



ADVANCING EXCELLENCE IN TRANSGENDER HEALTH

What Health Care Providers Need to Know about Transgender Legal Issues

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Transgender Legal Defense & Education Fund

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Roadmap

- Insurance Coverage
- Consent for Minors
- Name and Gender Changes
- Nondiscrimination Protections

Insurance Coverage

Getting trans-related care covered



Denials are illegal

Insurance should cover trans-related care.

There are many legal protections
available to challenge denials.



Trans Insurance Roadmap

**got insurance?
get trans surgery!**

video.transcendlegal.org

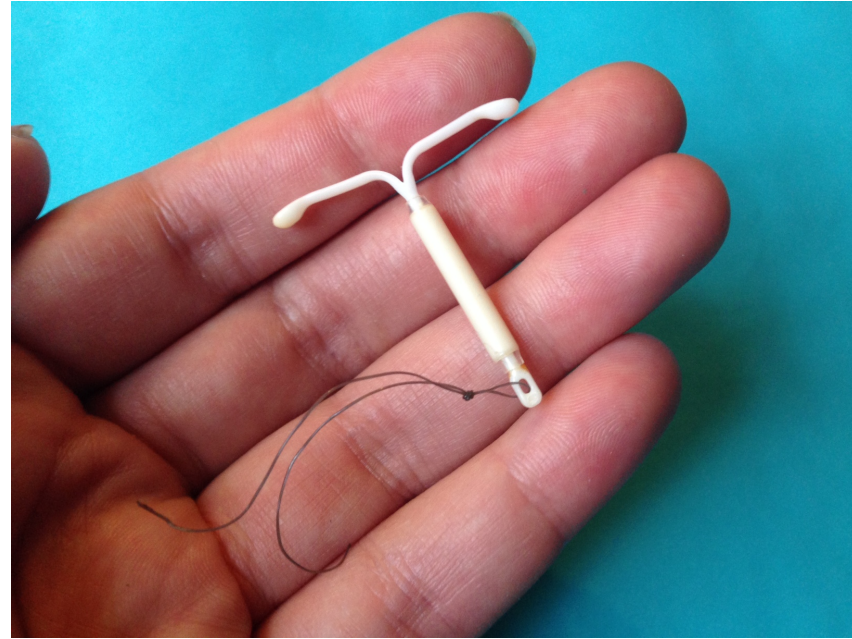
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Three main types of denials

1. Sex-specific care
2. Blanket exclusions for “sex change” surgery
3. Medical necessity denials

1. Sex-specific care

- DO change gender marker with insurance
- Submit claims with the correct sex
 - Medicare modifiers
 - Condition code 45
Modifier -KX
- Patient can call insurance company



Two types of health plans

Self-funded

- Large employers
- Governed by ERISA, which preempts state law

Insured

- State insurance law applies
- State where issued governs

States with insurance protections

- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Illinois
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Montana
- Nevada
- New Jersey
- New York
- Oregon
- Pennsylvania
- Rhode Island
- Vermont
- Washington

Explicit Medicaid coverage

- California
- Colorado
- Connecticut
- District of Columbia
- Hawaii
- Illinois
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Montana
- Nevada
- **New Hampshire**
- New Jersey
- New York
- Oregon
- Pennsylvania
- Rhode Island
- Vermont
- Washington
- **Wisconsin** (lawsuit pending)

Exclusion

11. Manipulative Treatment to treat a condition unrelated to spinal manipulation and ancillary physiologic treatment rendered to restore/improve motion, reduce pain and improve function, such as asthma or allergies;
12. physiological modalities and procedures that result in similar or redundant therapeutic effects when performed on the same body region during the same visit or office encounter;
13. sex transformation operations and related services;
14. the following treatments for obesity:
 - non-surgical treatment, even if for morbid obesity; and
 - surgical treatment of obesity unless there is a diagnosis of morbid obesity as described under *Obesity Surgery* in Section 6, *Additional Coverage Details*;
15. medical and surgical treatment of hyperhidrosis (excessive sweating);
16. the following services for the diagnosis and treatment of TMJ: surface electromyography; Doppler analysis; vibration analysis; computerized mandibular scan or jaw tracking; craniosacral therapy; orthodontics; occlusal adjustment and dental restorations; and
17. breast reduction surgery that is determined to be a Cosmetic Procedure.

This exclusion does not apply to breast reduction surgery which the Claims Administrator determines is requested to treat a physiologic functional impairment or to coverage required by the Women's Health and Cancer Rights Act of 1998 for which Benefits are described under *Reconstructive Procedures* in Section 6, *Additional Coverage Details*.



Exclusion



Prophylactic drugs for travel.

Refills over the amount specified by the **prescription** order. Before recognizing charges, **Aetna** may require a new **prescription** or proof as to need, if a **prescription** or refill appears excessive under accepted medical practice standards.

Refills dispensed more than one year from the date the latest **prescription** order was written, or as otherwise allowed by applicable law of the jurisdiction in which the drug is dispensed.

Replacement of lost or stolen **prescriptions**.

Drugs, services and supplies given in connection with treatment of an **occupational injury or occupational illness**.

Tobacco use: Any treatment, drug, service or supply to stop or reduce smoking or the use of other tobacco products or to treat or reduce nicotine addiction, dependence or cravings. This includes medications, nicotine patches and gum.

Strength and performance: Drugs or preparations, devices or supplies to enhance strength, physical condition, endurance or physical performance, including performance enhancing steroids.

Sex change: Any treatment, drug or supply related to changing sex or sexual characteristics, including hormones and hormone therapy.

Supplies, devices or equipment of any type, except as specifically provided in the *What the Plan Covers* section.

Test agents except diabetic test agents.



Exclusion



- assistance in the activities of daily living, including but not limited to eating, bathing, dressing or other Custodial Services or self-care activities, homemaker services and services primarily for rest, domiciliary or convalescent care.
- for or in connection with experimental, investigational or unproven services.

Experimental, investigational and unproven services are medical, surgical, diagnostic, psychiatric, substance abuse or other health care technologies, supplies, treatments, procedures, drug therapies or devices that are determined by the utilization review Physician to be:

- not demonstrated, through existing peer-reviewed, evidence-based, scientific literature to be safe and effective for treating or diagnosing the condition or sickness for which its use is proposed;
- not approved by the U.S. Food and Drug Administration (FDA) or other appropriate regulatory agency to be lawfully marketed for the proposed use;
- the subject of review or approval by an Institutional Review Board for the proposed use except as provided in the "Clinical Trials" section(s) of this plan; or
- the subject of an ongoing phase I, II or III clinical trial, except for routine patient care costs related to qualified clinical trials as provided in the "Clinical Trials" section(s) of this plan.
- cosmetic surgery and therapies. Cosmetic surgery or therapy is defined as surgery or therapy performed to improve or alter appearance or self-esteem or to treat psychological

have at least 50% bony support and are functional in the arch.

- medical and surgical services, initial and repeat, intended for the treatment or control of obesity, except for treatment of clinically severe (morbid) obesity as shown in Covered Expenses, including: medical and surgical services to alter appearance or physical changes that are the result of any surgery performed for the management of obesity or clinically severe (morbid) obesity; and weight loss programs or treatments, whether prescribed or recommended by a Physician or under medical supervision.
- unless otherwise covered in this plan, for reports, evaluations, physical examinations, or hospitalization not required for health reasons including, but not limited to, employment, insurance or government licenses, and court-ordered, forensic or custodial evaluations.
- court-ordered treatment or hospitalization, unless such treatment is prescribed by a Physician and listed as covered in this plan.
- **transsexual surgery including medical or psychological counseling and hormonal therapy in preparation for, or subsequent to, any such surgery.**
- any services or supplies for the treatment of male or female sexual dysfunction such as, but not limited to, treatment of erectile dysfunction (including penile implants), anorgasm, and premature ejaculation.
- medical and Hospital care and costs for the infant child of a Dependent, unless this infant child is otherwise eligible under this plan.

Exclusion

GEICO CORPORATION MEDICAL CHOICE PLUS/IN & OUT-OF-NETWORK PLAN

programs usually include intensive psychological support, behavior modification techniques, and medications to control cravings;

- chelation therapy, except to treat heavy metal poisoning;
- manipulative treatment to treat a condition unrelated to spinal manipulation and ancillary physiologic treatment rendered to restore/improve motion, reduce pain, and improve function, such as asthma or allergies;
- physiological modalities and procedures that result in similar or redundant therapeutic effects when performed on the same body region during the same visit or office encounter;
- sex transformation operations and related services, including reversal of a sex transformation operation;
- the following treatments for obesity:
 - non-surgical treatment, even if for morbid obesity; and
 - surgical treatment of obesity unless there is a diagnosis of morbid obesity as described under *Morbid Obesity Surgery* in Section 4, *Additional Coverage Details*;
- medical and surgical treatment of hyperhidrosis (excessive sweating);



Exclusion removed



Medical necessity denials

- Facial gender reassignment surgery
- Chest reassignment surgery for trans women
- Minors
 - Top surgery for trans men
 - Vaginoplasty for trans women
- Nonbinary individuals
- Medical transition without social transition
- Voice surgery, voice therapy
- Hair removal

Clinical criteria

Medical Coverage Policy



Effective Date..... 4/15/2018
Next Review Date..... 3/15/2019
Coverage Policy Number 0266

Treatment of Gender Dysphoria

Table of Contents

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Related Coverage Resources

[Blepharoplasty, Reconstructive Eyelid Surgery, and Brow Lift](#)
[Breast Reconstruction Following Mastectomy or Lumpectomy](#)
[Dermabrasion and Chemical Peels](#)
[Endometrial Ablation](#)
[Infertility Services](#)
[Male Sexual Dysfunction Treatment: Non- pharmacologic](#)
[Panniculectomy and Abdominoplasty](#)
[Preventive Care Services](#)
[Reduction Mammoplasty](#)
[Rhinoplasty, Vestibular Stenosis Repair, and Septoplasty](#)
[Redundant Skin Surgery](#)
[Speech Therapy](#)



Clinical criteria

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🔒 <https://transcendlegal.org/health-insurance-medical-policies>

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Transgender Insurance Medical Policies

Virtually all major insurance companies recognize that transgender-related medical care is medically necessary and have a written policy describing their criteria for when plans they administer will cover it. Below is a list of such policies.

The fact that an insurance company is listed below *does not* mean that your particular plan will follow these guidelines. You must look to your individual policy to determine if transgender care is covered or excluded. Only if it is covered will the policies below apply.

Items per page

25 ▾

Apply

Policy Issued By: [Aetna](#)

Medical Policy Title: [Gonadotropin-Releasing Hormone Analogs and Antagonists](#)

Policy Issued By: [Aetna](#)

Medical Policy Title: [Gender Reassignment Surgery](#)

Policy Issued By: [Amerigroup](#)

Medical Policy Title: [Gonadotropin Releasing Hormone Analogs for the Treatment of Non-Oncologic Indic...](#)

Clinical criteria - example

- Two referral letters from qualified mental health professionals, one in a purely evaluative role (see appendix); *and*
- Persistent, well-documented gender dysphoria (see Appendix); *and*
- Capacity to make a fully informed decision and to consent for treatment; *and*
- Age of majority (age 18 years and older); *and*
- If significant medical or mental health concerns are present, they must be reasonably well controlled; *and*
- Twelve months of continuous hormone therapy as appropriate to the member's gender goals (unless the member has a medical contraindication or is otherwise unable or unwilling to take hormones); *and*
- Twelve months of living in a gender role that is congruent with their gender identity (real life experience).

Clinical criteria



Table 4: Cosmetic and/or Not Medically Necessary

Procedure	CPT/HCPCS Code
Abdominoplasty	15847
Blepharoplasty	15820, 15821, 15822, 15823
Breast augmentation with implants	19324, 19325, 19340, 19342, C1789
Calf implants	17999
Cheek/malar implants	17999
Chin/nose implants	21210, 21270, 30400, 30410, 30420, 30430, 30435, 30450
Collagen injections	11950, 11951, 11952, 11954
Electrolysis	17380
Face/forehead lift	15824, 21137, 15825, 15826, 15828, 15829
Facial bone reduction (osteoplasty)	21209
Hair removal/hair transplantation	15775, 15776, 17380
Insertion of testicular prosthesis	54660
Jaw reduction	21120, 21121, 21122, 21223, 21125, 21127
Laryngoplasty	31599
Mastopexy	19316
Neck tightening	15825
Nipple/areola reconstruction (unrelated to mastectomy or post mastectomy reconstruction)	19350
Pectoral Implants	L8600, 17999
Removal of redundant skin	15830, 15832, 15833, 15834, 15835, 15836, 15837, 15838, 15839
Replacement of tissue expander with permanent prosthesis testicular insertion	11970
Rhinoplasty	21210, 21270, 30400, 30410, 30420, 30430, 30435, 30450
Scrotoplasty	55175, 55180
Skin resurfacing (e.g., dermabrasion, chemical peels)	15780, 15781, 15782, 15783, 15786, 15787, 15788, 15789, 15792, 15793
Suction assisted lipoplasty, lipofilling, and/or liposuction	15830, 15832, 15833, 15834, 15835, 15836, 15837, 15838, 15839, 15876, 15877, 15878, 15879
Testicular expanders, including replacement with prosthesis, testicular prosthesis	11960, 11970, 11971, 54660
Thyroid reduction chondroplasty	31750
Voice modification surgery	31599, 31899
Voice therapy/voice lessons	92507



Source of denial

Clinical criteria

- Not binding, can be overcome
- Can demonstrate medical necessity
- Use definition of medical necessity from the plan document

Plan document

- Legal action needed
- Will still be denied even if medical necessity proven
- Lack of individualized assessment is discrimination

Medical necessity example

Services, supplies or covered medications that a provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

- in accordance with generally accepted standards of medical practice; and
- clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the patient's illness, injury or disease; and
- not primarily for the convenience of the patient, physician, or other health care provider, and
- not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury or disease.

Good provider letters

- Sample letters
- List qualifications and trans-specific experience
- Get insurance company's criteria and hit all of them
- In accordance with WPATH Standards of Care
 - Explain deviations from Standards of Care or clinical criteria
- Say “medically necessary” not simply
 - Is ready for
 - Is the next step in their transition
- Will alleviate gender dysphoria

Good provider letters

- MHP: provide details of the symptoms and limitations
- Hormone provider:
 - Date started hormones
 - Hasn't changed body sufficiently to alleviate gender dysphoria
- Surgeon:
 - Purpose is to treat gender dysphoria (not improve appearance)
 - FFS & breast augmentation – that the characteristics will be changed from male to female

When to refer to an attorney

- If the medical policy indicates it will be denied
 - If a denial letter (preauthorization or post claim) cites a plan exclusion
 - If something is denied as not medically necessary
-
- Attorney involvement creates systemic change

Risks of provider appeals

- Judicial review is generally limited to the information the insurance company had in front of it
- Misapprehending the nature of the denial and delaying needed attorney involvement
- Do the peer-to-peer.

Legal protections

- Title VII (employer-based plans)
- Americans with Disabilities Act + Rehabilitation Act
- Title IX (education-based plans)
- Section 1557 of the Affordable Care Act
- OFCCP - federal contractors
- State insurance law & bulletins
- State nondiscrimination law
- Constitution (government-based plans)

Consent for *Minors*



Generally must be 18

- Alaska – any age if parents unwilling
- Informed consent standard
 - Arkansas
 - Idaho
 - Nevada – serious health hazard
 - Tennessee
 - West Virginia
- Delaware
 - Any disease if untreated threatens health of the minor
 - Reasonable efforts made to obtain parental consent

Generally must be 18

- Louisiana – any age
- Massachusetts
 - Mature minor
 - Only where “best interests . . . will be served by not notifying his or her parents of intended medical treatment.” *Baird v. Attorney General*, 360 N.E.2d 288 (1977).
- High school graduates
 - Montana
 - Pennsylvania
- Oregon – 15
- Alabama – 14

If neither parent is supportive

- Can go to court
- Guardian ad litem

When parents disagree

- Create a record of involving both parents
- Divorced – both usually retain medical decision making
- Can lead to a custody dispute



Both parents are supportive

- Inquire about unsupportive people in their lives
- Could be reported to child protective services



Safe folder

- <http://www.imatyfa.org/safe-folder.html>
- Letters
 - Pediatrician & other health care providers
 - Therapist
- Letters from friends/family/religious leader
- Drawings from child
- Pictures
- ID documents & name change order

Foster care

- Birth parents retain authority
- Foster parents cannot consent on their own
- State has an obligation to provide the care
 - Can override the lack of consent of the parents

Name and Gender Changes



Name changes - when

- As soon as someone settles on a permanent name
- Reversible

Name changes - why


- Only way to update name on identity documents
- Safety
- Privacy

Name changes - how

- File in court
- Minor cannot file on own
- Waiver of publication requirement
- Filing fees can be waived
- Have local referral for name changes

Clearinghouse

<http://www.transcendlegal.org/user/login>

 **TRANSGENDER
EQUALITY**
Celebrating 15 Years

About Transgender People ▾ Issues ▾ Know Your Rights ▾ ID Documents ▾ Take Action ▾ Blog

ID Documents Center | New Jersey

Welcome to our one-stop hub for name and gender change information. Find out how to get a legal name change where you live and update your name/gender on state and federal IDs and records.

How friendly is the driver's license gender change policy in your state?
[Check the grade we gave your state.](#)


Last updated May 2018

Name Change, Driver's License & Birth Certificate Policies in:

- Choose State/Territory - ▾

Federal IDs and Records:

- Choose - ▾



Transgender Legal Services Network
[Learn more →](#)

New Jersey Name Change Laws

To obtain a legal name change in New Jersey, an applicant must submit a petition to the court, including information about any convictions or pending charges. The applicant must publish notice of the petition once at least two weeks before the hearing date. After the judgment is issued, notice must be published in the newspaper and a copy of the judgment must be sent to the State Bureau of Identification. (NJ R SUPER TAX SURR CTS CIV R. 4:72-1 to 4:72-4). The New Jersey Courts provide instructions and forms for the name change process [here](#).

See LeGal and NCTE's [Name and Gender Change Guide for Residents of New Jersey](#) for more detailed information on the process.

Forms

[New Jersey Courts Instructions and Forms for the Name Change Process](#)

Resources

[Name and Gender Change Guide for Residents of New Jersey](#)
[Newark LGBTQ Free Legal Assistance Clinic](#)

Legal sex

- No such thing as “legal sex”
- Patchwork of identity document policies
- Judge-imposed

Legal sex

- J'Noel Gardiner
- *In re Estate of Gardiner*, 22 P.3d 1086 (2001)



Federal documents

- "Appropriate clinical treatment"
- Passport
- Social Security
- Immigration
- Consular report of birth abroad



Selective Service

- Trans women – required to register
- Trans men
 - Status information letter
 - Register if under 26

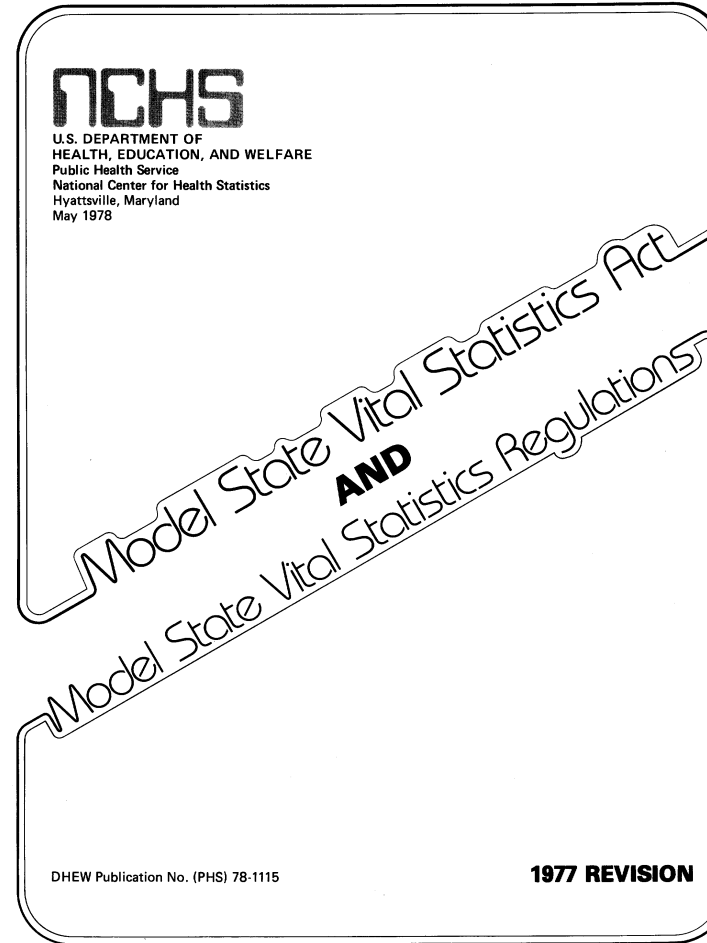


State ID / Driver licenses



- Most appropriate clinical treatment
- Some still surgery
- Youth – correct birth certificate first

Birth certificates



Birth certificates - court order

- **Alabama, Arkansas, Colorado, Georgia, Indiana, Louisiana, Missouri, Mississippi, New Hampshire, Northern Mariana Islands, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, Vermont, Wisconsin, and Wyoming**
- (Bold = proof of surgery required)

Birth certificates – provider letter

- Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Guam, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, New York City, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Washington, and West Virginia

Provider letter

- Appropriate clinical treatment
 - Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New York, New York City, Pennsylvania, Puerto Rico, Rhode Island, Vermont.
- Proof of surgery
 - Alaska, Arizona, Arkansas, Florida, Guam, Iowa, Kentucky, Maine, Michigan, Nebraska, New Mexico, North Carolina, North Dakota, West Virginia

Nonbinary & self-attestation

- Nonbinary option + self attestation
 - California
 - Washington
 - Oregon
 - New Jersey
- Self attestation (no nonbinary option)
 - Idaho
 - Montana
 - Nevada

No amendments

- Tennessee by statute
- Kansas and Ohio by agency policy

Nondiscrimination Protections



Employment discrimination

- In what states are trans people protected from employment discrimination?
- SCOTUS - *Harris Funeral Homes v. EEOC*

Employment discrimination

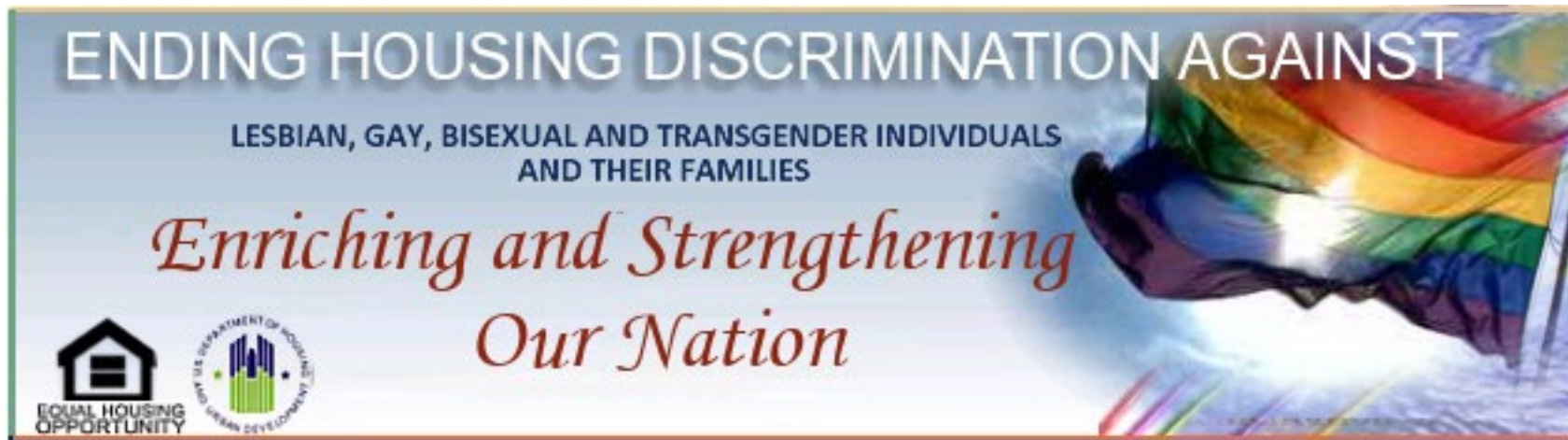
- Title VII - sex discrimination
- Americans with Disabilities Act
- State and local laws

- Encourage people to contact an attorney
 - Jillian Weiss jtweisslaw.com
- Deadlines to file (often 180 or 300 days)



Housing discrimination

- Federal Fair Housing Act
- State and local laws



Public accommodations

- Americans with Disabilities Act



Education discrimination



- Title IX
- Section 504
- State and local laws

Religious-based discrimination



Religious refusals - medical

- Conscience and Religious Freedom Division – HHS Office of Civil Rights
- Title VII – prohibits religious discrimination
 - Sincerely held religious belief
 - Reasonable accommodation
 - Undue hardship

Thank you!

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