

How transphobic legislation affects ethical service delivery for allied healthcare providers



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Abstract

Roughly 7.1% Americans identify as LGBTQ+ with around 0.7% or 2.3 million Americans identifying as transgender (1). Though only 30% of people may report knowing someone who is transgender, many more transgender people are less visible because they have not disclosed their status as transgender (2). It is likely that many allied healthcare providers work with transgender and gender diverse people without even being aware of their patient's gender identity.

Recent legislation in the United States affects healthcare service delivery for people who are transgender, including hearing healthcare and particularly for transgender minors. This legislation causes ethical conflicts for healthcare providers who provide services to transgender and gender diverse minors. State law in some states contradicts federal policy and allied health professional organizations' codes of ethics. Further, these laws can defy the best available evidence on how to provide affirming, inclusive healthcare services for people who are transgender. This article summarizes the current state of the dynamically changing legal landscape around providing healthcare services to people who are transgender and discusses ethical conflicts that healthcare providers face in response to these policies.

Introduction

Transgender (trans) can be defined as an umbrella term representing those individuals whose gender identity does not align with their biological sex assigned at birth [1]. Some trans individuals identify as trans women or trans men, but the transgender umbrella also includes those who are genderqueer, gender non-conforming, non-binary, and any other gender identity that does not align with someone's assigned sex at birth. Although the term "transgender" itself gained popularity in the 20th century, transgender people have existed in cultures around the world for thousands of years since at least the time of the ancient Greeks, either defined by some other term or not signified by any term [2]. The trans community is as diverse as non-transgender (cisgender) people; trans people are from various ethnic, racial, and religious backgrounds [3]. With the increasing visibility of the trans community, there has been growth and progress in understanding the lived experiences, perspectives, health, and challenges that this group faces. In the United States, the number of adults identifying as trans is about 2.3 million, which is more than the population of the state of New Mexico [4]. Yet due to the stigma associated with being transgender, this is likely an undercount of the number of trans individuals in the United States.

Despite the increasing awareness of trans individuals among the general population, there is limited published

research investigating the specific health needs of this community. What is known, however, is that trans people in the United States face significant risks, including sexual and/or physical assaults, discrimination, and bullying [5, 6]. This discrimination worsens mental health outcomes such as depression or anxiety, self-harm, and substance use disorders, as well as partaking in risky behaviors [5, 7]. Likewise, stigma and discrimination against the trans community have been found to lead to a significantly higher risk of lifetime suicide attempts among trans people compared to the U.S. population and other LGBTQ+ identities [5, 8, 9]. Discrimination exists in healthcare settings as well. For example, systemic bias against transgender people in allied healthcare settings (such as audiology clinics) causes many transgender people to feel uncomfortable discussing their gender identity with their hearing healthcare providers [10, 11].

Transgender people often undergo a gender transition to become more aligned with their gender identity. Transitioning is different and unique to each transgender individual. They may undergo a social transition, which typically involves the utilization of another name or different pronouns, and/or a legal transition involving changing the sex marker on one's passport, driver's license, or other legal documents. Some transgender individuals may also seek out gender-affirming medical care, known as medical transition, including receiving

hormonal or surgical treatment to align their physical appearance with the correct gender [1]. Gender-affirming care for transgender individuals has become more common within the United States, with more individuals seeking gender-affirmation hormone replacement therapy (HRT) or surgery compared to prior decades [12]. Likewise, shifts in public health and clinical settings involve physicians and other healthcare providers, such as social workers or physical therapists, to deliver care that is understanding, gender-affirming, and patient-centered.

Though most transgender healthcare is provided by physicians and nurses, allied healthcare professionals also regularly work with transgender patients. Allied healthcare professionals are a diverse group of non-medical, non-nursing, and non-dental professionals with advanced credentials in healthcare services providing care to patients [13]. Allied health disciplines include occupational and physical therapy, audiology, speech-language pathology, athletic trainers, and others [13]. Because of the prevalence of transgender identity, allied healthcare professionals are likely to encounter transgender patients seeking non-transgender healthcare services. Allied healthcare providers must be competent and knowledgeable about the biophysical, legal, and ethical issues affecting trans people that can influence how these professionals can effectively provide care for this population. In addition, many of these healthcare providers work in schools and with minors, who have been the focus of legislation limiting the rights of trans people. Allied health professionals must stay current on their legal responsibilities to this population.

Minors who are transgender do not typically receive gender-affirming surgery because of regulatory limitations and a concern that minors may not persist with gender-diverse identities into adulthood. Gender-diverse minors may take HRT or puberty-delaying medication known as puberty blockers, which prevents them from experiencing the ‘wrong’ puberty while they explore if they are transgender [14]. Though some minors identifying as gender diverse do not persist in their identity into adulthood, puberty-delaying treatment is fully reversible without significant side effects, so puberty-delaying treatment has been recommended until a child determines whether they are trans with the help of supportive counseling [14, 15]. Medical transition has been comprehensively shown to significantly improve the mental health and quality of life for people who receive it with few downsides, leading medical transition services to be the standard of care for adults and minors who are transgender [16].

Ethical Challenges to Transgender Healthcare

Despite the overwhelming scientific consensus on the benefits to an individual’s health that medical transitioning provides, many conservative individuals and groups advocate against or attempt to prohibit medical transitioning for minors, adults, or both [16]. These bans typically target trans healthcare for minors because adults are assumed to have the autonomy to consent to the services [17, 18]. However, some transgender healthcare bans include adults [19]. Minors are not typically allowed to have full decision-making capacity for medical conditions, but the unambiguous benefits, absence of long-term effects if stopped, and high risk of severe harm without transition services make the ethical case for denying minors medical transition services difficult to justify [14, 17]. The benefits of providing medical transition services to minors and the detriments of not doing so are severe enough that some have suggested that denying medically necessary transition services is child abuse, so the only ethical action is for the state to intervene and prevent parents from harming their children by withholding transition care from them [14].

Ethical frameworks can be used to examine the ethics of allowing medical transition services. Some of the most used ethical frameworks in healthcare are Christian bioethics, utilitarianism, and principlism. Biased, misleading language is used by some sources to cause moral outrage against transgender people without articulating reasonable ethical positions on their care, so the ethical claims made by any source should be carefully evaluated for intellectual honesty [17].

Christian Bioethics

Religious beliefs play a role in how transgender individuals are treated within healthcare settings. For example, contemporary Christian bioethics are often used to justify transphobic actions and policies in the United States, so this framework must be considered when discussing transgender ethics [20]. Christian views of transgender identity ethics are as heterogeneous as other Christian beliefs but can usually be categorized into one of three main camps: Diversity, Disability, and Essentialist [20]. The Diversity perspective views gender diversity as a variation created by God, hence it should be celebrated. The Disability perspective views any transgender identity as a mental illness. As a result, those following this perspective believe they must ‘help’ transgender individuals manage their ‘condition’, as their ethical obligation is to care for vulnerable or marginalized groups; whether this supports medical transitioning as the appropriate

‘treatment’ for being transgender is controversial amongst those holding the Disability perspective. Some religious individuals continue to advocate for gender conversion therapy, which attempts to cause someone to stop being transgender, though conversion therapy has been conclusively shown to be so ineffective and harmful that the United Nations has defined it as a type of torture [21]. Finally, the Essentialist view is that sex is binary, and gender is inherent in sex, which denies the validity of transgender and non-binary people.

Today, many people in the United States view transgender identity as an ethically wrong choice that harms society [22]. People with such Essentialist views typically believe that trans people are undeserving of equal rights to health and healthcare [23]. This can include allied healthcare providers who may adopt discriminatory or prejudiced sentiments toward transgender people to avoid offending socially conservative patients [11]. Such perspectives can further marginalize transgender groups and must be considered by allied health professionals while working to provide equitable care to patients.

Utilitarianism

Allied healthcare workers can use bioutilitarianism to evaluate ethical challenges. Utilitarianism emphasizes that ethical choices are choices that cause beneficial outcomes to most people, without focusing on the ethics of the actions to reach the outcome [17, 24]. This ethical framework focuses on maximizing ‘good’ outcomes by acting in a way to make good outcomes as likely as possible. The actions to get to the outcomes are not intrinsically good or bad, rather they are instrumentally good if the action brings good outcomes and neutral if the action does not bring bad outcomes.

Bioutilitarianism applies utilitarian principles to bioethics, the ethics of healthcare. Maximizing the health of people without favoritism is the goal because poor health is considered a ‘bad’ outcome [24]. Some authors have also advocated for considering violations of individual autonomy as bad outcomes because without protecting autonomy, bioutilitarianism commodifies people and can be logically extended to ending some people’s lives to improve the health of others (e.g., withholding healthcare from individuals with conditions that prevent them from contributing economically to society, so those healthcare resources can be used on patients who are able to economically benefit their society) [24]. Other criticisms of bioutilitarianism are that this framework ignores the value of human life and cultural values which do not universally support a single understanding of what ‘health’ is.

A common challenge to medical transitioning is that it is prohibitively expensive for an individual. Due to this, the costs are typically passed on to insurance companies or taxpayer-subsidized healthcare services such as Medicare. All healthcare services covered by such insurance companies are indirectly paid for by other insurance policyholders who do not directly benefit from the provision of trans healthcare but do benefit societally. Trans people who receive gender-affirming healthcare are healthier and more productive [25]. People who are healthier and more productive use fewer social safety net resources and contribute more economically, so insurance coverage for trans people, particularly early in life, can have beneficial societal economic effects [26, 27].

Bioutilitarianism can be used to advocate that all transgender people should receive appropriate medical transition services. Poor health outcomes, including many chronic mental and physical diseases, have been linked to trans people’s experiences of stigma and discrimination, and these negative outcomes are reduced with medical transition care [28]. Transgender people often delay pursuing healthcare services because of stigma and discrimination in healthcare settings, causing these conditions to worsen and require more costly treatment [29]. Instead of managing these health conditions for the lifetime of a transgender person, they can be effectively reduced by providing medical transition services to treat their root cause. The medical transitioning costs of the 2.3 million transgender people in the United States are inconsequential for most insurance companies and government healthcare services: for each trans person receiving trans healthcare, it costs about \$0.016 per member per month, or less than two cents USD [24, 27]. Moreover, it is offset by the reduced need for mental health services, which cost billions of dollars in direct healthcare costs and lost productivity annually [27, 30]. Given that transgender people are disproportionately burdened with anxiety and depression and that medical transitioning is an overwhelmingly effective, cost-efficient intervention, bioutilitarianism suggests that medical transition services should be provided to transgender people to benefit their health and the economic prosperity of society [16].

Principlism

Principlism is an ethical framework that is often used in healthcare ethics. It is based on the thought that ethical actions are actions that maintain people’s inherent rights by acting in accordance with certain principles [17, 24]. Actions are ethical if they maintain the patient’s autonomy, do not harm the patient (non-maleficence), do good for the

patient (beneficence), and are fair and equitable to the patient (justice). This framework has been used to advocate for healthcare for historically marginalized populations, including transgender people who do not receive equitable or beneficial medical transition healthcare services [31]. Transgender people's views and the scientific literature overwhelmingly show that medical transitioning services are highly beneficial, very rarely harm people receiving them, and uphold their autonomy, so principlism suggests that medical transition care should be provided when needed [16]. However, the current state of public policy often does not support medical transitioning.

Legal Landscape for Allied Healthcare Providers

All healthcare providers must understand their legal responsibilities toward transgender people at the state and federal levels. Generalizations of the legal status of transgender identity are difficult because they encompass many medical, legal, and social dimensions. In the United States, the legal status of transgender people at a federal level has varied significantly based on the political leaning of the executive branch of the government. For example, during the 2016 – 2020 Trump administration, the rights and recognition of LGBTQ+ people, including transgender people, were systematically removed at the federal level [32]. In contrast, the current Biden administration that began in 2021 has explicitly affirmed the right of transgender and gender-diverse people to accurate gender markers on federal documents and equitable treatment [33].

The picture of the legal status of transgender people is further complicated by legislation in several states restricting the rights of transgender people or criminalizing transgender healthcare. Many of these laws target transgender minors. As of 2023, only 16 states and Washington, D.C. have comprehensive laws protecting best-practice access to trans healthcare, while many states ban transgender youth from participating in gendered sports in any capacity but their assigned sex at birth, or explicitly criminalizing healthcare providers who provide gender-affirming healthcare services to trans people or those who fail to report minors receiving these services to the state for investigation [34–36]. Because of the dynamic landscape of state-level laws on trans people, interested readers are encouraged to view the latest data from organizations that track these issues, such as the Movement Advancement Project [34]. For example, the relevance of laws promising free speech and the freedom to practice religion regarding trans issues is an actively debated area [37]. Texas defined transgender healthcare for minors as child

abuse and requires healthcare providers who encounter transgender minors to report them and their families to the state for investigation [38]. Laws requiring healthcare providers to report minors receiving lifesaving gender-affirming care to the state for investigation directly affect the clinical practice of allied healthcare providers. These laws were implemented despite legal precedence and the overwhelming empirical evidence for the benefits of transgender healthcare for all ages. On the other hand, with the passing and implementation of the Health Insurance Portability and Accountability Act (HIPAA) in 1996, all U.S. healthcare providers must safeguard any sensitive or identifiable patient health information so that it is not publicized without the consent of the patient [39]. Under HIPAA, information regarding an individual's transgender status is also protected [40]. Although HIPAA ensures the safekeeping of patient health information and how it may be utilized, it is difficult to ascertain what truly occurs between a healthcare provider and a transgender patient because of legislation restricting the rights of transgender people.

Practical Considerations for Treating Transgender Patients

When providing care to transgender patients, healthcare providers must understand the lived experiences of transgender individuals. Many trans people, however, do not disclose their identity to their allied healthcare providers due to a fear of discrimination [41]. A recent report highlighted the mistrust of healthcare providers among trans people as less than half of the trans participants had disclosed their trans identity to their primary care provider [41]. This causes much concern for the health of the transgender community since without an accurate history of their patient's medications and surgical history, healthcare providers may be unable to provide best-practice, evidence-based care.

To ensure that the transgender community receives the utmost care, one recommendation is for allied healthcare providers to receive more education on how to communicate with trans individuals with affirming, accurate language and by avoiding outdated or stigmatizing language. This can allow for the creation of an inclusive healthcare setting for the transgender community, which can help combat low health-seeking behaviors [42]. Rather than utilizing terms that make some assumption regarding gender identity or sexual orientation, healthcare providers should use gender-inclusive terms (Table 1) [43].

Defying legal mandates can have legal consequences for healthcare providers who follow ethical and evidence-based practice by not reporting transgender minors to the state. This is particularly conflicting for school-based healthcare providers, such as audiologists, speech-language pathologists, or social workers, who are more

likely to work with trans youth than with adults. All healthcare providers who work with pediatric patients in any capacity, however, must be aware of the negative effects that transphobic policies have on their practice and their patients.

Table 1: Terms to Use

Outdated Terms	Proposed Terms
Biologically male, biologically female	Female/woman/girl, male/man/boy, transgender woman, transgender man, person
Marital Status	Relationship Status
Husband, Wife, Girlfriend, Boyfriend	Partner, Spouse
Mother, Father	Parent, Guardian
Homosexual	Queer, Gay, Lesbian
Opposite sex	Different sex
Sex reassignment surgery	Gender affirming care
“Normal”	Cisgender
Maiden name	Family name
Mr., Mrs., Miss, Ms.	First name
Sexual preference	Sexual orientation
Both genders	All genders
Utilization of “He” or “She” when referring to an individual whose pronouns are unknown	“They”

Allied healthcare providers must stay abreast of the changing laws and landscape in the transgender community. When deciding the next steps, an allied healthcare provider can work with their hospital's legal department and professional organizations for insight into the ethical and legal considerations for providing evidence-based care to their transgender patients. It is important to note that most transphobic laws are suspended by judicial order or are currently being challenged by the federal government, so healthcare providers may consider continuing to practice as they have previously until legal challenges are resolved. One organization that is considered the gold

standard for standards of care is the World Professional Association for Transgender Healthcare (WPATH). Their standards of care outline best practices for treating transgender patients with plenty of resources for how to navigate the turbulent climate in U.S. healthcare law. It is also within a provider's personal and professional role to advocate against harmful laws. Individually contacting lawmakers as well as working with professional and state organizations can influence change and acceptance.

Conclusion

People who identify as transgender are part of a diverse, increasingly visible community. Transgender people are periodically encountered by clinical healthcare providers working in all direct patient care settings. Transgender people face significant legal and ethical opposition to receiving human rights and medically necessary transgender healthcare services.

Of all the ethical frameworks that are commonly used to understand the ethics of medical transitioning, only a subset of Christian bioethics advocates withholding medical transition services from transgender people. Considering the overwhelming ethical and empirical evidence supporting the benefits of medical transitioning, withholding this care from people who can benefit from it is unethical and inhumane. Clinical allied healthcare providers working in states that mandate violating HIPAA by reporting transgender minors to the state must carefully consider the ethics and practical consequences of reporting transgender minors.

Declaration of Conflicting Interests

The Authors declare that there is no conflict of interest.

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How transphobic legislation affects ethical service delivery for allied healthcare providers

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