

Patients may be guilty of discrimination if they refuse care of transgender medic, NHS bosses told

New guidance warns NHS staff that patients have no right to be told a healthcare worker's assigned sex at birth

By Blathnaid Corless

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Patients may be found guilty of discrimination if they refuse the care of a transgender medic, according to new NHS guidance.

Health bosses have been warned that patients have no right to be told a healthcare worker's assigned sex at birth.

However, transgender health workers can choose not to treat patients if they feel uncomfortable doing so, the report by NHS Confederation says.

The report, published earlier this month in partnership with the LGBT Foundation, says patients can only request care from a same-sex staff member in limited circumstances, such as if they are having an intimate examination.

It states that when a patient requests an employee administering care to be a woman or a man, "the comfort of the staff member should be prioritised".

Patients with dementia 'should be challenged'

The report goes on to say that "the patient has no right to be told that the person treating them is trans or non-binary," adding: "It would likely be discriminatory for the patient to refuse to be treated or cared for by a trans person, unless clear and evidenced clinical harm may result to the patient."

Patients with dementia "should still be challenged" if they express discriminatory views about transgender staff, the 97-page guide states, while their relatives "may be removed from the premises" if they do the same.

But a non-binary medic can refuse to treat a patient, with the advice stating they “should not be forced to deliver care if this would cause undue distress or invalidate their lived experience of gender”.

It comes as the NHS published its first equality, diversity and inclusion (EDI) plan, which outlines that organisations are to include “diversity training on gender reassignment and sexual orientation” within mandatory training for healthcare workers.

‘Nobody working for the NHS should be subject to discrimination’

Saffron Cordery, the deputy chief executive of NHS Providers said: “Trust leaders are committed to ensuring all their staff are treated with dignity and respect and the publication of the NHS’s first ever EDI plan is a welcome step towards that ambition.

“Nobody working for the NHS should be subject to bullying, harassment, discrimination, or violence because of who they are, yet survey after survey shows that these behaviours are sadly all too common in the health service.

“Trust leaders are determined to stamp out these structural, persistent inequities. They are working hard to instil values and behaviours which create a more equal, diverse and inclusive health service, ensuring fair treatment and opportunity for everyone.”

Matthew Taylor, the chief executive of NHS Confederation, said: “This is a guide for our members on how they can be effective and active allies to their trans and nonbinary staff. It does not constitute formal policy for the NHS.

“Based on independent interpretations of equalities legislation and extensive engagement with our partners, the guide advises that if a patient requests to be seen by a NHS staff member with or without a particular protected characteristic, the healthcare provider would not be required under this or other legislation to comply with that.

“The exemption to that would be unless there would be a clinical need or benefit to do so, including around supporting the patient’s psychological wellbeing. As the guide says, there are likely to be extremely few circumstances in which this would happen and decisions would always be made on a case-by-case basis.’

He added: “We understand that this is a contested area, which is why we carried out an independent procurement process for an expert body to carry out this work on our behalf for our members – we are grateful to the LGBT Foundation for doing this and for the responses we have received so far from our members and partners.”

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