



RISK MANAGEMENT

HEALTHCARE ADVISORY

FOR ALLIED WORLD
POLICYHOLDERS

Your Patients' Gender Identity Matters

There are unique considerations when treating LGBTQ patients in a healthcare setting. These individuals may have experienced issues with social discrimination, healthcare discrimination and issues concerning health insurance coverage. It is important that the healthcare institution treat all patients equally regardless of their sex or gender identity, or sexual orientation.¹

Background

Gender Identity/Gender Role. The term “gender identity” refers to the personal conception of oneself as male or female (or both or neither), and is often related to the concept of gender role. Gender role is defined as the outward manifestations of personality that reflect an individual’s gender identity. Gender identity is typically self-identified whereas gender role is manifested by observable factors including behavior and appearance.²

Sexual Orientation. An individual’s sexual orientation refers to a pattern of emotional, romantic and/or sexual attractions to men, women or both sexes. Sexual orientation refers to a person’s sense of identity based on those attractions, related behaviors and being a part of a community of others who share those attractions.³

Medical Records

Mainstream healthcare delivery often does not address the specific needs of LGBTQ patients, particularly in the areas of documentation, medical records and health information privacy.

Non-Binary Identification. Hospital records should be non-binary (not just specific to male/female) as some individuals may not identify as either male or female.

Use of patient’s preferred name/gender. When transgender patients obtain care, using the wrong pronoun or name may cause distress, ridicule and as a result, they may not return for further care. If clinicians need to clarify, questions such as: “What do you go by” can be asked.

Documentation. Failure to document transgender identities accurately may have negative implications on quality improvement.

Rights Related to Privacy of Health Information

HIPAA requires most health care providers and health insurance plans to protect patients' privacy when it comes to certain information about their health or medical history. Information about transgender status, including diagnosis, medical history, sex assigned at birth, or anatomy, may be protected health information. Thus, this information should not be disclosed to anyone absent consent including family, friends, and other patients. In addition, this information should not be disclosed to medical staff unless there is a medically relevant reason to do so. In addition to HIPAA, understanding your specific state laws relative to health information privacy is necessary in order to determine if there are heightened protections available to the patient.

Special Considerations: Minors

It is important to know the age of consent in your jurisdiction to determine whether patient health information may be shared with the patient's parents or guardians. Keep in mind that the patient may not have yet informed their parent/s, may not be ready and/or may be afraid to do. There are many issues to consider and it is important to be aware of the laws within your state when sharing or not sharing information.

Hospital Specific Initiatives

Hospital Diversity Council: Consider developing a Hospital Diversity Council, which should include hospital leadership and front line staff. Hospital Diversity Councils can initiate special programs and direct activities around education and training in order to implement policy. In addition, "Council" members can develop, help facilitate or coordinate in-house training as well as conduct assessments across the system to determine the system needs including training and resources.

Education and Training for All Staff: Ensure that new staff receive relevant training and that there is a training initiative conducted at least annually or when there are significant policy changes. If your hospital is a teaching facility and has medical students, residents and fellows, consider adding content on transgender-specific clinical care to the training curricula.

Assessments across the system to determine facility needs. Whether you have a Hospital Diversity Council or not, it is important that your hospital system conduct assessments to determine facility needs for training and education.

Healthcare Equality Index. The Healthcare Equality Index (HEI) is an annual online benchmarking survey that rates healthcare organizations on their policies and best practices related to LGBTQ patient centered care in four areas: non-discrimination and staff training; patient services and support; employee benefits and policies; and patient and community engagement. In addition to demonstrating commitment to the LGBTQ patient population, participation in the HEI can help your organization:

- increase patient safety and satisfaction
- comply with CMS and Joint Commission requirements
- minimize risk and maximize quality
- enhance their reputation for equity and inclusion

Additional information can be found at <https://www.hrc.org/hej>.

Policies and Procedures

It is important that your organization develop policies and procedures to ensure LGBTQ patients are treated equally. Hospitals should develop policies on Nondiscrimination and Patient Rights. The AMA policy statement indicates that hospital policies should include “sexual orientation, sex or gender identity in any nondiscrimination statement.”⁴ In addition, healthcare providers should consider developing a specific policy for transgender individuals which may include how to:

- handle shared room assignments of a transgender patient
- use appropriate names and pronouns
- provide appropriate restroom access

Conclusion

It is important to treat all patients equally regardless of sexual orientation, sex or gender identity. It is recommended that your facility have policies and procedures in place addressing non-discrimination and patient rights. You should also consider a transgender patient-specific policy, and recognize the importance of staff education on the relevant policies and procedures. Should you have questions or concerns, contact your risk management professional or legal professional.

Resources

AMA, Nondiscriminatory Policy for the Health Care Needs of LGBTQ Populations H-65.976, <https://policysearch.ama-assn.org/policyfinder/detail/lgbtq?uri=%2FAMADoc%2FHOD.xml-0-5105.xml> (last accessed 3/28/18)

Ghosh, S., M.D., et al., Gender Identity, Mar 2015, <https://emedicine.medscape.com/article/917990-overview>
<https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>; <https://www.justice.gov/opa/press-release/file/941551/download>

Deutsch, M., M.D. and Buchholz, D., M.D., Electronic Health Records and Transgender Patients—Practical Recommendations for the Collection of Gender Identity Data, *J Gen Intern Med.*, 2015 June; 30(6): 843-847

Durkin, M. Taking Better Care of Transgender Patients. *ACP Hospitalist.*
<https://acphospitalist.org/archives/2015/10/transgender-patients.htm>, Oct. 2015

Healthcare Equality Index 2018. <https://www.hrc.org/hei>

The Fenway Institute. Question Methodology: How to Ask SO/GI Questions.
<http://doaskdotell.org/ehr/toolkit/howtoask/>

The Joint Commission: *Advancing Effective Communication, Cultural Competence, and Patient and Family Centered Care for the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community: A Field Guide.* Oak Brook, IL, Oct. 2011.
<https://www.jointcommission.org/assets/1/18/LGBTFieldGuide.pdf>

End Notes

¹ <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>; <https://www.justice.gov/opa/press-release/file/941551/download>

² Ghosh, S., M.D., et al., Gender Identity, Mar 2015, <https://emedicine.medscape.com/article/917990-overview>

³ American Psychological Association, “Answers to Your Questions For a Better Understanding of Sexual Orientation & Homosexuality,” <https://www.apa.org/topics/lgbt/orientation.pdf>.

⁴ AMA, Nondiscriminatory Policy for the Health Care Needs of LGBTQ Populations H-65.976, <https://policysearch.ama-assn.org/policyfinder/detail/lgbtq?uri=%2FAMADoc%2FHOD.xml-0-5105.xml> (last accessed 3/28/18)

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