

The Right to Emergency Medical Care

If you have a health emergency and go to a hospital with an emergency room, you have the right to be evaluated, treated, and stabilized. **It is against federal and state law for a hospital with an emergency room to turn you away for any reason**, including because you are transgender or gender nonconforming, because you have no way to pay, or because you are an undocumented immigrant.

Transgender Healthcare Discrimination

Hospitals, clinics, doctors' offices, dentists' offices, and therapists' offices are "places of public accommodation." In New York State, it is against the law for a place of public accommodation to discriminate against transgender and gender nonconforming people.

A healthcare provider should never refuse to treat you because you are transgender. Sometimes doctors claim that they will not treat you because they do not have enough "expertise" in treating transgender people or because transgender people have "special needs." That may be an okay reason if you are seeking specific complex care related to being transgender, such as a type of sex reassignment surgery that the doctor does not know how to do. But, if you are looking for a type of care the doctor provides to non-transgender people, such as breast enhancement, gyn exams, or treatment for illness or infection, the doctor may not use his or her failure to treat transgender people in the past as an excuse to discriminate against you now.

Harassment is a type of discrimination. If hospital staff or other providers keep calling you names, insulting you, making fun of your body, or refusing to use the right pronouns for you, they may be breaking the law.

It can also be discrimination to deny you access to gender segregated facilities based on your gender identity. For example, a trans woman should be allowed to use the women's restroom in her therapist's office. Also, you must be allowed to wear clothing that matches your gender identity.

SYLVIA RIVERA
 LAW PROJECT

The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.

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Your Healthcare Rights:

Trans Adults in New York

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HIV Healthcare Discrimination

It is against federal, state, and local law for healthcare providers to refuse to treat people because of their HIV status. Refusing to treat someone because they are positive is discrimination on the basis of disability.

Some procedures may not be right for you because of your HIV status, but it is almost never okay for a healthcare provider to refuse to treat you because they are worried that there is some risk that they or their staff will catch HIV. These laws apply to surgeons who provide gender affirming surgery to transgender people, just as they apply to all other surgeons and healthcare providers. If a surgeon refuses to give you some type of sex reassignment or other surgery because of your HIV status, they are probably breaking the law.

Rights to Consent to Healthcare

The law presumes that all people over the age of 18 have the capacity to consent to their own healthcare. People with mental disabilities are also presumed to be able to make their own healthcare decisions. Even if a court has said that you are not able to make one type of decision, you may still be able to make another type of decision. If you are found not to have the capacity to make a healthcare decision, you may need to have a guardian appointed by a court to make a decision for you.

If you make a healthcare proxy while you still have capacity, you can say who you want to have the power to make healthcare decisions for you if you are not able to make them for yourself in the future. That person is called your healthcare agent. You can also give directions about what types of healthcare you would and would not want to get. You can make a healthcare proxy by filling out a form and signing it in front of two witnesses.

About this Fact Sheet This fact sheet was prepared by the Sylvia Rivera Law Project through Z Gabriel Arkles, Equal Justice Works Fellow, with Dean Spade, Maria Salazar and Rebekah Heilman. This fact sheet is meant to share general legal information to help transgender and gender nonconforming New Yorkers understand their rights. It is not legal advice. **If you need legal advice about a problem you have, please contact a lawyer.**

Rights to Refuse Healthcare

In general, adults (ages 18 and over) can always refuse any medical treatment. If a doctor (or anyone else) touches you without your consent, it is a crime. There are a few exceptions, such as in emergencies when you are not able to consent, but this rule applies most of the time. Even if you are involuntarily committed to a hospital for a psychiatric disability, you still have a right to a hearing in court before you can be given drugs against your will.

You not only have the right to refuse healthcare, you

also have the right to have the possibilities for your care explained to you in a way you understand before you make a choice about them. You may be able to bring a lawsuit against your doctor if he or she treats you without your informed consent and you are hurt because of it.

If in the middle of an appointment you become uncomfortable with the way a doctor is treating you, remember that you have the option to tell the doctor to stop, or even just to get up and leave. •

WHAT TO DO ABOUT DISCRIMINATION

If you think you have been discriminated against, there are things you can do to protect your rights.

Keep good records.

Write down everything that happened to you right away, including dates and the names and phone numbers of anyone who saw what happened. Ask for copies of all your medical records by signing a release as soon as you can. Be sure to keep copies of any papers related to what happened.

Get support.

Healthcare discrimination can be a trauma. You may want to get help in coping with the stress from friends, support groups, or a therapist.

File a complaint.

There are a lot of different places where you can file complaints to try to get action taken about what happened to you. Most hospitals and healthcare providers' offices have an internal way to file a grievance. Some have an office of a patient advocate that may be able to help you. You can also file a complaint with a professional association about a provider's unethical acts. Also, there are local and state government agencies that

can enforce discrimination laws if you file a complaint with them. See the brochure *Resources for Trans Communities* for more information.

Talk to a lawyer.

You may be able to bring a lawsuit about what happened to you. The time limits about how soon you have to bring a law suit or give notice of your claim are complicated. It is best to talk to a lawyer as soon as possible so you can better protect your rights. Sometimes it can take a while to find the right lawyer. Even if the first couple of lawyers you talk to cannot take your case, you may still find the right one.

Organize!

Whether or not you file a complaint or a lawsuit, you can also make change in other ways. Working with other people in your community, organizing, doing direct action and speaking out publicly can help end discrimination against all people.

For more information about understanding, exercising, and protecting your rights, rights, see SRLP's other publications: *Your Healthcare Rights: Trans Youth in New York* • *Your Immigration Rights: Trans Immigrants in New York* • *Transgender Employees in New York: Protect Yourself at Work* • *How to Legally Change Your Name in New York City* • *Resources for Trans Communities* all of which are available by calling 212-337-8550, and at www.srlp.org