

## Know Your Rights: Healthcare

Under federal and state laws, it is illegal for health providers, insurance companies, and other health programs to discriminate against transgender people in many circumstances. While many transgender people continue to face discrimination in health care and coverage, these laws may provide options for avoiding or resolving discrimination and make it easier for transgender people to get access to the health care they need. One of the most important laws is the Affordable Care Act, which prohibits sex discrimination, including anti-transgender discrimination, by the vast majority of insurance companies and health care providers. That means that in every state, most insurance companies aren't allowed to exclude transition-related care and most health care providers are required to treat you with respect and according to your gender identity. You can find information below about what your rights are and what you can do if those rights are violated.

## What Are My Healthcare Rights?

### ■ What are my rights in health insurance?

The Affordable Care Act (or “Obamacare”) prohibits most health insurers from discriminating based on gender identity and transgender status. Insurance companies that receive federal funding or that have one or more plans on a federal or state Marketplace have to comply with this requirement. That includes all major insurance companies and the majority of smaller insurance companies, but some small health insurance companies may not be covered.

Here are some policies or practices that would be illegal under the ACA:

- **Excluding transition-related care from coverage:** Insurance companies can't have automatic or categorical exclusions of transition-related care. For example, an insurance company that says that all care related to gender transition is excluded violates the ACA. An insurance company also 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 non-transgender people. That means that an insurance company may be breaking the law if it covers breast reconstruction for cancer treatment, hormones to treat post-menopause symptoms, or genital surgery after accidents but won't cover those treatments to treat gender dysphoria.
- **Refusing to enroll you in a plan, cancelling your coverage, or imposing higher rates for you because of your transgender status:** An insurance company can't treat you differently, refuse to enroll you, or limit coverage for any services based on your transgender status.



- **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, an insurance company can't deny a transgender woman coverage for a prostate exam because she is listed as female in her records or coverage for gynecological care because her sex assigned at birth was male.

## ■ Which health providers are prohibited from discriminating against me?

Under the Affordable Care Act, it is illegal for any health program, provider, or organization that gets any federal funding (including accepting Medicare or Medicaid payments for any patients) or is administered by a federal agency to discriminate against you because you are transgender or because you don't conform to gender stereotypes. 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

The ACA makes it illegal for most insurance companies and health care providers to discriminate against you because you are transgender.

## ■ What types of discrimination by health care providers 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 don't conform to gender stereotypes:

- Refuse to admit or treat you
- Force you to have intrusive and unnecessary examinations
- Refuse to provide you services that they provide to other patients
- Refuse to treat you according to your gender identity, including by providing you access to restrooms consistent with your gender
- 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 exercise your health care rights

Discrimination based on gender stereotypes includes many forms of discrimination against lesbian,

gay, and bisexual people and same-sex couples. The law also prohibits discrimination on the basis of race, color, national origin, age, and disability, including HIV/AIDS status.

## ■ ■ 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?

### ■ ■ Appeal insurance denials

If your insurance company denies you coverage for transition-related care or denies you coverage for other services because you are transgender, you may be able to resolve the problem by appealing the decision through the insurance company's internal appeals process. Your insurance company should provide you with information about how to appeal a denial. Make sure you work with your health provider to put together documentation showing why the service you're seeking is medically necessary for you. It is often recommended that you try to go through the insurance company's internal appeals process before taking other steps, like filing a lawsuit or a complaint. [Find out more about appealing a denial here.](#)

### ■ ■ Contact an attorney or legal organization

Many laws, including the Affordable Care Act, allow you to sue an insurance company or health provider if you face discrimination. You can talk to a lawyer or a legal organization to see if that option is right for you. A lawyer might also be able to help you resolve your problem without a lawsuit, like by contacting your health care provider to make sure they understand their legal obligations. 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 here](#).

### ■ ■ File a complaint with the Department of Health and Human Services

The Office for Civil Rights at the U.S. Department of Health and Human Services (HHS) is responsible for investigating violations of many federal health care laws, including violations of the Affordable Care Act's nondiscrimination protections and the HIPAA privacy protections. Under the Trump Administration, HHS has said that it will not investigate complaints about anti-transgender discrimination. However, it might still investigate complaints about other forms of discrimination or

about HIPAA privacy violations.

You can learn more about the complaint process at <http://www.hhs.gov/ocr/civilrights/complaints/index.html>. Here is some key information you should know:

- The complaint needs to be filed within 180 days of when you learned about the discrimination.
- 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 must be filed in writing, either electronically or in writing. You can file your complaint electronically through the HHS Office for Civil Rights' complaint portal (<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>). You can find out how to file your complaint in writing and mail, email or fax it here: <http://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html>.
- For HIPAA complaints, you can use HHS's Health Information Privacy Complaint Form Package (<http://www.hhs.gov/ocr/privacy/hipaa/complaints/hipcomplaintform.pdf>).

## ■ File discrimination complaints with other agencies

Some health providers or insurance plans are also covered under other federal, state, or nongovernmental agencies, and you can file complaints with those agencies in addition to filing with the HHS Office for Civil Rights or taking other steps.

- **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 long-term care ombudsman. You can locate an ombudsman here: <http://www.ltombudsman.org/ombudsman>.
- **Federal Health Employee Benefits Program:** File a complaint with the Office of Personnel Management ([FEHB@opm.gov](mailto:FEHB@opm.gov)) or the Equal Employment Opportunity Commission ([https://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](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](https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)).
- **TRICARE:** File a complaint with TRICARE (<http://tricare.mil/ContactUs/FileComplaint.aspx>).

## ■ File a complaint with a state or local human rights agency

Many state and local governments have their own laws and regulations that protect transgender people from discrimination in health care and insurance coverage. 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?

The following laws and policies protect transgender people in health care:

- **The Affordable Care Act (ACA)**, or “Obamacare,” 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 you, like by turning you away or refusing to treat you according to your gender identity. [Find out more about what the ACA means for transgender people](#). The Trump Administration has said it intends to roll back the regulation implementing these protections, but that doesn’t change your rights under the law. [Find out more about what the Trump Administration’s actions mean for you](#).
- **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.
- **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. [Find out more about state health insurance policies](#).
- **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.
- **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.

## How Can I Help?

Share your story. 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 resolved a health care situation, we want to hear about that as well.

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# Additional Resources

FAQ on the Affordable Care Act Nondiscrimination Section:

<http://www.transequality.org/sites/default/files/HHS-1557-FAQ.pdf>

FAQ on the Trump Administration's Plans to Roll Back the Regulation on the ACA's Nondiscrimination Protections:

<http://www.transequality.org/1557-FAQ>

Department of Health and Human Services Office for Civil Rights:

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

Links to State and Local Human Rights Agencies:

<http://www.justice.gov/crt/legalinfo/stateandlocal.php> (scroll down)

Links to Legal Service Organizations:

<http://www.lsc.gov/what-legal-aid/find-legal-aid>

HealthCare.Gov:

<https://www.healthcare.gov/transgender-health-care/>

Creating Equal Access to Quality Health Care for Transgender Patients: Transgender-Affirming Hospital Policies, Lambda Legal, HRC, & New York Bar:

[http://www.lambdalegal.org/publications/fs\\_transgender-affirming-hospital-policies](http://www.lambdalegal.org/publications/fs_transgender-affirming-hospital-policies)

Healthcare Equality Index, Human Rights Campaign

<http://www.hrc.org/campaigns/healthcare-equality-index>

National Center for LGBT Health Education:

<http://www.lgbthealtheducation.org/>

National Resource Center on LGBT Aging:

<http://www.lgbtagingcenter.org>

Primary Care Protocols for Transgender Patients, UCSF Center of Excellence for Transgender Health:

<http://transhealth.ucsf.edu/trans?page=protocol-00-00>