



## Frequently Asked Questions: Health Insurance Protections for Transgender & Non-Binary Virginians

### What protections do transgender and non-binary Virginians have in healthcare settings?

As of July 1, 2020, the Virginia Values Act prohibits healthcare facilities, including hospitals and clinics, and their employees from discriminating against LGBTQ people in the care they provide because of a patient's sexual orientation or gender identity. In addition, the law bans discrimination on the basis of race, color, religion, status as a veteran, national origin, sex, marital status, pregnancy, or childbirth or related medical conditions including lactation.

In June 2020, the federal government rolled back explicit protections for LGBTQ people under the Affordable Care Act (ACA), although [legal experts assert](#) that the ACA still protects LGBTQ Americans thanks to the body of federal court case law interpreting sex discrimination protections to include sexual orientation and gender identity. Regardless, Virginians are protected in healthcare facilities by the Virginia Values Act.

### What do I do if I face discrimination in a healthcare setting?

Keep an up-to-date written record in a secure place regarding what happened, what was said, who witnessed it, and what the consequences were, along with copies of any written or electronic documents relating to the discrimination. Promptly contact an attorney. Equality Virginia (EV) has a [directory of LGBTQ-friendly lawyers](#) for your reference.

If you would like to file a complaint of discrimination, [you can use this form](#) with the Office of the Attorney General. For more information about the complaint process, [click here](#).

The Virginia Values Act empowers the [Virginia Division of Human Rights](#) to conduct investigations and issue recommendations when a person files a discrimination complaint with them. They can file suit on behalf of someone who complains. In addition, after filing a complaint with the Division of Human Rights, an individual can file suit against those who discriminated against them. In such a suit, they can obtain an order prohibiting the person sued from engaging in further discrimination or requiring other action, as well as compensatory and punitive damages, and attorney fees and costs.

### What protections do trans and non-binary Virginians have *in health insurance coverage*?

Delegate Danica Roem's [House Bill \(H.B.\) 1429](#), which went into effect on July 1, 2020, ensures that transgender and non-binary Virginians are protected from discrimination in *state-regulated* health insurance plans. This means:

- Health insurance companies cannot refuse to provide you coverage simply due to your gender identity or transgender status.
- Your health insurance plan must cover any medically necessary treatment for a transgender person, including transition-related care if it would cover that care for a cisgender person.
- They cannot deny you care simply because the treatment you need is not generally associated with your gender identity, the sex you were assigned at birth, or the gender marker listed with your healthcare provider or insurance company.

H.B. 1429 applies to the roughly 22% of health plans in Virginia that are state regulated. This generally includes ‘fully-funded plans,’ meaning private individual and group health plans that are **not** through an employer or school. Many other health plans are regulated by the federal government or other entities.

At the federal level, the ACA guarantees that you cannot be denied insurance coverage because of a pre-existing condition, including gender dysphoria or your transgender status. You also cannot be refused insurance or given worse insurance options due to your gender identity or transgender status. While the Trump Administration rolled back explicit protections for LGBTQ people under the ACA, [legal experts assert](#) that the ACA still protects LGBTQ Americans thanks to the body of federal court case law.

There are several other federal laws that protect transgender and non-binary people in health care and insurance. Visit the [National Center for Transgender Equality's page](#) for more information about federal legal protections in healthcare access.

### **What if I do not have health insurance?**

Visit [Healthcare.gov](#) to see what health insurance options are available for you, when you can enroll, and if you can get financial assistance to pay for insurance. You can also see if quality for other programs like Medicaid.

Visit [Out2Enroll.org](#) to help you understand your options, know what each health plan says about transition-related care, and find local LGBTQ-friendly resources where you can go to for help.

If you cannot get insurance through the ACA Marketplace, your employer or school, or a government program, you can [search for a free clinic near you](#).

### **What if I have Medicare or Medicaid?**

Medicaid is an insurance program run jointly by the federal and state government for those with a qualifying low income. It is illegal for Virginia Medicaid to not cover your medically necessary transition-related care under the ACA. However, there is no explicit state-level policy that ensures trans and non-binary Virginians have access to all medically necessary

transition-related care, and insurance companies providing plans through Virginia Medicaid have had exclusions for transition-related care. Therefore, you may have issues getting your transition-related care automatically covered. For more information about Medicaid, visit [Cover Virginia](#) or the [Virginia Department of Medical Assistance Services](#).

Medicare is an insurance program run by the federal government for adults over 65 and adults with disabilities. According to the National Center for Transgender Equality's [Medicare guide](#), it is illegal for Medicare to not cover your medically necessary transition-related care. For counseling and assistance with Medicare, visit the [Virginia Insurance Counseling and Assistance Program](#) for more resources.

### **How do I make sure I can access transition-related care?**

We highly recommend you consult the following comprehensive resources to get your transition-related care covered by your health insurance plan:

- The National Center for Transgender Equality (NCTE) [Health Coverage Guide](#)
- The Transgender Legal Defense and Education Fund (TLDEF) [Trans Health Insurance Guide](#)

An overview of the general process is below:

1. Find out what your plan says about transition-related care by consulting your member handbook. [Check out Transcend Legal's video](#) for more information about finding your benefits.
2. Find out if your plan is fully-insured or self-funded.
  - a. Self-funded plans include most insurance through your (or your parent's) employer - including most government employees - or your school. Check out [NCTE's guide](#) on accessing health care through a self-funded plan. If there is an exclusion in your plan, it may be more effective to talk to your employer or school about getting it removed rather than your health insurance company.
3. If your plan is fully-insured or you have confirmed your self-funded plan's coverage, you should apply for pre-authorization for any transition-related care. [Check out NCTE's guide](#) for more information on that process, including the [pre-authorization letter template](#) and [healthcare provider letters](#) to assist you and your healthcare provider in this process.
4. If your claim is denied by the insurance company, it is strongly recommended that you find a lawyer or clinic assisting with insurance appeals. You can also contact the [Transgender Legal Defense and Education Fund's Trans Health Project](#), and use Equality Virginia's [directory of LGBTQ-friendly lawyers in Virginia](#).

### **Why is my insurance company denying my care?**

The [Transgender Legal Defense and Education Fund's \(TLDEF\) Trans Health Project](#) has a comprehensive resource for reasons your insurance plan may not be automatically approving coverage for your medically necessary care, including the following causes:

- *Gender Marker Mismatches* - This often occurs with sex-specific care such as gynecological visits, contraception, or prostate exams. This can usually be resolved without going through the appeals process by talking to your doctor or insurance company.
- *Medical Necessity Denials* - The insurance company has denied you care by saying it is not medically necessary for you. To resolve this, you will have to gather evidence that it is medically necessary for you specifically.
- *Blanket Exclusion in Plan Document* - The insurance company has an exclusion in the plan document for all transition-related care so they will not cover care even if you prove medical necessity. [Contact TLDEF](#) if you come across this issue.
- *Targeted Exclusion in Plan Document* - The insurance company has an exclusion in the plan document for some transition-related care so they will not cover some care even if you prove medical necessity. [Contact TLDEF](#) if you come across this issue.
- *Care Sought Under a Different Diagnosis* - It is not recommended to seek transition-related care under a diagnosis other than gender dysphoria since the insurance company may cite their ban on transition-related care and not cover the care. [Contact TLDEF](#) before proceeding with a surgery that could be deemed to be transgender-related even if that is not the reason you need the surgery.

### **How do I file an appeal if I am denied care and could not resolve the issue?**

The [Transgender Legal Defense and Education Fund's \(TLDEF\)](#) Trans Health Project has a comprehensive resource about the appeals process, including the following avenues:

- Peer-to-peer appeals
- Internal appeals
- External appeals
- Fair hearings
- Civil rights complaints
- Talking to the employer
- Insurance division complaints

### **How do I file a complaint of discrimination if my insurance company denies me care due to my transgender status?**

If you would like to pursue a complaint due to health insurance discrimination, you have several options.

Above all else, keep an up-to-date written record in a secure place regarding what happened, what was said, who witnessed it, and what the consequences were, along with copies of any written or electronic documents relating to the discrimination.

Most insurance companies have internal Civil Rights Coordinators that you can speak to within 30 days of a denial or discriminatory incident. You can usually find their information in the denial

of care letter or by searching online by typing in “Civil Rights Coordinator” and the name of your insurance company.

If you have a fully-insured plan, meaning you have private individual or group insurance *not* through your employer or school (nor from your parent’s employer or school), then you have robust protections from anti-trans discrimination in Virginia through Delegate Roem’s House Bill 1429. You should consult the [Virginia State Corporation Commission’s Bureau of Insurance](#) (SCC BOI) to learn more about filing a complaint, including what the SCC BOI can and cannot do. You can call them at 1-877-310-6560 as well. Generally, the SCC BOI will contact your insurance company about the issue and then review their response. They will then use their regulatory power to resolve the issue or recommend actions you can take.

If you have a health insurance plan from the ACA Marketplace, Medicare, or Medicaid, you can [file a complaint through the Health and Human Services \(HHS\) Office of Civil Rights \(OCR\)](#). If you have Virginia Medicaid, you can also contact the [Department of Medical Assistance Services](#). If you have Medicare, you can also contact [Medicare.gov](#).

If you have a self-funded employer plan, meaning you get insurance coverage through your private employer (or your parent does), contact the [Department of Labor’s Employee Benefits Security Administration](#).

If you are a Commonwealth of Virginia employee, contact the [Virginia Department of Human Resource Management](#).

If you have military insurance, contact [Tricare.gov](#).

If you are a federal employee, contact the [U.S. Office of Personnel Management](#).

#### **Sources:**

[Transgender Legal Defense and Education Fund’s \(TLDEF\) Trans Health Project](#)  
[Virginia State Corporation Commission \(SCC\) Bureau of Insurance](#)  
[National Center for Transgender Equality \(NCTE\)](#)  
[Out2Enroll](#)  
[Virginia Values Coalition](#)  
House Bill [1429](#)

#### **Collaborators**

Thank you to the [Transgender Legal Defense and Education Fund \(TLDEF\)](#) for offering their expertise to review and provide feedback on this information sheet.

#### **About Equality Virginia**

Founded in 1989 as Virginians for Justice, Equality Virginia (EV) is the leading advocacy organization in Virginia seeking equality for lesbian, gay, bisexual, transgender, and queer

(LGBTQ) people. EV is building a fully inclusive Commonwealth by educating, empowering, and mobilizing Virginians to ensure all LGBTQ people are free to live, love, learn, and work.

For more information, check out [www.equalityvirginia.org](http://www.equalityvirginia.org) or reach out to [info@equalityvirginia.org](mailto:info@equalityvirginia.org).

**DISCLAIMER: This document provides general information only and should not be understood as providing legal advice regarding any person's specific situation. For guidance on your particular situation, you must consult a lawyer.**