

Department of Behavioral Health
TRANSMITTAL LETTER

SUBJECT Gender Identity and Expression		
POLICY NUMBER 641.1	DATE APR 28 2017	TL# 308

Purpose. The purpose of this policy is to implement the Gender Identity and Expression requirements contained in the D.C. Human Rights Act as it applies to consumers/clients of DBH behavioral health services and supports.


Applicability. Applies to the Department of Behavioral Health (DBH), all certified DBH providers (MHRS and Substance Use Disorder [SUD] services), and the SUD Prevention Centers.


Policy Clearance. Reviewed by affected responsible staff and cleared through appropriate Behavioral Health Authority (BHA) offices and providers.

Effective Date. This policy is effective immediately.

Superseded Policy. None.

Distribution. This policy will be posted on the DBH web site at www.dbh.dc.gov under Policies and Rules. Applicable entities are required to ensure that affected staff is familiar with the contents of this policy.


Tanya A. Royster, M. D.
Director, DBH

GOVERNMENT OF THE DISTRICT OF COLUMBIA  DEPARTMENT OF BEHAVIORAL HEALTH	Policy No. 641.1	Date APR 28 2017	Page 1
	Supersedes: None		
Subject: Gender Identity and Expression			

1. **Purpose.** The purpose of this policy is to implement the Gender Identity and Expression requirements contained in the D.C. Human Rights Act as it applies to consumers/clients of DBH behavioral health services and supports.

2. **Applicability.** Applies to the Department of Behavioral Health (DBH), all certified DBH providers (MHRS and Substance Use Disorder [SUD] services), and the SUD Prevention Centers.

3. **Authority.** The D.C. Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), Chapter 8 of Title 4 of the District of Columbia Municipal Regulations (DCMR) entitled “Compliance Rules and Regulations Regarding Gender Identity or Expression,” October 3, 2006; and the Department of Behavioral Health Establishment Act of 2013.

4. **Background.** Studies have shown that people who are transgender face disproportionate amounts of discrimination in all areas of life, especially in employment. The D.C. Human Rights Acts prohibits Gender Identity and Expression discrimination. DBH is committed to implementing the provisions of the D.C. Human Rights Act and creating an environment from free discrimination for its employees and consumers.

5. **Definitions.**

5a. Consumers - a person eligible to receive MHRS as defined in the District of Columbia Department of Behavioral Health Establishment Act of 2013.

5b. Client – a person admitted to an SUD treatment or recovery program and is assessed to need SUD treatment services or recovery services.

5c. Gender identity or expression - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

5d. Transgender - an adjective that refers to any individual whose identity or behavior differs from stereotypical or traditional gender expectations, including transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristic are perceived to be gender-atypical.

6. **Policy.** DBH and its provider network shall not discriminate on the basis of gender identity and/or expression and shall comply with this Policy. Examples of prohibited discrimination includes, but is not limited to, any conduct below based upon an individual’s gender identify or expression: (1) Refusal to provide any facility, service, program, or benefit; (2) Verbal or physical harassment; (3) Creating a hostile environment; or (4) Denying access to restroom

facilities and other gender specific facilities that are consistent with a person's gender identity or expression. The following is specific guidance on implementing the D.C. Human Rights Act:

- 6a. Restrooms and Gender-Specific Facilities (4 DCMR §§ 802, 805). Consumers/clients have the right to use gender-specific restrooms and other gender-specific facilities (e.g., dressing rooms) that are consistent with their gender identity or expression. Single occupancy restrooms must be gender-neutral and use gender-neutral signage, such as "Restroom." Rather than "Men" or "Women." It is important to note that even if a gender-neutral restroom is available, individuals must be able to use the restroom and other gender-segregated facilities (such as locker rooms).
- 6b. Dress and Grooming Standards (4 DCMR § 804). Providers shall not create or enforce a consumer dress and grooming standard that discriminates on the basis of gender expression and/or identity.
- 6c. Gender-specific facilities where nudity in the presence of others is customary (4 DCMR § 805) (e.g., Mental Health Community Residential Facilities [MHCRFs], Saint Elizabeths Hospital [SEH] and Comprehensive Psychiatric Emergency Program [CPEP]). Consumers/Clients shall be provided access to, and the safe use of, facilities that are segregated by gender. In gender-specific facilities where nudity in the presence of others is customary, the agency shall make reasonable accommodations to allow an individual access to, and the use of, the facility that is consistent with that individual's gender identity or expression, regardless of whether the individual has provided identification or other documentation of their gender identity or expression. Efforts shall be made to provide private spaces, through the use of curtains or partitions, to anyone that does not want to be fully nude in such open environments. Documentation or other proof of an individual's gender is not required, except in situations where all persons are asked to provide documentation, or other proof of their gender, for a reasonable business or clinical purpose.
- 6d. Recording of gender and name (4 DCMR § 806). DBH and providers shall not require consumers/ clients to state whether he or she is transgender. If any eligibility form asks for the consumer/client to identify as male or female, a consumer/client may choose the sex they identify with, rather than the consumer/client's assigned or presumed gender. A consumer/client may also choose to identify as neither male nor female. Such designations shall not be considered fraudulent or to be a misrepresentation for the purpose of denial of services. A consumer/client's giving of a name publicly and consistently (even when the name given is not the consumer/client's legal name, shall not be grounds for denial of services if the name given is consistent with the consumer/client's gender identity or expression. Where use of a person's legal name is required by law the consumer/client may be required to disclose it; however, failure to disclose a change of gender or name (unless specifically required as part of the eligibility process) shall not be considered grounds for disqualification for service or discharge from service.
- 6e. Confidentiality (4 DCMR § 807). Information regarding a consumer/client's gender transition or modification is confidential. Any information shared in a public setting, such as announcing the consumer/client's name in a waiting room must reflect the preferred name and pronouns of the consumer/client. Disclosure of gender identity or expression to others shall

only be with consent. DBH and its providers shall not ask irrelevant and unnecessary questions about gender identity or expression.

6f. Use of proper names and pronouns (4 DCMR§ 808). The consumer/client's desired name and pronouns shall be used when communicating and when talking about them to third parties. If an entity is unclear about which pronoun to use, the consumer/client shall be consulted on preference, e.g. him/her, she/he or they. DBH and providers must ensure through training, monitoring and enforcement of policies and use a transgender consumer/client's preferred names and pronouns, as repeated failure to do so can be considered harassment under the District of Columbia Human Rights Act.

6g. Prohibition on harassment and hostile environment (4 DCMR § 808). DBH and DBH contractors shall ensure that all harassment or actions that create a hostile environment based on gender identity or expression are strictly prohibited. The following behaviors may constitute unlawful harassment, or a hostile environment based upon an individuals' gender identity or expression:

- (1) Deliberately misusing a consumer/client's preferred name or gender-related pronoun;
- (2) Asking personal questions about a consumer/client's body, gender identity or expression, or gender transition;
- (3) Causing distress to a consumer/client by disclosing to others that the individual is transgender; and
- (4) Posting offensive pictures, or sending offensive electronic or other communications.

7. Responsibilities. DBH and certified providers and contractors shall:

7a. Adhere to all stated policies above.

7b. Post and communicate the District's regulations in visible places (Exhibit 1 - District Requirements in Public Accommodations - Gender Identity and Expression).

7c. Communicate to all employees about what type of behavior is lawful in consumer/client interface with regard to all forms of discrimination and harassment, including gender identity and expression.

7d. Provide culturally competent training and practices that promote dignity and respect of consumer/client.

8. Corrective/Disciplinary Action. Any violation of the law, this policy, or Chapter 18 of D.C. Personnel Regulations (Employee Conduct) may be cause corrective/disciplinary action of DBH employees. Any action taken may be in addition to any penalties prescribed by law, and in accordance with applicable laws and regulations, particularly D.C. Code (1981 ed.) § 1-617.1; and D.C. Office of Personnel policies, rules, and regulations. DBH supervisors shall consult with the Office of Human Resources, as needed.

Likewise, private behavioral health providers and contractors must take corrective/disciplinary action in accordance with their internal procedures and must comply with applicable laws and regulations.

9. Compliance. Each Provider shall:

9a. Establish and adhere to its own consumer/client rights policy regarding gender identity and/or expression.

9b. Follow the Provider Grievance Procedure established in accordance with Title 22-A DCMR § 306.

9c. Post the following telephone numbers and information for consumer/clients for filing complaints or concerns:

Consumer and Family Affairs Administration: (202) 673-4377
Ombudsman Contact Telephone Number: 1 (844) 698-2924
DC Office of Human Rights (OHR) complaint division website:
<https://ohr.dc.gov/service/file-complaint>.

9d. Inform consumers/clients that they have the option to initiate a grievance with any or all of several outside entities, including but not limited to the Office of Administrative Review and Appeals at the Department of Human Services, the U.S. Department of Health and Human Services and the District of Columbia's program for the protection and advocacy for persons with behavioral health issues.


10. Accountability. The DBH Consumer and Family Affairs Administration (CFAA) shall monitor the implementation of this policy.

11. Exhibit.

Exhibit 1 District Requirements in Public Accommodations – Gender Identity and Expression

Approved By:

**Tanya A. Royster, MD
Director, DBH**


(Signature) 4/28/2017
(Date)

District Requirements in Public Accommodations -
Gender Identity and Expression
- Fact Sheet -



Introduction

Transgender and gender non-conforming individuals living and working in the District of Columbia often face challenges when accessing or attempting to access a bathroom or other gender specific facilities, such as locker rooms, and showers. At times, these challenges can even escalate to violence. To protect against and prevent such obstacles, District law requires two things with regard to access to public facilities: (1) single-occupancy bathrooms must be gender-neutral; and (2) facility managers and personnel must respect a person's restroom choice based on their gender identification or expression. More broadly, gender identity and expression are protected traits under District law and this means that discrimination in employment, housing, public accommodations or educational institutions is prohibited in our city. This fact sheet provides an overview of the District of Columbia Human Rights Act and the accompanying regulations so that District agencies, offices, and contractors working within and/or on behalf of the District can better understand the legal requirements and ensure that individuals are treated fairly and in accordance with the law.

What does the DC Human Rights Act require?

Generally, the regulations implementing the District of Columbia Human Rights Act provide: "It shall be unlawful for any person or entity, including agencies of the District of Columbia government and its contractors, to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's actual or perceived gender identity or expression." 4 DCMR § 801.1. Specifically, it states that all single-occupancy restroom facilities must be gender neutral and use gender-neutral signage (i.e., replace "Men" or "Women" signs with "Restroom"). 4 DCMR § 802.2. Additionally, it requires that access to all facilities must be consistent with a person's gender identity or expression, not their assigned sex at birth. 4 DCMR § 802.1. This means that individuals must be permitted to use a facility of their choice in accordance with their gender identity or expression. For instance, if an individual, who identifies or presents themselves as a woman, wishes to use the Women's restroom, they must be permitted to do so even if the individual were to be perceived differently. Thus, under District laws, denying access to any restroom, or other gender specific facility that is consistent with a person's gender identity or expression, is unlawful.

Where does the law apply?

All District agencies, offices, and contractors working within and/or on behalf of the District must comply with the requirements under the Human Rights Act and the accompanying regulations¹. This means that all government buildings must allow individuals to use gender-specific restrooms and other gender-specific facilities that are consistent with their gender identity or expression.

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¹ Although this fact sheet is designed to provide District agencies, offices, and contractors with a better understanding of the District's prohibitions of gender identity and expression discrimination, it is important to note that these prohibitions reach far beyond District government facilities. As noted above, 4 DCMR § 801.1 provides that it shall be unlawful for any person or entity to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's actual or perceived gender identity or expression. For purposes of the District of Columbia Human Rights Act, "entities" include all employers, housing providers, public accommodations, and educational institutions, in addition to government agencies. See 4 DCMR § 899.1.

This also means that all single occupancy restrooms must be gender-neutral and use gender-neutral signage, such as "Restroom," rather than "Men" or "Women." Additionally, even if a gender-neutral restroom is available, individuals still maintain the right to use the restroom and other gender-segregated facilities that they identify with, and with which they are most comfortable. For example, individuals have the right to use the following facilities consistent with their gender identity or expression: **locker rooms, dressing rooms, including those located within District of Columbia Public Schools¹, homeless shelters, group homes, educational institutions, and District offices and bathrooms.**

Simply put, a person who identifies as, or presents as, a man should be permitted to use a men's restroom, and a person who identifies as, or presents as a woman, should be permitted to use a women's restroom. Refusing to allow individuals to use bathrooms or facilities that are congruent with their gender identity or expression is a form of discrimination under the District of Columbia Human Rights Act.

When must the laws be enforced?

All District agencies, offices, and contractors working within and/or on behalf of the District shall follow the requirements of the District of Columbia Human Rights Act at all times. See D.C. Code § 2-1401.01 et seq. Additionally, agencies, offices and contractors shall clearly and explicitly post and communicate District of Columbia's laws regarding gender identity or expression to all management, employees, and volunteers as required by the law. Such postings shall include notices setting forth the human right laws, the protections afforded to one's gender identity and expression, and information pertinent to the filing of a complaint. See D.C. Code § 2-1402.51; 4 DCMR § 801.2.

¹ For detailed information on the District of Columbia Public School's transgender and gender-nonconforming policies, please refer to the guidance released June 2015, found at: <http://dcps.dc.gov/publication/dcps-transgender-and-gender-non-conforming-policy-guidance>