Most insurance companies refuse to cover transition-related health care even when a doctor considers it medically necessary. This practice continues despite medical consensus on the "efficacy, benefit and medical necessity" of transition-related treatment, as the American Psychological Association described it in 2008. (For more about that, see "Transition-Related Health Care," which is also part of this Transgender Rights Toolkit, at lambdalegal.org/publications/toolkits.)

Everyone deserves to be treated with respect in health care settings; good experiences do more than treat illness or injury. Studies show that suicide rates drop significantly when transgender people can access appropriate medical care.

This fact sheet is a practical guide to accessing basic, quality health care, whether from your family doctor or from one of the growing network of LGBT community health clinics. If you have experienced health care discrimination because you are TGNC, contact Lambda Legal's Help Desk at 866-542-8336 or lambdalegal.org/help-form.

OUR STORY

A MEDICAL EMERGENCY THAT EMS WORKERS WOULDN'T TOUCH

NAKOA NELSON; BARBARA RILEY

Barbara: "We finished at church and Nakoa was eating some cookies and he just started turning red and coughing nonstop. We drove to the fire station because it was five minutes away. I thought, 'Oh, thank God, they're going to help us.'"

Nakoa: "I've been living as a man for almost three years and I always wear a binder, but I took it off [that morning] because I was having trouble breathing."

Barbara: "When we got to the fire station, the Emergency Medical Services guys unbuttoned Nakoa's shirt all the way [and then stopped helping when they realized he is transgender.] They said there was nothing they could do."

Nakoa: "When I realized they were not going to help, the only thing I could think of is, 'We have to leave.' That's a real sensitive situation—with a bunch of guys standing around and my shirt wide open. We were lucky and found a doctor nearby who gave me steroid shots to help me breathe."

Barbara: "The doctor said Nakoa could have died [because of the delay]."

I don't care if you don't like us, but to turn someone away in a life-threatening situation...I couldn't believe it."

Nakoa: "I filed a complaint later with the Fire Commission, but it came down to my word against five reputable firemen."



Medics told Nakoa Nelson (right) that there was nothing they could do.

FAQ

Answers to Common Questions about Equal Access to Health Care

Q: Are there laws protecting transgender people's right to health care?

A: Yes, transgender people are protected from many forms of health-related discrimination.

The Affordable Care Act of 2010 (ACA) prohibits sex discrimination in federally funded health care facilities, and in 2012, the federal Department of Health and Human Services (HHS) clarified that this includes discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. Also, the Act forbids insurance providers from refusing to cover a person based on a pre-existing condition, and that includes being transgender. Transgender and gender-nonconforming individuals who suffer discrimination at HHS-funded facilities can file complaints with the HHS Office of Civil Rights (OCR), which will investigate complaints of sex discrimination.

Health care discrimination based on gender identity or expression is also barred if you live in a jurisdiction that has a law that prohibiting discrimination on the basis of sex, gender identity or gender expression in public accommodations. A number of states and the District of Columbia have also issued "insurance bulletins" reminding private insurers that it is against state law and the ACA to allow discrimination against transgender policy holders. For more information on jurisdictions with protections for transgender people, contact the Transgender Law Center.

Every state has an agency that licenses or investigates the conduct of health care professionals, and mistreating someone for being transgender certainly falls under the category of misconduct.

Finally, transgender people are protected under the standards promulgated by the Joint Commission, an independent non-profit that accredits thousands of hospitals and other health care organizations throughout the United States. In 2011, the Commission changed its standards to require hospitals to adopt policies prohibiting discrimination based on gender identity or expression. These are voluntary standards, but certification by the Joint Commission is widely recognized as a mark of quality. If you experience discrimination in a hospital or other health care organization, you can file a complaint with the Joint Commission at jointcommission.org/report_a_complaint.aspx.

Q: Is my doctor supposed to keep my transgender status private?

A: Yes, the federal Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of all personally identifiable patient information, including your trans-

gender status, your birth-assigned sex and details about your anatomy. This information cannot be shared without your consent, not even to your family or to medical personnel unless it is required by your treatment or for the purposes of payment or health care operations (such as inquiries about liability insurance).

Additionally, you can ask that your transgender status not be shared with certain people, groups or companies even if it would normally be part of health care operations or consultations regarding treatment. For example, if you go to a clinic, you can ask the doctor not to share information regarding your transgender status with other doctors or nurses at the clinic. You can also ask your health care provider or pharmacy not to tell your insurance company about care you receive or drugs that you take as long as you pay for the care or drugs in full and the provider or pharmacy does not need to get paid by your insurance company.

Q: What should I do if a health care provider discriminates against me?

A: If you experience health care discrimination based on your gender identity or expression, consider filing a complaint. One option is to file a complaint with the Office for Civil Rights at the federal Department of Health and Human Services (HHS). Find out more about that here: hhs.gov/ocr/office/file/index.html.

Another option is to contact the agency in your state that monitors professional misconduct. In New York, for example, contact the state Health Department's Office of Professional Misconduct; in California, contact the Medical Board of California.

If your state, county or city has a law barring discrimination on the basis of sex, gender identity or gender expression in public accommodations, you may file a complaint about the discrimination you have experienced. It's generally recommended that you consult a lawyer in such a case.

You may also contact Lambda Legal's Help Desk (toll-free: 866-542-8336 or lambdalegal.org/help), which takes calls from TGNC people who have experienced discrimination.

Q: How can I find a transgender-friendly health care provider?

A: The Gay & Lesbian Medical Association (GLMA) maintains an online database at glma.org where patients can search for a health care provider by zip code. National Coalition for LGBT Health member organizations can help too. There are some local directories as well:



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—BARBARA RILEY



For instance, the New York Association for Gender Rights Advocacy (NYAGRA) has a “Transgender Health Care Provider Directory” that lists trans-friendly New York City physicians, psychologists, and therapists in a variety of medical fields.

Another way to find transgender-friendly health care providers is to contact facilities such as Fenway Health in Boston; The Fenway Institute in Minnesota; Whitman Walker Health in Washington, DC; Howard Brown Health Center in Chicago; Lyon Martin Health Services in San Francisco; the LA LGBT Center in Los Angeles; and Callen-Lorde Community Health Center in New York City.

Q: Do I need a specialist just because I'm transgender?

A: No, you do not. A myth about transgender health care (and a handy excuse for negligence) is that a doctor needs to be a

specialist of some kind to treat transgender people. But the truth is that most doctors are fully capable of providing care for transgender patients, whether for routine checkups; treatment of health problems; or transition-related hormone therapy. The World Professional Association for Transgender Health (WPATH) affirmed in 2012 that “Many of the screening tasks and management of co-morbidities associated with long-term hormone use...fall more uniformly within the scope of primary care rather than specialist care, particularly in locations where dedicated gender teams or specialized physicians are not available.”

Q: Where can doctors find answers to questions about treating transgender patients?

A: The University of California at San Francisco's Center of Excellence for Transgender Health compiled a *Protocol for Transgender*

INSURANCE

IMPROVING ACCESS TO TRANSITION-RELATED COVERAGE

There is continued reluctance among most insurance companies to cover transition-related health care such as hormone therapy or gender-affirming surgery, which can put these treatments out of reach even when a doctor affirms they are medically necessary for a particular patient.

The insurance landscape is gradually changing, however, with a growing number of U.S. localities that cover transgender medical services, including gender reassignment surgery, as a standard benefit in their government health plans for lower-income and disabled persons. And the trend in private workplaces is such that companies hoping to score 100% on the Human Rights Campaign's annual Corporate Equality Index must now offer trans-inclusive health insurance.

Lambda Legal and other legal advocates are challenging discriminatory exclusions of transgender health care in the courts. (For more about insurance coverage of transition-related health care, please see our fact sheet, “Transition-Related Health Care,” at lambdalegal.org/publications/trt-transition-related-health-care.)

COMPLETE

CARE

IF YOU HAVE IT, CHECK IT

Transgender people so often experience discrimination or incompetence when they go to the doctor that many feel uncomfortable seeking the range of health care that they need. This includes check-ups for cancer prevention such as pap tests for transgender men, for instance, or prostate exams for transgender women.

Insurance coding systems that cover certain medical treatments only for one gender or the other also create barriers to care. For example, carriers typically deny uterine fibroid treatment to transmen who are enrolled as male.

Doctors' offices and insurance policies should offer “complete” health care, “regardless of the patient's self-description or identification, presenting gender, or legal status,” as the Center of Excellence for Transgender Health recommends. The best advice: If you have it, check it!

Patient Care in 2011 that doctors of all kinds can use as a reference. The Protocol can be viewed online at transhealth.ucsf.edu/trans?page=protocol-00-00.

You can also encourage your provider to contact one of the trans-friendly health clinics mentioned above.

SUICIDE

ACCESS TO HEALTH CARE MAKES ALL THE DIFFERENCE

Forty-one percent of the 6,450 transgender and gender-nonconforming respondents in the 2011 National Transgender Discrimination Survey (NTDS) said they had attempted suicide (compared to 1.6% of the general population). But suicide risk seems to fall significantly once transgender people are able to access appropriate medical care. The rate of self-reported suicide attempts among participants in a 2006 study dropped from 29.3 to 5.1 percent when they were given access to transition-related treatment.

Resources

MORE ABOUT TRANSGENDER HEALTH CARE

These publications are helpful for patients and providers alike:

- ***Health Care Rights and Transgender People***, National Center for Transgender Equality
transequality.org/Resources/HealthCareRight_UpdatedMar2014_FINAL.pdf
- ***Medicare Benefits and Transgender People***, National Center for Transgender Equality
transequality.org/PDFs/MedicareAndTransPeople.pdf
- ***NYC-Metro Area Transgender and Gender Non-Conforming (TGNC) Resource Guide***, Callen-Lorde Community Health Center
callen-lorde.org/graphics/2012/03/NYC-Metro-TGNC-Resources_Updated-9_12_2013.pdf
- ***Primary Care Protocol for Transgender Patient Care***, Center of Excellence for Transgender Health
transhealth.ucsf.edu/trans?page=protocol-00-00
- ***Transgender Health and the Law: Identifying and Fighting Health Care Discrimination***, Transgender Law Center
thecentersd.org/pdf/health-advocacy/identifying-transgender.pdf
- ***Transgender Inclusive Benefits for Employees and Dependents***, Human Rights Campaign
hrc.org/resources/entry/transgender-inclusive-benefits-for-employees-and-dependents
- ***Understanding the T in LGBT: A Role for Clinicians***, The Fenway Institute
trans-health.com/2013/trans-health-for-clinicians/

Photo of Nakoa Nekson and Barbara Riley © Tim Wright

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.