



## COMMENTARY COLUMN

## Catalyzing a Nursing Response to Healthcare Discrimination Against Transgender and Nonbinary Individuals

Globally, it is estimated that 25 million people identify as transgender and nonbinary gender (TGNB). Approximately 1.5 million TGNB adults live in the United States. Under the Affordable Care Act Section 1557 (2011), a federal law was established that made it illegal to discriminate based on “race, color, national origin, sex, age, or disability in certain health programs and activities.” Yet, on June 12, 2020, the U.S. Department of Health and Human Services published a new final rule on its interpretation of Section 1557, which remove gender identity or expression from protections included under sex nondiscrimination, thus permitting healthcare discrimination against TGNB individuals. As clinicians, we are deeply troubled by the elimination of gender identity discrimination protections in health care and ongoing violent acts against transgender people.

Globally, it is estimated that 25 million people identify as transgender and nonbinary gender (TGNB; Winter et al., 2016), approximately 1.5 million of whom reside in the United States (Kaiser Health News, 2020; Meerwijk & Sevelius, 2017). Transgender is an umbrella term for people “whose gender identity is different from their sex defined at birth,” whereas nonbinary refers to a gender expression that is neither male nor female (National Center for Transgender Equality, 2016). Internationally, TGNB persons face significant barriers to accessing appropriate quality health care (i.e., health insurance and limited specialist services) and experience discrimination within healthcare systems (Bakko & Kattari, 2020; Thomas et al., 2017). These barriers to care are reflected in the disproportionate burden of violence and victimization among transgender persons (Johns et al., 2019); insignificant receipt of preventive health screenings (e.g., cholesterol, cancer; Edmiston et al., 2016); and high prevalence of clinical depression, anxiety, somatization, homelessness, and suicide attempts among transgender youth and adults (Keuroghlian, Shtasel, & Bassuk, 2014; Safer et al., 2016). Given the injustices experienced in the healthcare system, discrimination protection laws are necessary to help ensure that TGNB individuals have the fullest civil rights when receiving health care.

Under the Affordable Care Act (ACA) Section 1557 (2011), a U.S. law was established that made it illegal

to discriminate based on “race, color, national origin, sex, age, or disability in certain health programs and activities.” The ACA discrimination protections were further clarified in 2016 to ensure that “sex-based discrimination” encompassed gender identity (defined as “male, female, neither, nor a combination of male and female;” U.S. Department of Health and Human Services Office of Civil Rights, 2016). The protections established in Section 1557 build on existing federal civil rights laws by applying them to federally funded health programs, requiring that clinicians and health insurance payers who receive federal funding must provide the same access to coverage, services, and care to TGNB persons as they would to cisgender individuals (Keith, 2020). Yet, on June 12, 2020, the U.S. Department of Health and Human Services published a new final rule on its interpretation of Section 1557, which removes gender identity or expression from protections included under sex nondiscrimination, effectively permitting healthcare discrimination against TGNB individuals (Keith, 2020). These changes allow for discrimination of TGNB people in accessing health insurance coverage and receiving services and care consistent with their gender identity. In this context, a TGNB person could, for example, be refused screening for breast cancer, treatment for HIV, or endocrine therapy for transitioning without consequences on the health system or insurer.

The new rule, a direct reversal of the former, is a departure from progress on transgender civil and human rights. The United States has removed these protections despite legal, scientific, and professional positions on TGNB healthcare rights across the globe (World Professional Association for Transgender Health, 2012), including the United Nations pledge to “leave no one behind” in its 2030 Agenda for Sustainable Development (United Nations, 2015). Without discrimination protections, TGNB individuals are now even more vulnerable to exclusionary, discriminatory, or prejudiced acts by insurers, healthcare providers, and others within healthcare spaces (Kaiser Health News, 2020). Lawmakers and advocates of lesbian, gay, bisexual, transgender, and queer spectrums (LGBTQ+) communities voiced anger and concern about this policy, and plan to challenge the overturned rule in court. The loss of civil

rights protections will have devastating and long-term implications for the health and care of TGNB individuals. Laws protecting these communities from further harm are essential to promote equitable health and well-being.

## Violence Towards the TGNB Community in 2020

Transphobic violence has been recorded in all regions of the world. Globally, the lifetime prevalence of physical violence motivated by perception of transgender identity ranges from 11.8% to 68.2% (Blondeel et al., 2018). Recent heightened media attention to fatal acts of violence against TGNB people, and Black transgender women in particular, has raised public awareness of the ongoing fight for transgender human rights (Human Rights Campaign, 2020). In the largest study surveying transgender individuals, nearly half of the respondents (48%) reported being denied equal treatment, experiencing verbal harassment, or being physically attacked in the past year because of their gender identity (James et al., 2016). Additionally, 1 in 10 respondents were sexually assaulted in the preceding year, and more than half of these respondents (54%) experienced some form of intimate partner violence (James et al., 2016). Transgender women of color are disproportionately affected by anti-transgender violence, representing four in five of all transphobic homicides (Human Rights Campaign, 2018). Therefore, transgender people need more civil and social protections and advocacy than ever before.

As clinicians, we are deeply troubled by the elimination of gender identity discrimination protections in health care and the ongoing violent acts against transgender people. The International Council of Nurses (2012) has stated that it is inherent in nursing that respect for human rights, including cultural rights, the right to life and choice, to dignity and to be treated with respect, are fundamental ethical principles within nursing. TGNB people are entitled to full human rights protections, which include access to health care. This is noteworthy in a year when the coronavirus (COVID-19 disease) pandemic has infected more than 11 million people worldwide and killed more than 500,000 people as of July 1, 2020 (Johns Hopkins University & Medicine, 2020). Globally, hundreds of thousands of TGNB adults are at risk for contracting COVID-19 because of social determinants of health that disproportionately affect transgender people (UCLA School of Law, Williams Institute, 2020). Additionally, stigma, discrimination, and barriers to healthcare access may

further discourage this community from seeking care when they need it most. Nurses now have an unprecedented opportunity to play a greater role in advocating for transgender and nonbinary people.

## Transphobia Must Be Addressed by All Nurses and Healthcare Systems

The care of TGNB patients is a test of the legitimacy of health systems that claim to deliver “patient-centered” and “high-quality” care. The lack of federal protection could worsen structural barriers, leading transgender people to delay or avoid important care in fear of discrimination, prohibitive costs, and healthcare violence (Padula & Baker, 2017; Stroumsa, Crissman, et al., 2019). For example, in a recent federal lawsuit, *Pangborn v. Ascend*, a transgender man (and practicing hospice nurse) was denied gender-affirming care because his insurer excluded coverage for gender transition (GLBTQ Legal Advocates and Defenders [GLAD], 2020). A fifth (20.8%) of insured transgender people were denied transition-relation coverage (Stroumsa, Crissman, Dalton, & Richardson, 2019), regardless of their insurance type (Bakko & Kattari, 2020).

As a profession, we must acknowledge and address the often discriminatory and unwelcoming healthcare spaces our systems have created for underrepresented communities. TGNB patients frequently experience denial of services, abuse, and discrimination by healthcare providers (James et al., 2016). This violence is, most frequently, verbal harassment and use of abusive language, but also includes unwanted sexual contact and physical abuse (Kattari, Bakko, Langenderfer-Magruder, & Holloway, 2020). As a result, many individuals do not seek healthcare services. For example, an estimated 23% of transgender individuals have not seen a healthcare provider in the past year due to fear of being mistreated for being transgender (James et al., 2016). Transphobia translates to worse health outcomes for TGNB patients, including the higher prevalence of HIV infection, suicide attempts, emotional trauma and retraumatization, and substance use disorders (Learmonth, Vilorio, Lambert, Goldhammer, & Keuroghlian, 2018; Mizock & Lewis, 2008).

Nurses are the largest group of health professionals, yet they receive inconsistent, sporadic, or negligible training on gender identity in their professional education (Carabez, Eliason, & Martinson, 2016). They are well-suited to advocate for their TGNB patients by ensuring best hospital and clinic practices, affirming clinical care, and responding to transphobic events or micro-aggressions. The nursing profession contributes

substantially to the culture of health, but has historically been silent regarding equitable care for TGNB patients (Eliason, Dibble, & DeJoseph, 2010). Nurses can—and must—play a fierce adequacy role in addressing existing inequities. Nurses must intentionally reject discrimination and victimization of TGNB patients, listen to their needs, and act to create transformative justice in healthcare delivery.

### **Preparing the Nursing Workforce to Advocate for Affirming Care for Transgender and Nonbinary Patients in Their Practice and Professional Curriculum**

Moving forward, the nursing profession needs to critically evaluate and reconsider the care provided to TGNB people and advocate for gender-affirming care in the areas of practice, education, research, and policy. Affirming care is an approach to healthcare delivery that supports the needs, values, preferences, and health goals of gender-diverse and transgender individuals. It involves affirming patient gender identity; using respectful language and communication; and creating healthcare processes that honor and affirm all gender identities. Affirming care is not limited to transition-related care (such as hormonal therapy and surgeries) and includes all healthcare realms from primary and preventive care to disease-specific care throughout the lifespan. Calls to action to increase LBGTQ+ inclusion in nursing curricula, practice, and recruitment of diverse LBGTQ+ faculty are not new (American Academy of Nursing, 2012; American Academy of Nursing Ethics Advisory Board, 2018; Lim, Brown, & Jones, 2013). However, since the change to the interpretation of Section 1557, there is a need for amplified, intentional support for affirming care from the nursing profession. While this change to legislation occurred in the United States, transgender individuals are disproportionately affected by a range of negative health indicators across various high-income, middle-income, and low-income countries globally (Reisner et al., 2016). International professional organizations, governing bodies, and prelicensure and graduate nursing programs must lead such efforts. We recommend the following actions for nurses and nursing organizations:

- Issue position statements affirming the rights of TGNB people and voicing opposition to any legal discriminations of TGNB individuals, such as the elimination of nondiscrimination protections under the new regulation regarding Section 1557 of the ACA in the United States.

- Support legal groups challenging the new Section 1557 of the ACA, including GLAD, the American Civil Liberties Union (2020), and the Human Rights Watch LGBT Rights.
- Provide affirming care for TGNB patients in inter-professional partnerships and teams, including (but not limited to) physicians, mental health providers, lawyers, social workers, and community advocates.
- Partner with LBGTQ+ and transgender organizations to facilitate bidirectional health care–community service linkages.
- Use person-centered, gender-neutral inclusive language in mission and vision statements and nursing course syllabi (Stroumsa & Wu, 2018).
- Train nursing students to approach health care with an affirming framework and use innovative educational approaches (including directly addressing transphobia, and integrating role modeling, simulations, case studies, and patient presentations) to build competency (Ho & Mussap, 2019; Stroumsa, Shires, Richardson, Jaffee, & Woodford, 2019).
- Build seamless processes to update persons' names and gender identities in healthcare and education administrative settings.
- Work proactively to welcome and integrate transgender and nonbinary individuals through the nursing educational, clinical, and administrative pipelines with attention to intersecting marginalized identities.
- Integrate into nursing curriculum content about health disparities affected by transgender and nonbinary individuals, especially those disparities disproportionately affected by TGNB individuals of color.
- Recruit and retain LBGTQ+ individuals (with an emphasis on TGNB individuals) into schools of nursing given that other forms of increased representation in the profession of nursing has been associated with increased health equity (Phillips & Malone, 2014).
- Acknowledge that recruiting and retaining few LBGTQ+ individuals for student, staff, or faculty roles to avoid criticism (i.e., tokenism) does not reflect inclusivity (Vanderbilt Business School, 2018).

These actions are not all-encompassing but establish preliminary steps for an affirming nursing profession. Decisive action from nurse leaders and nursing institutions may have immediate and direct effects on the safety and well-being of TGNB individuals seeking care. Such actions also have the power to influence future legal actions regarding nondiscrimination protections for transgender and nonbinary people. They may also begin to reverse nursing's historical silence towards and complicity in transphobia in health care. To fulfill

our ethical mission to make healthcare spaces welcoming and accessible to all, nurses must advocate for equitable care and justice for TGNB binary patients.

## Acknowledgement

Dr. Choi acknowledges support from the Agency for Healthcare Research and Quality and the Patient-Centered Outcomes Research Institute (K12HS26407-07; Ong & Gould, Co-Principal Investigators).

**Alex J. Fauer, PhD, RN, OCN** 

Postdoctoral Fellow, National Clinician Scholars Program, UCLA, Los Angeles, CA USA

**Kirstin Manges, PhD, MSHP, RN**

Postdoctoral Fellow, National Clinician Scholars Program, University of Pennsylvania, Philadelphia, PA USA

**Daphna Stroumsa, MD, MPH, MSc**

Clinical Lecturer, Department of Obstetrics and Gynecology and Institute for Healthcare Policy and Innovation, University of Michigan, Ann Arbor, MI USA

**Laura Sinko, PhD, RN**

Postdoctoral Fellow, National Clinician Scholars Program, University of Pennsylvania, Philadelphia, PA USA

**Gillian I. Adynski, PhD, RN**

Postdoctoral Fellow, National Clinician Scholars Program, Duke University, Durham, NC USA

**Shoshana V. Aronowitz, PhD, CRNP**

Postdoctoral Fellow, National Clinician Scholars Program, University of Pennsylvania, Philadelphia, PA USA

**Kristen R. Choi, PhD, MS, RN**

Assistant Professor, School of Nursing, UCLA, Los Angeles, CA and Adjunct Investigator, Department of Research & Evaluation, Kaiser Permanente Southern California, Pasadena, CA USA

## References

- American Academy of Nursing. (2012). Position statement on health care for sexual minority and gender diverse populations. Retrieved from <https://higherlogicdownload.s3.amazonaws.com/AANNET/c8a8da9e-918c-4dae-b0c6-6d630c46007f/UploadedImages/docs/Policy%20Resources/lgbtq%20overachstement%20final%207%2011%2012.pdf>
- American Academy of Nursing Ethics Advisory Board. (2018). ANA position statement: Nursing advocacy for LGBTQ+ populations. *Online Journal of Issues in Nursing*, **24**(1). Retrieved from <https://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-24-2019/No1-Jan-2019/ANA-Position-Statement-Advocacy-for-LGBTQ.html>
- American Civil Liberties Union. (2020, June 12). ACLU comment on Trump administration roll back of health care protections. Retrieved from <https://www.aclu.org/press-releases/aclu-comment-trump-administration-roll-back-health-care-protections>
- Bakko, M., & Kattari, S. K. (2020). Transgender-related insurance denials as barriers to transgender healthcare: Differences in experience by insurance type. *Journal of General Internal Medicine*, **35**(6), 1693–1700. <https://doi.org/10.1007/s11606-020-05724-2>
- Blondeel, K., de Vasconcelos, S., García-Moreno, C., Stephenson, R., Temmerman, M., & Toskin, I. (2018). Violence motivated by perception of sexual orientation and gender identity: A systematic review. *Bulletin of the World Health Organization*, **96**(1), 29L–41L. <https://doi.org/10.2471/BLT.17.197251>
- Carabez, R. M., Eliason, M. J., & Martinson, M. (2016). Nurses' knowledge about transgender patient care: A qualitative study. *Advances in Nursing Science*, **39**(3), 257–271. <https://doi.org/10.1097/ANS.000000000000128>
- Edmiston, E. K., Donald, C. A., Sattler, A. R., Peebles, J. K., Ehrenfeld, J. M., & Eckstrand, K. L. (2016). Opportunities and gaps in primary care preventative health services for transgender patients: A systematic review. *Transgender Health*, **1**(1), 216–230. <https://doi.org/10.1089/trgh.2016.0019>
- Eliason, M. J., Dibble, S., & DeJoseph, J. (2010). Nursing's silence on lesbian, gay, bisexual, and transgender issues: The need for emancipatory efforts. *Advances in Nursing Science*, **33**(3), 206–218. <https://doi.org/10.1097/ANS.0b013e3181e63e49>
- GLBTQ Legal Advocates and Defenders. (2020, June 12). GLAD lawsuit tests Trump's reversal of healthcare protections for trans people under ACA. Retrieved from <http://www.glad.org/post/glad-lawsuit-tests-trump-administrations-reversal-of-healthcare-protections-for-transgender-people-under-the-aca/>
- Ho, F., & Mussap, A. J. (2019). The Gender Identity Scale: Adapting the gender unicorn to measure gender identity. *Psychology of Sexual Orientation and Gender Diversity*, **6**(2), 217–231. <https://doi.org/10.1037/sgd0000322>
- Human Rights Campaign. (2018). Dismantling a culture of violence. Retrieved from <https://asset>

- s2.hrc.org/files/assets/resources/2018AntiTransViolenceReportSHORTENED.pdf?\_ga=2.70749264.1324491569.1592924147-1069587052.1592924147
- Human Rights Campaign. (2020). Violence against the transgender community in 2020. Retrieved from <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020/>
- International Council of Nurses. (2012). The ICN code of ethics for nurses. Geneva, Switzerland: Author.
- James, S., Herman, J., Rankin, S., Kiesling, M., Mottet, L., & Anafi, M. (2016). The report of the 2015 US Transgender Survey. Washington, DC: National Center for Transgender Equality. Retrieved from <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>
- Johns, M. M., Lowry, R., Andrzejewski, J., Barrios, L. C., Demissie, Z., McManus, T., ... Underwood, J. M. (2019). Transgender identity and experiences of violence victimization, substance use, suicide risk, and sexual risk behaviors among high school students—19 states and large urban school districts, 2017. *Morbidity and Mortality Weekly Report*, **68**(3), 67–71. <https://doi.org/10.15585/mmwr.mm6803a3>
- Johns Hopkins University & Medicine. (2020, June 24). COVID-19 Dashboard. COVID-19 Dashboard, Coronavirus Resource Center. Johns Hopkins Coronavirus Resource Center. Retrieved from <https://coronavirus.jhu.edu/map.html>
- Kaiser Health News. (2020, June 15). Trump administration rolls back Obama-era health care protections for transgender patients. *Kaiser Health News*. Retrieved from <https://khn.org/morning-breakout/trump-administration-rolls-back-obama-era-health-care-protections-for-transgender-patients/>
- Kattari, S. K., Bakko, M., Langenderfer-Magruder, L., & Holloway, B. T. (2020). Transgender and nonbinary experiences of victimization in health care. *Journal of Interpersonal Violence*. <https://doi.org/10.1177/0886260520905091>
- Keith, K. (2020, June 12). HHS strips gender identity, sex stereotyping, language access protections from ACA anti-discrimination rule. *Health Affairs Blog*. Retrieved from <https://www.healthaffairs.org/doi/10.1377/hblog20200613.671888/full/>
- Keuroghlian, A. S., Shtasel, D., & Bassuk, E. L. (2014). Out on the street: A public health and policy agenda for lesbian, gay, bisexual, and transgender youth who are homeless. *American Journal of Orthopsychiatry*, **84**(1), 66–72. <https://doi.org/10.1037/h0098852>
- Learmonth, C., Vilorio, R., Lambert, C., Goldhammer, H., & Keuroghlian, A. S. (2018). Barriers to insurance coverage for transgender patients. *American Journal of Obstetrics and Gynecology*, **219**(3), 272.e1–272.e4. <https://doi.org/10.1016/j.ajog.2018.04.046>
- Lim, F. A., Brown, D. V., & Jones, H. (2013). Lesbian, gay, bisexual, and transgender health: Fundamentals for nursing education. *Journal of Nursing Education*, **52**(4), 198–203. <https://doi.org/10.3928/01484834-20130311-02>
- Meerwijk, E. L., & Sevelius, J. M. (2017). Transgender population size in the United States: A meta-regression of population-based probability samples. *American Journal of Public Health*, **107**(2), e1–e8. <https://doi.org/10.2105/AJPH.2016.303578>
- Mizock, L., & Lewis, T. (2008). Trauma in transgender populations: Risk, resilience, and clinical care. *Journal of Emotional Abuse*, **8**(3), 335–354. <https://doi.org/10.1080/10926790802262523>
- National Center for Transgender Equality. (2016, July 9). Understanding non-binary people: How to be respectful and supportive. Washington, DC: Author. Retrieved from <https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>
- Padula, W. V., & Baker, K. (2017). Coverage for gender-affirming care: Making health insurance work for transgender Americans. *LGBT Health*, **4**(4), 244–247. <https://doi.org/10.1089/lgbt.2016.0099>
- Phillips, J. M., & Malone, B. (2014). Increasing racial/ethnic diversity in nursing to reduce health disparities and achieve health equity. *Public Health Reports*, **129**(1 Suppl. 2), 45–50. <https://doi.org/10.1177/003335491412915209>
- Reisner, S. L., Poteat, T., Keatley, J., Cabral, M., Mothopeng, T., Dunham, E., ... Baral, S. D. (2016). Global health burden and needs of transgender populations: A review. *Lancet*, **388**(10042), 412–436. [https://doi.org/10.1016/S0140-6736\(16\)00684-X](https://doi.org/10.1016/S0140-6736(16)00684-X)
- Safer, J. D., Coleman, E., Feldman, J., Garofalo, R., Hembree, W., Radix, A., & Sevelius, J. (2016). Barriers to healthcare for transgender individuals. *Current Opinion in Endocrinology & Diabetes and Obesity*, **23**(2), 168–171. <https://doi.org/10.1097/MED.0000000000000227>
- Stroumsa, D., Crissman, H. P., Dalton, V. K., & Richardson, C. R. (2019). Systemic predictors of non-prescription gender affirming hormone use [32K]. *Obstetrics & Gynecology*, **133**, 126S. <https://doi.org/10.1097/01.AOG.01.AOG.0000559226.50568.24>
- Stroumsa, D., Shires, D. A., Richardson, C. R., Jaffee, K. D., & Woodford, M. R. (2019).

- Transphobia rather than education predicts provider knowledge of transgender health care. *Medical Education*, **53**(4), 398–407. <https://doi.org/10.1111/medu.13796>
- Stroumsa, D., & Wu, J. P. (2018). Welcoming transgender and nonbinary patients: Expanding the language of “women’s health”. *American Journal of Obstetrics and Gynecology*, **219**(6), 585.e1–585.e5. <https://doi.org/10.1016/j.ajog.2018.09.018>
- Thomas, R., Pega, F., Khosla, R., Verster, A., Hana, T., & Say, L. (2017). Ensuring an inclusive global health agenda for transgender people. *Bulletin of the World Health Organization*, **95**(2), 154–156. <https://doi.org/10.2471/BLT.16.183913>
- UCLA School of Law, Williams Institute. (2020, April). Vulnerabilities to COVID-19 among transgender adults in the U.S. Retrieved from <https://williamsinstitute.law.ucla.edu/publications/transgender-covid-19-risk/>
- United Nations. (2015). Resolution A/RES/70/1. Transforming our world: The 2030 agenda for sustainable development. Presented at the Seventieth United Nations General Assembly, September 15, 2015. Retrieved from [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)
- U.S. Department of Health and Human Services Office of Civil Rights. (2016, August 25). Section 1557: Protecting individuals against sex discrimination. Retrieved from <https://www.hhs.gov/civil-rights/for-individuals/section-1557/fs-sex-discrimination/index.html>
- Vanderbilt Business School. (2018, February 26). What is tokenism, and why does it matter in the workplace? Retrieved from <https://business.vanderbilt.edu/news/2018/02/26/tokenism-in-the-workplace/>
- Winter, S., Diamond, M., Green, J., Karasic, D., Reed, T., Whittle, S., & Wylie, K. (2016). Transgender people: Health at the margins of society. *Lancet*, **388**(10042), 390–400. [https://doi.org/10.1016/S0140-6736\(16\)00683-8](https://doi.org/10.1016/S0140-6736(16)00683-8)
- World Professional Association for Transgender Health. (2012). Standards of care for the health of transsexual, transgender, and gender nonconforming people. Retrieved from [https://wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care\\_V7%20Full%20Book\\_English.pdf](https://wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf)