

 Official Policy Manual	Date issued 06/23/2020		Page 1 of 7	Section # PC-1600
	Section: Patient Care			
	Directive: Facility Gender Identity and Gender Expression Nondiscrimination Policy and Protocols for Interaction with Transgender and Gender Non-Binary Patients			
	Policy Owner: Director, Bureau of Cultural Competence			

POLICY STATEMENT:

The New York State Office of Mental Health (OMH) does not discriminate against any person based on gender identity or gender expression. Because of the well-known discrimination against and increased risk for behavioral health issues among transgender/non-binary people, OMH provides the following directive related to the provision of gender affirming, respectful care to patients who identify as transgender/non-binary.

Patients have the right to competent, considerate and respectful care in a safe setting that fosters the patient’s comfort and dignity, free from all forms of abuse, harassment, or neglect - including abuse, harassment or neglect based on gender identity or gender expression.

Patients have the right to privacy and confidentiality during treatment. This includes HIPAA-protected information such as the patient’s transgender “status,” diagnosis of Gender Dysphoria, surgical history, hormone prescriptions, sex assigned at birth, or current anatomy. All students, residents, volunteers and interns should be counseled on OMH’s Facility Gender Identity and Gender Expression Nondiscrimination Policy and Protocols for Interaction with transgender and gender non-binary patients. In all cases, discussion, consultation, examination and treatment must be conducted discretely.

Patients have the right to up-to-date information regarding laws, legal rights, standards, protections, standards of care and available services as they pertain to their transgender or gender non-binary identity.

Transgender and gender-nonconforming patients have the right to refuse to be examined, observed, or treated by students, residents, volunteers, interns, or any other facility staff when the primary purpose is educational or informational, without jeopardizing the patient’s access to medical care, including psychiatric and psychological care. Patients must be notified of this right prior to such educational staff entering the examination room or office.

Transgender and gender-nonconforming patients have a right to access medical care that is relevant to current anatomy, physiology, or symptoms regardless of their gender identity (e.g., a trans man who retains a cervix is entitled to all necessary gynecologic care).

This policy directive is applicable to all children and adult State-operated civil and forensic facilities including all programs except SOMTA. It is to be implemented no later than six months from the date of issuance.

POLICY 1: ACCESS TO HORMONE THERAPY

PURPOSE: To ensure that gender-affirming hormone therapy will be provided for transgender and gender non-binary patients in a manner consistent with their gender identity and their goals for gender-affirming healthcare unless it is determined to be clinically inappropriate.

POLICY: OMH must ensure transgender and gender non-binary patients that have been receiving medically managed hormone therapy prior to admission, have that therapy continued without interruption, unless such treatment is deemed harmful to the patient and/or therapeutic goals. The delivery of such care should follow the Standards of Care set forth by the World Professional Association for Transgender Health.

POLICY 2: PROTOCOLS FOR INTERACTION WITH TRANSGENDER AND GENDER NON-BINARY PATIENTS

PURPOSE: To ensure that facility staff members interact with transgender and gender non-binary patients with professionalism, courtesy and respect.

POLICY: Information about a patient's transgender or non-binary gender identity or any transition-related services that the patient is seeking and/or has obtained is HIPAA-protected medical information and facility staff members will treat it as such.

When transgender and gender non-binary patients present for health care, they will be addressed and referred to on the basis of their self-identified gender, pronouns and name regardless of the patient's appearance, surgical history, legal name, or sex assigned at birth. If the patient's family members suggest that the patient is of a gender different from that with which the patient self-identifies, the patient's stated gender, name, and pronouns should be honored. Confidentiality must be maintained unless permission is granted by the patient to share this information with family member(s) or other potential visitors.

Facility staff members will not use language that a reasonable person would consider demeaning, question, or invalidate a patient's actual or perceived gender identity or expression.

Facility staff members will not ask questions or make statements about a person's genitalia, secondary sex characteristics, surgical status or other physical characteristics except for reasons pertinent to patient care.

POLICY 3: ROOM ASSIGNMENTS

PURPOSE: To establish guidelines for the safe, ethical and appropriate assignment of rooms for transgender and gender non-binary patients.

POLICY: The preliminary assignment in a gendered room, wing or ward for any patient shall be informed by specific gender-identification information requested on admission documents and when possible on confirmation of self-identified gender with the patient. Any changes in room assignment will be informed by the patient's self-identified gender at the time of the room change.

If the patient is not able to relay this information to staff because they are in an acute psychiatric state, all reasonable efforts will be made to place the patient in a single room when available until this information can be obtained from the patient.

Where rooms, wings or wards are gender-based, all reasonable efforts will be made so that a transgender/non-binary patient will be assigned a room that best aligns with their self-identified gender along with other factors such as comfort, safety and therapeutic considerations. This assignment occurs regardless of whether self-identified gender accords with their physical appearance, surgical history, anatomy, sex assigned at birth, name and sex as they appear on facility records or legal documents.

A transgender or gender non-binary patient's physical appearance or anatomy differing from other patients who share the same self-identified gender is not a barrier to assigning the patient to a room, wing or ward in accordance with their self-expressed gender identity. A transgender or gender non-binary patient will not be *required* to use a separate non-gendered room solely based on the discomfort of other patients or staff.

POLICY 4: ACCESS TO RESTROOMS

PURPOSE: To ensure that transgender and gender non-binary patients have safe and equal access to restrooms and showers in accordance with their gender identity.

POLICY: All patients should use the restroom and bathing areas aligned with their self-identified gender, regardless of gender expression, physical appearance, surgical history, anatomy, sex assigned at birth, or name and sex as they appear on facility records or legal documents.

All single-user restrooms shall be non-gendered. Transgender and gender non-binary

patients will not be *required* to use separate non-gendered restrooms or showers solely because of the discomfort of other patients or staff.

Harassment of transgender and gender-nonbinary patients for using facility restrooms and showers in accordance with their gender identity will not be tolerated. Transgender and gender non-binary patients who are harassed in this manner should refer to the rights/complaints posters posted on each unit.

POLICY 5: ACCESS TO PERSONAL ITEMS THAT ASSIST GENDER PRESENTATION

PURPOSE: To ensure that transgender and gender non-binary patients have access to personal items that facilitate gender expression to the same extent that other patients have access to these items, regardless of gender.

POLICY: Transgender and gender non-binary patients may have access to personal items that facilitate gender expression (e.g., clothing, makeup, etc.) to the same extent that other patients have access to these items, regardless of gender. In addition, transgender and gender non-binary patients may also have access to other personal items that assist in their gender presentation such as those used in binding, shaving, padding and tucking in accordance with existing safety procedures/policies. Access to these items will not be used in conjunction with reward, punishment, or any other type of positive or negative reinforcement.

Harassment of transgender and gender non-binary patients for using these items to assist in their gender presentation in accordance with their gender identity will not be tolerated. Transgender and gender-nonconforming patients who are harassed in this manner should refer to the rights/complaints posters posted on each unit.

POLICY 6: ASSESSMENT FOR A DIAGNOSIS OF GENDER DYSPHORIA OR GENDER INCONGRUENCE

PURPOSE: To ensure that transgender and gender non-binary patients have access to assessment and treatment of a diagnosis of Gender Dysphoria or Gender Incongruence. These diagnoses can often facilitate care and provide access to insurance coverage for gender-affirming psychotherapy, hormone therapy, and/or surgery.

POLICY: Patients who self-identify as transgender or gender nonbinary will be assessed for a diagnosis of Gender Dysphoria or Gender Incongruence if they request such assessment.

DEFINITIONS

Cisgender - an umbrella term used to describe people whose gender identity is

congruent with their assigned or presumed sex at birth (e.g., an individual whose gender identity is man and who was assigned male at birth; an individual whose gender identity is woman and who was assigned female at birth).

Gender-affirming Hormone Therapy - hormone therapy aimed at feminizing or masculinizing a person's appearance to affirm gender identity (e.g., puberty suppression, anti-androgen, estrogen, testosterone therapy).

Gender-affirming Surgery - surgical procedures aimed at feminizing or masculinizing a person's appearance to affirm gender identity (e.g., chest or breast surgery, genital reconstructive surgery, facial feminization surgery).

Gender expression - the way a person expresses gender through dress, grooming habits, mannerisms and other characteristics. Societal norms for gender expression are often influenced by culture, geography, and time. Therefore, there is no absolute standard for what is considered feminine or masculine.

Gender identity - an individual's inner sense of being a woman, a man, or another gender. Everyone has a gender identity.

Gender-nonconforming - a term used to describe people whose gender expression does not conform to a society's expectations for their gender identity and/or sex assigned at birth.

Name in use - the name by which a person wants to and should be addressed, even though it may differ from the name appearing on the person's legal identity documents or the name assigned to the person at birth.

Gender Non-Binary - a category that encompasses any genders that are not exclusively woman or man.

Pronoun(s) - a noun, or set of nouns, that a person would like to be used when referencing that person (e.g. in English: she/her/hers; he/him/his; they/them/their/theirs).

Transgender/Trans - an umbrella term used to describe people whose gender identity differs from their assigned or presumed sex at birth.

Transition - change(s) an individual may make to better align their body, their social role, or society's perception of them with their gender identity

Trans man/Man of trans experience - an individual whose gender identity is man and who was assigned female at birth.

Trans woman/Woman of trans experience - an individual whose gender identity is woman and who was assigned male at birth.

RELEVANT STATUTES AND STANDARDS:

New York Code of Rules and Regulations (NYCRR) §466.13, Discrimination on the Basis of Gender Identity

- a. Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).
- b. Discrimination on the basis of gender identity is sex discrimination, and includes gender identity and the status of being transgender.
- c. Harassment on the basis of a person's gender identity or the status of being transgender is sexual harassment.
- d. Discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law (§ 292.21) is disability discrimination.

Section 1557 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) prohibits sex discrimination in any hospital or health program that receives federal funds,¹¹ and in May 2016, the U.S. Department of Health & Human Services (HHS), Office for Civil Rights (OCR), issued regulations explaining that this prohibition extends to claims of discrimination based on gender identity and sex stereotyping.

The Joint Commission standard RI.01.01.01, EP 29 provides that an accredited hospital "respects, protects and promotes patient rights" and "prohibits discrimination based on . . . gender identity or expression." The Joint Commission's LGBT Field Guide advises hospitals to post, disseminate and publicize this nondiscrimination policy on the hospital's website, in written material and in packets of information distributed to patients and employees.

Department of Health & Human Services (DHHS) Centers for Medicare & Medicaid Services (CMS) §482.13(h) Standard: Patient visitation rights. A hospital must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation. A hospital must meet the following requirements:

- (3) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.
- (4) Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.

Insofar as hospitals are considered public accommodations under the Administrative Code of the City of New York Section 8-107(4), it is an unlawful, discriminatory practice for a New York City hospital to directly or indirectly refuse, withhold from, or deny a person any of the accommodations, advantages, facilities, services, or

privileges of the hospital based upon the person's actual or perceived gender, including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to the person at birth.

REFERENCES

Lambda Legal, Human Rights Campaign, & New York City Bar, "Creating Equal Access to Quality Health Care for Transgender Patients: Transgender-Affirming Hospital Policies".

World Professional Association for Transgender Health (WPATH)'s Standards of Care, Version 7(2012) <https://wpath.org/publications/soc>.