Unfair and Inadequate: An Analysis of Transgender Health Care

By Rachel Bernzweig

Transgender individuals do not have equal access to health care. When they try to make a doctor's appointment and mention "transgender," the office responds that no one is available to help them.[1] Doctors and medical professionals alike refuse to provide health care to them because they do not have the training or expertise to deal with their unique health care concerns.

This type of discrimination is not new. Undeniably, "[t]he history of this country is replete with instances when people, based on their . . . sex, gender, gender identity or expression, . . . or some combination thereof, have been burdened and excluded from the founding promise of equality for all."[2] These instances stem from "the idea that there are only two genders, which match two distinct physical sexes" which is presumed by most people in our society.[3] That presumption unfairly alienates transgender individuals because the "transgender umbrella" includes people who were assigned female sex at birth who now identify as men (transgender men) and people who were assigned male sex at birth who now identify as women (transgender women).[4] Transgender individuals "have long endured frustrated dreams and denials of equal access to . . . healthcare . . . [that] they seek and deserve."[5] Irrefutably, "[m]eeting the needs of current and future transgender individuals is a pressing medical concern."[6]

I. Current Day Transgender Discrimination

The majority of medical professionals know little to nothing about transgender health, meaning that "countless trans[gender] individuals across the country" are left with "incredibly restricted health care options."[7] Consequently, transgender individuals are forced to travel far distances in order "to see a doctor who has experience in transgender health care, or at least is not openly hostile."[8] They are willing to travel because the regions they come from are not only "hurting for health care options" because they lack physicians who are knowledgeable about treating them, but they also face "discrimination and abuse" by staying.[9] As the National Center for Transgender Equality has shockingly reported, "half of all trans[gender] people have had to teach the fundamentals of trans[gender] health care to their health care providers."[10]

The aforementioned discrimination is facilitated by the fact that the federal government has failed to afford the transgender community protection from this type of discrimination. Section 1557 of the Affordable Care Act (hereinafter "Section 1557")[11] was enacted to combat blatant discrimination against the transgender community by "expand[ing] the rights of all patients to equal healthcare free from discrimination."[12] Section 1557 specifies that "an individual shall not . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity"[13] which essentially "provides antidiscrimination protections greater than those of the Equal Protection Clause" because the section encompasses Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964, which "forbid discrimination on the basis of sex."[14] Further, Section 1557's protection extends more than previous antidiscrimination laws because the U.S. Department of Health and Human Services (HHS) declared that "discrimination 'on the basis of sex' include[d] discrimination on the basis of 'gender identity.'"[15] This landmark distinction made Section 1557 the first federal law enacted to protect transgender individuals from discrimination on the basis of gender identity.

But on December 31, 2016, one day before Section 1557 was supposed to go into effect, a federal judge issued a nationwide injunction halting enforcement of the provision.[16] The lawsuit sought "to undermine critical protections against discrimination in health care."[17] In this infamous decision, U.S. District Court Judge Reed O'Connor wrote that the section's "interpretation of sex discrimination pressures doctors to deliver health care in a manner that violates their religious freedom and thwarts their independent medical judgment."[18] Pursuant to this ruling, health care providers are permitted to discriminate and subsequently "turn away" transgender patients seeking necessary care.[19]

Over the years, discrimination against transgender individuals, "the T in LGBT,"[20] arguably "the most medically vulnerable Americans,"[21] was "largely tolerated because of the lack of federal regulation . . . and inadequate nondiscrimination laws."[22] It has been noted that a central purpose of the Affordable Care Act[23] (ACA) is to "ensure that health services are available broadly on a nondiscriminatory basis to individuals throughout the country."[24] However, since the injunction remains in place, transgender individuals have no law to lean on and discrimination against them in the health care industry continues.

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II. Without Change, Discrimination Continues

Aside from legal protections, to ensure that transgender individuals have equal access to healthcare, the health care community should focus on medical training because while transgender individuals cannot always rely on the law for protection, they should be able to rely on their health care professionals. This focus can have a positive effect because "[a] health care professional's humility can be a source of relief to an anxious [transgender] patient."[25] The Code of Medical Ethics "recognizes healthcare as a fundamental human good"[26] and that "physicians' attitudes can exacerbate variations in patients' access to healthcare services or the quality of health care patients receive."[27] Further, the Code provides that physicians "may not discriminate against a patient on the basis of gender identity."[28]

Without question, "[t]his area is a critical one for reform, as access to nondiscriminatory medical treatment remains a serious problem for trans[gender] people in the United States."[29] The types of discrimination that transgender individuals "across the country routinely experience," range from "health care providers" using harsh or abusive language, blaming patients for their health status, being physically rough or abusive or refusing care outright."[30] Those in the health care industry who do not understand or support transgender identities have been found to "gossip" by "asking inappropriate questions about a transgender patient's identity, joking or commenting about a patient's body or appearance, and using slang or the wrong pronoun or name when referring to a patient."[31] It is important that health care professionals respect transgender patients and stand up for patients who are being faced with "this kind of unprofessional and aggressive behavior . . . [b]y informing perpetrators of inappropriate and offensive speech, and by making it clear that their actions are insensitive and sources of potential harm to patients."[32]

In the broadest sense, a "health disparity" is "a particular type of health difference that is closely linked with social, economic, and/or environmental disadvantage."[33] These differences include "the role of bias, discrimination, and stereotyping at the individual, institutional, and health-system levels."[34] Although these types of disparities are often linked to race or ethnicity, they affect those who are discriminated against based on "gender; sexual orientation or gender identity."[35] It is well defined that transgender individuals suffer because of these disparities[36] because "LGBT health disparities largely track to a long history of societal stigma and discrimination directed at sexual and gender minorities."[37] This "[s]tigma and discrimination" affects transgender individuals directly through health care professionals who are biased and are "fueled by hatred of LGBT people."[38]

According to HHS, in order to attain "health equity," meaning the "attainment of the highest level of health for all people," it is required that everyone be valued "equally with focused and ongoing societal efforts to address avoidable inequalities, historical and contemporary injustices, and the elimination of health and health care disparities."[39] Yet transgender individuals face "high rates of victimization coupled with limited social and cultural structural support" which inevitably "set the stage for health disparities."[40] It is impossible to attain "health equity" when transgender individuals "often delay necessary care for fear of bias" because they would rather avoid "than engage with the health care system."[41]

Physician implicit biases, such as those described earlier, are "associated with weaker communication between doctors and their minority patients" because "physicians hold shorter clinical encounters with minority patients, make less frequent eye contact, verbally dominate exchanges . . . and share less information with minority patients."[42] These biases have evident negative effects on a transgender individual's ability to access necessary types of healthcare because when transgender individuals are being discriminated against due to their gender identity, they are left with "health care options [that] are correspondingly biased, limited and therefore inadequate."[43] Despite the "demonstrable health benefits of gender-affirming health care interactions and accessible transition options among transgender populations[,]" countless medical professionals "struggle to provide care to people who want to transition genders"[44] because of these biases.

Access to adequate and respectful health care is important for all people. Change must be made in order to address the remaining barriers facing transgender individuals to ensure that our most vulnerable and marginalized communities will have access to adequate health care. While the "lack of access to appropriate care (due to lack of clinicians knowledgeable about transgender patients' specific needs and vulnerabilities) is the biggest barrier," they face other barriers such as "financial and socioeconomic obstacles, physicians lack of awareness or education about physicians' roles in transgender health care, and discrimination."[45] Transgender individuals are one of "the most stigmatized and medically underserved groups, facing barriers at every phase of accessing care, from getting into the doctor's office to paying for care."[46]

While "LGBT health centers do exist . . . they are generally located in major cities and therefore too far for many people to travel for regular care."[47] Physicians who "are experienced in gender-affirming procedures are also relatively few, and, as a result, patients might have no choice but to travel great distances for expensive procedures."[48] These conditions have created a financial hardship on transgender individuals[49] who "[b]ecause of dis-

crimination . . . are much more likely to be homeless, unemployed, and low income."[50] While "anti-transgender bias" can appear in any setting, it is "particularly problematic in health care because transgender individuals are 'uniquely dependent on medical treatments to realize their identities and to live healthy, authentic lives.'"[51]

Clearly, access to gender transition-related care remains an unmet need, but transgender individuals also struggle to get other types of health care as well. The reality is that "[t]ransgender patients' other health care needs are, in many respects, identical to those of cisgender (nontransgender) people."[52] This why the World Professional Association for Transgender Health "recommends that the health-care needs of transgender people be openly and properly addressed, at the same level of quality and thoroughness as is afforded to any other person."[53]

Yet, transgender individuals are not afforded the same quality because numerous transgender individuals are denied access to preventative health care and routine services "due to the gender marker on file with their insurance provider."[54] Transgender males "who have a uterus, ovaries, and/or breasts, can be at risk for cancer in these organs" and will need services such as a "Papanicolaou (Pap) smear to screen for cervical cancer."[55] These males are denied access to "Pap smears and other reproductive health-related preventive services even though they need this care."[56] Comparably, transgender females are often denied access to prostate exams despite their risk for prostate cancer.[57] Where a transgender male was diagnosed with cervical and ovarian cancer, "more than twenty gynecologists refused to treat him over a ten-month period" because the physicians were "uncomfortable with his transgender status and feared that treating him would harm the reputation of their medical practices."[58] Unfortunately, because the cancer had gone untreated for so long, the cancer metastasized and became fatal.[59] Therefore, it is necessary that "[c]linicians . . . understand how to validate and support [transgender] patients by providing gender-affirming care."[60]

III. Focus on Medical and Legal Professionals

1. Medical Professionals

There is no debate "that the actions and inactions of health professionals have had a significant effect on the health of LGBT people."[61] In order to "end[] LGBT invisibility, it is important to understand the terminology used."[62] Understanding and valuing "gender" is "[a] foundational concept" that allows medical professionals to "focus on optimizing interactions with individual patients."[63] It is important to "understand and value the diversity embedded within the term 'gender' and the panoply of ways people may choose to describe and express their gender."[64] An example of this understanding is the use of preferred pronouns in order to avoid "misgendering"[65] because "clinicians' nonjudgmental use of this language assists with establishing rapport and cultivating respectful relationships."[66]

Further, "[h]ospitals and medical practitioners can create a more welcoming environment for this marginalized population of patients by adopting inclusive intake procedures, asking about gender identity, and conducting a physical exam in a manner that is most comfortable for patients."[67] Additionally, "[w]hile a patient's gender identity may not appear relevant to a diagnosis and treatment of many medical conditions, familiarity with transgender medicine will lead to better informed medical care and provide a singular opportunity for teaching."[68] Gender-affirming care can and should be provided to all patients because "[e]veryone, no matter their gender identity . . . appreciates friendly and courteous service"[69] and "[m]eeting the needs of these patients is an ethical obligation that the medical profession must assume."[70]

Whether patients have identified themselves as transgender or not, it is advised that health care providers ask them if they have "a preferred pronoun" because "this small act . . . has the potential to enhance the therapeutic alliance between doctor and patient and may enable the patient to be more forthcoming about sex and gender issues that could be relevant to the clinical presentation."[71] Further, "clinicians can try more mindfully to notice that they have biases or make judgments that impede the formation of strong patient-clinician relationships."[72] For example, "[i]n the transgender population, gender variant bodies are common, and this 'difference' should be respected by members of the medical community."[73] Learning about these biases and working to "mitigate reactions" are critical to improving "gender-affirming and responsible care."[74]

In order to obtain "[t]ransgender health literacy[,] . . . ongoing education and training" is required.[75] As "any area of medicine, . . . standards of care and best practice guidelines are continually being updated" and "it is important to stay up to date on current research and literature pertaining to transgender identities."[76] Moreover, it is important to note that "although the acronym LGBT is used as an umbrella term, and the health needs of this community are often grouped together, each of these letters represents a distinct population with its own health concerns."[77] Additionally, "[i]t is not always possible to know a person's gender identity based on their name, their appearance, or the sound of their voice."[78]

The "Fenway Approach" is "'a philosophy of accessible, patient-centered care that views gender affirmation as routine part of primary care service delivery, not a psychological or psychiatric condition in need of treat-

ment."[79] Arguably, using this approach could lead to decreased discrimination towards transgender patients, because physician biases would not come to fruition. Medical schools should be incorporating this approach into their curriculum because it is well established that education "represents an opportunity to not only help [medical professionals] develop LGBT-care competence but also to help improve the care received by that learner's future patients, and, perhaps on a grander scale, to improve overall social equity for LGBT people."[80]

Commonly, "medical, nursing, and other health professional school curricula have contained very little LGBT-specific content . . . because of pervasive homophobic attitudes among educators, the health care professions as a whole, and the population at large."[81] But, "as cultural attitudes are shifting to regard LGBT people in the United States more positively, so have attitudes in health care and health care education."[82] For example, Vanderbilt University School of Medicine has recently established "The Trans Buddy Program" as part of its medical education, where students are trained as "peer advocates" to "streamline communication between patients and providers" and to "reduce patient anxiety."[83] Further, the school offers lesbian, gay, bisexual, transgender and intersex (hereinafter "LGBTI") curriculum components, internships and a graduate certificate program.[84]

The Association of American Medical Colleges has encouraged the inclusion of LGBTI health in medical schooling because "LGBTI individuals face documented health disparities, perpetuated in part by limited LGBTI-related education and cultural competency training in medical curricula."[85] Further, the Accreditation Council for Graduate Medical Education program requirements provide that medical curriculum must include "Patient Care and Procedural Skills," meaning that "[f]ellows must be able to provide patient care that is compassionate, appropriate, and effective for the treatment of health problems and the promotion of health."[86]

There remains a continued need for these types of programs. A recent study of medical school curricula showed "that more than 33% of medical schools reported 0 hours of LGBT-specific content delivered in the clinical years, and 6.8% of medical schools reported 0 hours of LGBT-specific content in the preclinical years."[87] Further, although some schools have LGBT-specific content, "it is important to note that time devoted to subject-specific education does not necessarily equate to equality of education, nor does it necessarily lead to desirable learning outcomes (knowledge, skills, behaviors, attitudes)."[88]

2. Legal Professionals

Working to prevent discrimination against transgender individuals also applies to law practices in "both their capacity as employers and as professionals serving members of the public."[89] The National Transgender Discrimination Survey found that transgender individuals suffer from unemployment and those that are employed "make less than $10,000 per year."[90] Also, transgender individuals are being turned away from law firms who do not accept transgender clients.[91] Especially in New York, where a longstanding history of anti-discrimination laws is in place, legal professionals "need to be aware of this issue" and work to prevent it.[92] Combating against discrimination by promoting "an environment where all persons, including persons who do not conform to traditional gender norms, are treated with dignity and respect" effectively "sends a message to the outside world about your values, company culture, and commitment to equal treatment."[93]

For example, law firms should "[a]dd gender identity/expression to the list of protected classes in application forms, recruitment materials, marketing materials, website pages and policies related to nondiscrimination, antiharassment, and equal employment opportunity."[94] Relatedly, it is advisable to "eliminate any questions related to gender (or other protected class status)" from client intake forms because it is extremely important to "[u]se appropriate pronouns . . . consistent with an employee's or client's stated gender identity."[95] Where you might be unsure, "it is acceptable to ask, provided you do so in a sensitive and open-ended manner."[96] However, it is equally important not to "out" any transgender employees or clients and to "make sure you have their permission before disclosing to anyone that they are transgender" because "protecting the confidentiality of any medical information they may provide to you . . . [will] enable you to better accommodate their needs."[97] On the other hand, "[i]t will be necessary to make sure opposing counsel and the court address your client appropriately" because "[y]ou as the representative set the tone."[98]

IV. Creating a New Antidiscrimination Law

While maintaining an active approach to mitigating and eliminating discrimination against transgender individuals in the medical and legal fields, we should begin by looking at current state laws to help determine an adequate replacement for Section 1557. Notably, despite Section 1557's failure, "[t]he state of New York has had a long history of protecting the rights of transgender persons under the provisions of the Human Rights Law."[99] In fact, "New York was the first state in the nation to enact an anti-discrimination Human Rights Law, which affords every citizen 'an equal opportunity to enjoy a full and productive life.'"[100] To show perspective, "New York [S]tate is home to more than 78,600 transgender people" who are "historically underserved" and for whom "access to a full continuum of quality, culturally competent health care is long overdue."[101]

More recently, in an effort to further protect transgender individuals in the state, Governor Cuomo issued a "statewide regulation[] to prohibit harassment and discrimination on the basis of gender identity, transgender status or gender dysphoria."[102] This regulation speaks volumes because "[i]t is intolerable to allow harassment or discrimination against anyone, and the transgender community has been subjected to a second-class status for far too long."[103] Additionally, New York City's Commission on Human Rights has one of "the most severe 'transgender rights' enforcement" laws.[104] Violations of the law include: "[1] [f]ailing to use an individual's preferred name or pronoun . . . [2] [r]estricting same-sex facilities . . . [3] [l]imiting a person's options to only 'male' and 'female' . . . [4] [s]ex stereotyping . . . [5] [i]mposing different dress codes based on sex . . . [6] [t]ransgender-inclusive health insurance . . . [and] [7] [t]reating cross-dressers differently in any way."[105] The City determined that the law was necessary because "there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences."[106]

Forgoing a replacement for Section 1557 will leave a chilling impact on millions of Americans because "[c]hanges to the Affordable Care Act do not just affect a small group of individuals; millions of lives are at risk."[107] Section 1557's protections were "critical to addressing the remaining barriers to . . . care that LGBT people across the country routinely experience."[108] Section 1557 was enjoined because the judge believed "that statutory prohibitions against sex discrimination under Title XI . . . do not prohibit discrimination on the basis of gender identity."[109] Judge O'Connor "justified his ruling by claiming that individual doctors' refusal to treat trans patients . . . does not limit their access to health care" because "the government doesn't seem to be too concerned about specifically trans people's access to health care anyway."[110] This ruling "will only continue to limit options for trans people" because it has "paved the way for even more discrimination on the grounds of religious freedom."[111] Therefore, a different argument must be produced in order to create a new federal law that will actually protect transgender individuals from discrimination.

While states, such as New York, offer invaluable protections from discrimination, all "[s]tate laws do not sufficiently address these concerns: currently only 18 states and the District of Columbia protect access for LGBT people to health care facilities."[112] Further, "the nondiscrimination protections offered by federal laws . . . are becoming even more critical for LGBT people across the country as states enact laws . . . that condone or even encourage discrimination on the basis of gender identity and sexual orientation, including by health care providers."[113] A law like Section 1557 has power because it "codifies substantial protections for transgender individuals in access to health care."[114] A replacement law should, among other things, "clarif[y] that a provider or other staff person persistently and intentionally refusing to use a transgender individual's correct name and gender pronoun [in communication with the patient] constitutes prohibited harassment on the basis of sex" and "require[] health care providers to provide medically necessary health care services to transgender individuals."[115]

V. Conclusion

Undoubtedly, "[t]he need to uphold transgender rights has never been more pressing or more important than today."[116] It is clear that "transgender rights stem from human rights" which are "fundamental rights belonging to every person"[117] and the "right" to have access to health care should be protected by the law. Our country protects religious freedom and "religion is quintessentially a choice."[118] Using the same rationality, all members of our communities, including transgender individuals, deserve to have that same level of protection for their choices.

Right now, there is no nationwide protection from discrimination for transgender individuals. Thus, to ensure that discrimination against transgender individuals in health care does not continue, a change to medical training is the next best step. Treating "transgender patients with the same dignity and respect that [a medical professional] would treat any other patients cannot be overstated."[119] Physicians have "responsibilities to protect their transgender patients as they would any other patient."[120] Further, "transgender patients need clinicians whom they feel safe and comfortable seeing regularly for all of their health care needs."[121]

In reality, the "majority of medical care related to transgender health can be administered by any physician willing to research best practices and create a care plan that centers on an individual patient's health care needs and priorities."[122] Transgender individuals "should have access to a gender-affirming medical home where all components of care can be discussed nonjudgmentally in an environment that minimizes stigma and discrimination."[123] Thus, "[i]t is incumbent upon health professionals to continue striving to meet the needs of individual patients" regardless of their gender identity.[124]

Endnotes

1. Molly Redden, *How a Tiny City in New York Became a Beacon for Transgender Healthcare*, The Guardian (May 3, 2016) https://www.theguardian.com/society/2016/may/03/transgender-healthcare-doctor-oneonta-new-york-carolyn-wolf-gould.
2. Zubik v. Burwell, 2016 U.S. S. Ct. Briefs LEXIS 783, 21 (2016).

3. *Affirmative Care for Transgender and Gender Non-Conforming People: Best Practices for Front-line Health Care Staff, National LGBT Health Education Center*, 1, 1 (2016), https://www.lgbthealtheducation.org/wp-content/uploads/2016/12/Affirmative-Care-for-Transgender-and-Gender-Non-conforming-People-Best-Practices-for-Front-line-Health-Care-Staff.pdf.
4. *Id.*
5. Zubik, 2016 U.S. S. Ct. Briefs LEXIS 783 at 21.
6. Matthew W. McCarthy, Elizabeth Reis, Joseph J. Fins, *Transgender Patients, Hospitalists, and Ethical Care*, 59 PERSP. IN BIOLOGY & MED. 2, 234, 235 (2016).
7. Redden, *supra* note 1.
8. *Id.*
9. *Id.*
10. *Id.*
11. 45 C.F.R. § 1557 Part 92 (2016).
12. Elizabeth B. Deutsch, *NOTE: Expanding Conscience, Shrinking Care: The Crisis in Access to Reproductive Care and the Affordable Care Act's Nondiscrimination Mandate*, 124 YALE L.J. 2470, 2490 (2015).
13. § 1557.
14. Cruz v. Zucker, 195 F. Supp. 3d 554, 579 (2016).
15. Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31376, 31467, § 92.4 (May 18, 2016).
16. *See* Franciscan Alliance, Inc. v. Burwell, 2016 U.S. Dist. LEXIS 183116, 62 (2016) ("Accordingly, the Rule's harm is felt by healthcare providers and states across the country . . . and the Court finds a nationwide injunction appropriate."). *See also* Chris Geidner, *Federal Judge Halts Obamacare Transgender, Abortion-Related Protections Nationwide*, BUZZFEED (Dec. 31, 2016, 5:20 PM), https://www.buzzfeed.com/chrisgeidner/federal-judge-halts-obamacare-transgender-abortion-related-p?utm_term=.ar3Lwlk0Q#.lmJW5ZjLx (discussing the injunction of Section 1557).
17. *Franciscan Alliance v. Burwell*, ACLU (Jan. 9, 2017), https://www.aclu.org/cases/franciscan-alliance-v-burwell.
18. Geidner, *supra* note 16.
19. *Franciscan*, *supra* note 17.
20. HARVEY J. MAKADON, ET AL., THE FENWAY GUIDE TO LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH, 4 (2nd ed. 2015).
21. Joanna V. Theiss, *It May Be Here to Stay, But Is It Working? The Implementation of the Affordable Care Act Through an Analysis of Coverage of HIV Treatment and Prevention*, 12 J. HEALTH & BIOMED. L. 109, 123 (2016).
22. *Id.* at 122-23.
23. 42 U.S.C.S. § 18116 (2010).
24. § 1557.
25. Ryan K. Sallans, *Lessons from a Transgender Patient for Health Care Professionals*, 18 AMA J. OF ETHICS 11, 1140 (2016).
26. *Id. See also* THE CODE OF MEDICAL ETHICS, Formal Op. 11.1.1 (2016).
27. Makadon, *supra* note 20, at 6. *See also* THE CODE OF MEDICAL ETHICS, Formal Op. 8.5 (2016).
28. Kristen L. Eskstrand, et al., *Affirmative and Responsible Health Care for People with Nonconforming Gender Identities and Expressions*, 18 AMA J. OF ETHICS 11, 1108, 1095-96 (2016). *See also* THE CODE OF MEDICAL ETHICS, Formal Op. 1.1.2 (2016).
29. Ilona M. Turner, *Transgender Rights and the Law: Article: Pioneering Strategies to Win Trans Rights in California*, 34 U. LA VERNE L. REV. 5, 14 (2012).
30. *LGBT Protections in Affordable Care Act Section 1557*, Center for American Progress (May 12, 2016).
31. Sallans, *supra* note 25, at 1142-43.
32. *Id.* at 1143.
33. *Id.* at 1334.
34. *Id.*
35. Daryll C. Dykes, *Evidence, Social Psychology, and Health Care: Health Injustice and Justice in Health: The Role of Law and Public Policy in Generating, Perpetuating, and Responding to Racial and Ethnic Health Disparities Before and After the Affordable Care Act*, 41 WM. MITCHELL L. REV. 1129, 1134 (2015).
36. Danielle Hahn Chaet, *The AMA Code of Medical Ethics' Opinions Related to Discrimination and Disparities in Health Care*, 18 AMA J. OF ETHICS 11, 1095 (2016).
37. Makadon, *supra* note 20, at 6.
38. *Id.*
39. Dykes, *supra* note 35, at 1334.
40. Eskstrand, *supra* note 28, at 1109.
41. *Id.*
42. Dayna Brown Matthew, *Health Care, Title VI, and Racism's New Normal*, 6 Geo. J. L. & Mod. Crit. Race Persp. 3, 5 (2014).
43. Zubik, 2016 U.S. S. Ct. Briefs LEXIS 783 at 36.
44. Eskstrand, *supra* note 28, at 1110.
45. Chaet, *supra* note 36, at 1095.
46. Sarah E. Gage, *The Transgender Eligibility Gap: How the ACA Fails to Cover Medically Necessary Treatment for Transgender Individuals and How HHS Can Fix It*, 49 NEW ENGLAND L. REV. 499, 500 (2015).
47. Elizabeth Dietz and Jessica Halem, *How Should Physicians Refer When Referral Options Are Limited for Transgender Patients?*, 18 AMA J. OF ETHICS 11, 1170, 1074 (2016).
48. *Id.*
49. *Id.*
50. *Affirmative Care*, *supra* note 3, at 6.
51. Gage, *supra* note 46, at 501.
52. Dietz, *supra* note 47, at 1071.
53. McCarthy, *supra* note 6, at 236.
54. Jordan Aiken, *Promoting an Integrated Approach to Ensuring Access to Gender Incongruent Health Care*, 31 BERKELEY J. GENDER L. & JUST. 1, 3 (2016).
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.* at 4.
59. Aiken, *supra* note 54, at 4.
60. Eskstrand, *supra* note 28, at 1110.
61. Makadon, *supra* note 20, at 6.
62. *Id.* at 4.
63. Eskstrand, *supra* note 28, at 1112.
64. *Id.*
65. *Affirmative Care*, *supra* note 3, at 7.

66. *Id.*
67. McCarthy, *supra* note 6, at 235.
68. *Id.* at 236.
69. *Affirmative Care*, *supra* note 3, at 7.
70. McCarthy, *supra* note 6, at 235.
71. *Id.* at 236.
72. *Id.*
73. *Id.* at 239.
74. Eskstrand, *supra* note 28, at 1112.
75. Sallans, *supra* note 25, at 1144.
76. *Id.*
77. Makadon, *supra* note 20, at 3.
78. *Affirmative Care*, *supra* note 3, at 10.
79. Dietz, *supra* note 47, at 1075.
80. Makadon, *supra* note 20, at 15.
81. *Id.*
82. *Id.*
83. *Trans Buddy Program*, Program for LGBTI Health, Vanderbilt University School of Medicine (2016), https://medschool.vanderbilt.edu/lgbti/trans-buddy-patient.
84. *Health Education*, Program for LGBTI Health, Vanderbilt University School of Medicine (2016), https://medschool.vanderbilt.edu/lgbti/health-education.
85. *Id.*
86. *ACGME Program Requirements for Graduate Medical Education in Clinical Informatics*, Accreditation Council for Graduate Medical Education, 1, 11-12 (2015) http://www.acgme.org/portals/0/pfassets/programrequirements/381_clinical_informatics_2016.pdf.
87. Makadon, *supra* note 20, at 15.
88. *Id.*
89. Catherine E. Reuben, *Is Your Law Practice Welcoming to Transgender Employees and Clients?*, 2 GP SOLO EREPORT 8 (Mar. 2013).
90. Kylar Broadus, *Practice Tips for Working with Transgender Clients*, 5 GP SOLO REPORT 7 (Feb. 2016).
91. *Id.*
92. Reuben, *supra* note 89.
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. Reuben, *supra* note 89.
98. Broadus, *supra* note 90.
99. *Governor Cuomo Announces New Regulations Protecting Transgender New Yorkers from Discrimination Take Effect Today*, THE OFFICIAL WEBSITE OF NEW YORK STATE (Jan. 20, 2016), https://www.governor.ny.gov/news/governor-cuomo-announces-new-regulations-protecting-transgender-new-yorkers-discrimination-take.
100. *Id.*
101. Doug Wirth, *New York's Transgender Health Crisis*, SLANT (Jan. 8, 2017), http://nyslant.com/article/opinion/new-york's-transgender-health-crisis.html.
102. *Governor Cuomo*, *supra* note 100.
103. *Id.*
104. *New York City Initiates the Most Severe 'Transgender Rights' Enforcement in America*, LIFESITE (Jan. 4, 2016), https://www.lifesitenews.com/opinion/new-york-city-initiates-the-most-severe-transgender-rights-enforcement-in-a.
105. *Id.*
106. *Id.*
107. Jennifer Goldberg, *Repealing the Affordable Care Act Without a Replacement Hurts Seniors*, JUSTICE IN AGING (Dec. 21, 2016), http://www.justiceinaging.org/repealing-affordable-care-act-without-replacement-hurts-seniors/.
108. Kellan Baker, *LGBT Protections in Affordable Care Act Section 1557*, HEALTH AFFAIRS (June 6, 2016), http://healthaffairs.org/blog/2016/06/06/lgbt-protections-in-affordable-care-act-section-1557/.
109. Timothy Jost, *ACA Round-Up: Rand Paul's Replacement Plant, Non-Discrimination Litigation, and New CBO Projections*, HEALTH AFFAIRS (Jan. 27, 2017), http://healthaffairs.org/blog/2017/01/27/aca-round-up-rand-pauls-replacement-plan-non-discrimination-litigation-and-new-cbo-projections/.
110. Marie Solis, *Judge Rules Doctors Can Refuse Trans Patients and Women Who Have Had Abortions*, NEWS MIC (Jan. 4, 2017), https://mic.com/articles/164234/judge-rules-doctors-can-refuse-trans-patients-and-women-who-have-had-abortions?utm_source=NYMag&utm_medium=social&utm_campaign=partner#.gkdRkzFNm.
111. *Id.*
112. Baker, *supra* note 109.
113. *Id.*
114. *Id.*
115. *Id.*
116. Tia Powell, Sophia Shapiro and Ed Stein, *Transgender Rights as Human Rights*, 18 AMA J. OF ETHICS 11, 1126 (2016).
117. *Id.*
118. *Id.*
119. McCarthy, *supra* note 6, at 241.
120. Chaet, *supra* note 36, at 1096.
121. Dietz, *supra* note 47, at 1076.
122. *Id.*
123. Eskstrand, supra note 28, at 1113.
124. *Id.* at 1112.