What are Public Accommodations?

Public accommodations are establishments that provide goods and services to the general public – which may include (for example) restaurants, theaters, hotels, hospitals, libraries, gas stations, and retail stores. State and federal civil rights laws prohibit covered businesses from discriminating against customers on some grounds, but the range of businesses covered by law varies.

What Laws Protect Me in Public Accommodations?

Federal nondiscrimination laws covering public accommodations cover only race, color, religion, national origin, and disability. Federal law does not prohibit discrimination based on sex, gender identity or sexual orientation in public accommodations.

The majority of states (44 and the District of Columbia) prohibit discrimination based on sex in public accommodations. Many state courts and enforcement agencies have interpreted these laws to protect transgender people.

Many states and localities also explicitly prohibit discrimination based on gender identity and sexual orientation in public accommodations. The following 17 states have explicit protections: California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Iowa, Maryland, Maine, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington State, as well as the District of Columbia. More than 200 cities and counties also explicitly prohibit gender identity discrimination even if their state does not.

Businesses that are public accommodations may also be covered by other civil rights laws. For example, while the customers of a restaurant are covered by laws regarding public accommodations, the restaurant's employees are covered by laws regarding employment. A hospital may be covered by laws specifically covering health care as well as those covering public accommodations.

What Are My Rights in Public Accommodations?

Most states and many cities prohibit discrimination in public accommodations based on either sex or gender identity. **If your state or locality has such a law, you have the following rights:**

You have the right to not to be refused entry, participation, or services because you are transgender or gender nonconforming. You have the right to enjoy a business's services or goods on an equal basis.

You have the right to dress and present yourself in a manner consistent with your gender identity. You cannot be turned away because someone objects to your gender presentation.

You have the right to be free from harassment. If the business's management knows of serious harassment by staff or customers and fails to remedy it, this may be discrimination.

Which businesses are covered by these laws varies by state. Even if your state's public accommodations law does not cover sex or gender identity or excludes certain types of businesses, those businesses may be covered by federal or state laws regarding sex and/or gender identity discrimination in health care, housing, education, credit, or employment. (For more information, see NCTE's other "Know Your Rights" resources.)

What About Public Restrooms?

People sometimes think that "public accommodations" refers to public restrooms. Actually, "public accommodations" are categories of businesses that serve the general public. If a business is covered by a public accommodations law, access to all facilities that are open to the public is covered by that law as well. (Similarly, if a business is covered by an employment law, then an employee's access to the restrooms is covered by that law.)

Denial of access to a public restroom that is consistent with person's gender identity may be discrimination based on sex and/or gender identity. Many state and local laws, or official interpretations of those laws, explicitly protect this right; however, in a few states the laws have been interpreted not to protect this right. While most states currently have no official guidance on this issue, you may file a complaint of discrimination with your state or local human rights agency if you are denied equal access to restrooms.

What Can I Do if I Face Discrimination in Public Accommodations?

The first step is determining whether your state or locality covers sex or gender identity discrimination in the type of establishment that engaged in the discrimination. This information may be available on the state or local human rights agency's website, or you may have to look up the law online. (See the chart below for citations to state laws.)

Complaint procedures vary. Some states and cities have a standard complaint form, while others do not. Unless you know that your jurisdiction explicitly prohibits discrimination based on gender identity, you should specify that your complaint alleges sex discrimination. Most agencies have deadlines for filing complaints – these vary by jurisdiction, but may be as short as 60 days.

Your complaint will be more effective if you can present solid facts. 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.

Once the agency receives your complaint, they may contact you to discuss your situation. In some cases, the agency may ask you and the business that is the subject of the complaint to participate in voluntary mediation. If a complaint cannot be resolved voluntarily, the agency will usually investigate it and make a finding as to whether discrimination occurred and, if so, what corrective action the business must take. In some jurisdictions you may have a right to file a lawsuit – either immediately or after an investigation by the agency – however the available remedies may be limited, for example to a court order preventing the business from discriminating in the future.

For discrimination in housing, health care, credit or loans, education, employment, or air travel, you may file a sex discrimination complaint under federal law. See NCTE's other Know Your Rights resources for details.

Who Else Can Help Me?

Every jurisdiction is different, and this guide is only a general overview. Specific information about state and local laws can be obtained from your state or local human rights agency or local community groups. While complaints can be filed and often resolved without an attorney, don't hesitate to seek help from a local community group 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 attorneys. You can try your local legal aid or legal services organization, or national or regional organizations such as Lambda Legal, the National Center for Lesbian Rights, the ACLU, the Transgender Law Center, or others listed on NCTE's website.

How Else Can I Help?

Share your story. If you have faced discrimination, consider sharing your story with NCTE so we can use it in our advocacy efforts to change policies, improve education, and reduce future discrimination. We want to hear from you whether or not the discrimination problem gets resolved, especially if anything we wrote here was helpful or needs to be improved.

What are my rights in insurance coverage?

Federal and state law prohibits most public and private health plans from discriminating against you because you are transgender. This means, with few exceptions, that it is illegal discrimination for your health insurance plan to refuse to cover medically necessary transition-related care.

Here are some examples of illegal discrimination in insurance:

- Health plans can't have automatic or categorical exclusions of transition-related care. For example, a health plan that says that all care related to gender transition is excluded violates the law.
- Health plans can't have a categorical exclusion of a *specific* transition-related procedure. Excluding from coverage specific medically necessary procedures that some transgender people need is discrimination. For example, a health plan should not categorically exclude all coverage for facial feminization surgery or impose arbitrary age limits that contradict medical standards of care.
- An insurance company can't place limits on coverage for transition-related care if
 those limits are discriminatory. For example, an insurance company can't
 automatically exclude a specific type of procedure if it covers that procedure for nontransgender people. For example, if a plan covers breast reconstruction for cancer
 treatment, or hormones to treat post-menopause symptoms, it cannot exclude these
 procedures to treat gender dysphoria.
- Refusing to enroll you in a plan, cancelling your coverage, or charging higher rates because of your transgender status: An insurance company can't treat you differently, refuse to enroll you, or limit coverage for any services because you are transgender.
- Denying coverage for care typically associated with one gender: It's illegal for an
 insurance company to deny you coverage for treatments typically associated with one
 gender based on the gender listed in the insurance company's records or the sex you
 were assigned at birth. For example, if a transgender woman's health care provider
 decides she needs a prostate exam, an insurance company can't deny it because she is
 listed as female in her records. If her provider recommends gynecological care,
 coverage can't be denied simply because she was identified as male at birth.

What should I do to get coverage for transition-related care?

Check out NCTE's <u>Health Coverage Guide</u> for more information on getting the care that you need covered by your health plan.

If you do not yet have health insurance, you can visit our friends at <u>Out2Enroll</u> to understand your options.

Does private health insurance cover transition-related care?

It is illegal for most private insurance plans to deny coverage for medically necessary transition-related care. Your private insurance plan *should* provide coverage for the care that you need. However, many transgender people continue to face discriminatory denials.

To understand how to get access to the care that you need under your private insurance plan, check out NCTE's Health Coverage Guide.

Does Medicaid cover transition-related care?

It is illegal for Medicaid plans to deny coverage for medically necessary transition-related care. Your state Medicaid plan *should* provide coverage for the care that you need. However, many transgender people continue to face discriminatory denials. Some states have specific guidelines on the steps you have to take to access care. You can check if your state has specific guidelines here.

To understand how to get access to the care that you need under your Medicaid plan, check out NCTE's Navigating Insurance page.

My plan has an exclusion for transition-related care. What should I do?

There are many reasons why your plan might still have an exclusion for transition-related care in general or for a specific procedure. This does not mean that your plan will not cover your care. Sometimes plan documents are out of date, or you can ask for an exception by showing that this care is medically necessary for you.

If you get insurance through work or school, you can advocate with your employer to have the exclusion removed.

NCTE's <u>Health Coverage Guide</u> has more information on how to access care and remove exclusions.

Does Medicare cover transition-related care?

It is illegal for Medicare to deny coverage for medically necessary transition-related care.

For many years, Medicare did not cover transition-related surgery due to a decades-old policy that categorized such treatment as "experimental." That exclusion was eliminated in May 2014, and there is now no national exclusion for transition-related health care under Medicare. Some local Medicare contractors have specific policies spelling out their coverage for transition-related care, as do some private Medicare Advantage plans.

To learn more about your rights on Medicare, check out NCTE's Medicare page.

Does the Veterans Health Administration (VHA) provide transition-related care?

The Veterans Health Administration (VHA) provides coverage for *some* transition-related care for eligible veterans. However, VHA still has an arbitrary and medically baseless exclusion for coverage of transition-related surgery. On June 19th, The US Department of Veterans Affairs announced that they will begin the process to expand health care services available to transgender veterans to include gender confirmation surgery. Currently, the Veterans Health Administration (VHA) provides care for thousands of transgender veterans, including some transition-related medical care. We expect the rule will finalize in approximately two years.

For more information FAQs by VHA are found here.

For more information about VHA and transition-related care, check out NCTE's VAH <u>Veterans</u> <u>Health Care</u> page.

Does TRICARE cover transition-related care?

TRICARE provides coverage for *some* transition-related care for family members and dependents of military personnel. However, TRICARE still has an exclusion for coverage of transition-related surgery.

If you are an active military member and want to understand your coverage while serving, check out the resources from our friends at SPART*A and OutServe.

What are my rights in receiving health care?

Which health providers are prohibited from discriminating against me?

Under the Affordable Care Act, it is illegal for most health providers and organizations to discriminate against you because you are transgender. The following are examples of places and programs that may be covered by the law:

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

What types of discrimination by health care providers are prohibited by law?

Examples of discriminatory treatment prohibited by federal law include (but are not limited to):

- Refusing to admit or treat you because you are transgender
- Forcing you to have intrusive and unnecessary examinations because you are transgender
- Refusing to provide you services that they provide to other patients because you are transgender
- Refuse to treat you according to your gender identity, including by providing you access to restrooms consistent with your gender
- Refusing to respect your gender identity in making room assignments
- Harassing you or refusing to respond to harassment by staff or other patients
- Refusing to provide counseling, medical advocacy or referrals, or other support services because you are transgender
- Isolating you or depriving you of human contact in a residential treatment facility, or limiting your participation in social or recreational activities offered to others
- Requiring you to participate in "conversion therapy" for the purpose of changing your gender identity
- Attempting to harass, coerce, intimidate, or interfere with your ability to exercise your health care rights

What are my rights related to privacy of my health information?

The Health Insurance Portability and Accountability Act (HIPAA) requires most health care providers and health insurance plans to protect your privacy when it comes to certain information about your health or medical history. Information about your transgender status, including your diagnosis, medical history, sex assigned at birth, or anatomy, may be protected health information. Such information should not be disclosed to anyone—including family, friends, and other patients—without your consent. This information should also not be disclosed to medical staff unless there is a medically relevant reason to do so. If this information is shared for purposes of gossip or harassment, it is a violation of HIPAA.

What Can I Do If I Face Discrimination?

Seek preauthorization for care and appeal insurance denials

You shouldn't be denied the care that you need just because you're transgender. That's illegal.

To access transition-related care, we recommend applying for preauthorization before any procedures to understand whether your plan will cover it. You should also consider appealing insurance denials that you believe are discriminatory. **We recommend you consult an attorney before filing any appeals.**

See these resources for more information about your rights during COVID-19:

• <u>A Know Your Rights Guide for Transgender People Navigating COVID-19</u> (PDF)

• Una guía para que las personas transgénero navegando la COVID-19 conozcan sus derechos (PDF)

Check our NCTE's <u>Health Coverage Guide</u> for more information on how to get the care that you need covered.

Contact an attorney or legal organization

If you face discrimination from a health care provider or insurance company, it may be against the law. You can talk to a lawyer or a legal organization to see what your options are. A lawyer might also be able to help you resolve your problem without a lawsuit, for example by contacting your health care provider to make sure they understand their legal obligations or filing a complaint with a professional board.

While NCTE does not take clients or 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 our Additional Resources page and in the Trans Legal Services Network.

File discrimination complaints with state and federal agencies

Now transgender people are encouraged to report any discrimination they experience while seeking health care services. The U.S. Department of Health and Human Services has encouraged consumers who believed that a covered entity violated their civil rights may file a complaint. If you face any of ther kind of discrimination or denial of care based on your gender, disability, age, race, or national origin, or if your health care privacy was violated, you can still file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights.

Here are some other places you can file health care complaints:

- Private insurance: File a complaint with your state insurance department. You can find information about your state department here: https://www.naic.org/state-web-map.htm.
- Hospitals: File a complaint with the Joint Commission, which accredits most hospitals.
 You can find more information or submit a complaint online at http://www.jointcommission.org.
- Nursing home, board and care home, or assisted living facility: Contact your local longterm care ombudsman. You can locate an ombudsman here: http://www.ltcombudsman.org/ombudsman.
- HIPPA violations: file a complaint with the U.S. Department of Health and Human Services (HHS): https://www.hhs.gov/hipaa/filing-a-complaint/index.html
- Federal Health Employee Benefits Program: File a complaint with the Office of Personnel Management (FEHB@opm.gov) or the Equal Employment Opportunity Commission (https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm).
- Veterans Health Administration: File a complaint with the Veterans Administration's External Discrimination Complaints Program or contact a Patient Advocate at your VA

- Medical Center. Find out more
- here: http://www.va.gov/orm/ and http://www.va.gov/health/patientadvocate.
- Employee health plan: File a complaint with the Equal Employment Opportunity Commission (https://www.eeoc.gov/federal/fed employees/complaint overview.cfm).
- TRICARE (military health care): File a complaint with TRICARE (http://tricare.mil/ContactUs/FileComplaint.aspx).

Other state and local agencies: If you face discrimination, you may be able to file a complaint with your state's human rights agency. You can find a list of state human rights agencies here: http://www.justice.gov/crt/legalinfo/stateandlocal.php.

What Laws Protect Me?

Federal protections

- The Health Care Rights Law, as part of the Affordable Care Act (ACA) prohibits sex discrimination, including anti-transgender discrimination, by most health providers and insurance companies, as well as discrimination based on race, national origin, age, and disability. Under the ACA, it is illegal for most insurance companies to have exclusions of transition-related care, and it is illegal for most health providers to discriminate against transgender people, like by turning someone away or refusing to treat them according to their gender identity. On May 5th, 2021, the Biden Administration and HHS announced that the Office for Civil Rights will interpret and enforce Section 1557 and Title IX's prohibitions on discrimination based on sex to include:
- 1. Discrimination on the basis of sexual orientation.
- 2. Discrimination on the basis of gender identity.

Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in covered health programs or activities. The update was made in light of the U.S. Supreme Court's decision in Bostock v. Clayton County and subsequent court decisions. Now transgender people are encouraged to report any discrimination they experience while seeking health care services. The HHS has encouraged consumers who believed that a covered entity violated their civil rights may file a complaint at: https://www.hhs.gov/ocr/complaints

- The Health Insurance Portability and Accountability Act (HIPAA) protects patients'
 privacy when it comes to certain 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.
- **The Americans with Disabilities Act** prohibits discrimination in health care and other settings based on a disability, which may include a diagnosis of gender dyshoria.
- **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 and in recognizing a patient's designated decision-maker.
- **The Joint Commission hospital accreditation standards** 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 prohibit health care discrimination against transgender people in many circumstances.

A large number of states also have explicit policies that prohibit anti-transgender discrimination in private insurance and Medicaid, like exclusions of transition-related care.

- **California** private insurance (<u>PPO regulation</u>, <u>HMO general guidelines</u> and <u>HMO guidelines on surgery coverage</u>) and <u>Medicaid</u>
- Colorado private insurance and Medicaid
- Connecticut private insurance and Medicaid
- **Delaware** <u>private insurance</u>
- **District of Columbia** private insurance and Medicaid
- Hawaii private insurance and Medicaid
- Illinois private insurance (<u>regulations</u> and <u>bulletin</u>) and <u>Medicaid</u>
- Maine private insurance and Medicaid
- Maryland private insurance and Medicaid
- Massachusetts <u>private insurance</u> and <u>Medicaid</u>
- Michigan Medicaid
- Minnesota private insurance and Medicaid
- Montana private insurance and Medicaid
- Nevada private insurance and Medicaid
- New Hampshire <u>private insurance</u> and <u>Medicaid</u>
- New Jersey private insurance and Medicaid
- New Mexico private insurance
- New York private insurance (<u>coverage</u>, <u>code mismatches</u>, <u>updated</u>
 <u>policy</u>) and Medicaid (<u>general Medicaid policy</u>, <u>criteria for authorization of procedures</u>)
- **Oregon** <u>private insurance</u> and Medicaid (<u>general policy</u>--refer to Guideline Note 127--and <u>facial feminization policy</u>)
- Pennsylvania private insurance and Medicaid
- Rhode Island private insurance and Medicaid
- Vermont private insurance and Medicaid
- Virginia private insurance
- Washington State private insurance and Medicaid
- Wisconsin Medicaid
- Puerto Rico private insurance

Remember: Just because your state isn't listed here doesn't mean you're not protected. Check out NCTE's <u>Health Coverage Guide</u> for more information about getting coverage for the care that you need.

How Can I Help?

- **Head to <u>NCTE's Health Action Center</u>** to see the latest on health care and how you can help fight for transgender people's right to get the health care they need
- **Share your story.** If you are facing discriminatory treatment, consider <u>sharing your story</u> with NCTE so we can use it in advocacy efforts to advance public understanding and policy change for transgender people. If you successfully resolved a health care situation, we want to hear about that as well.