



American Professional Agency



RISK MANAGEMENT



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CONSIDER THIS...

Your Patients' Gender Identity Matters

In the United States, approximately 150,000 youth (ages 13-17), identify as transgender.¹ The term "transgender," although often used by the public as a catchall term, actually refers to a subset of the greater gender diversity category of individuals who transiently or persistently identify with a gender different from their gender at birth.²

Transgender patients may experience gender dysphoria. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) "gender dysphoria" diagnosis includes separate specific criteria for children, adolescents and adults. Patients with gender dysphoria face extraordinary stigmatization, discrimination and victimization, including difficulties accessing healthcare and obtaining insurance coverage for treatment. The two primary treatment modalities used to treat gender dysphoria are cross-sex hormone therapy and gender reassignment surgery.³

Conventional healthcare treatment often does not address the specific needs of transgender patients, frequently leading to negative patient experience including, sometimes, negligent patient care. Understanding the specific clinical and psychosocial needs of transgender patients, along with applicable legal and ethical obligations can help psychiatrists ensure patient safety and mitigate potential liability exposures. This article addresses some of the issues psychiatrists may encounter when treating transgender patients undergoing sex hormone therapy and preparing for gender reassignment surgery.

Writing letters

Many surgeons and/or third party payers require that patients obtain documentation from a psychiatrist or other mental health provider confirming the patient's diagnosis of gender dysphoria, and that either they have been working with the patient for a period of time, or have seen the patient in consultation, prior to accepting a patient for gender assignment surgery. When assessing and drafting the requested correspondence, psychiatrists should avoid predicting specific clinical outcomes, and ensure their documentation reflects a thorough assessment of:

- Patient's decision-making capacity;
- Does patient meet the criteria for gender dysphoria; and
- Whether gender assignment surgery is an appropriate treatment to address the patient's gender dysphoria.

Medical Records

It is important that patient records accurately capture the patient's identifying information. If information is captured incorrectly or the patient is referred to in a manner other than specified, not only can it create confusion, but it can also create further distress and demonstrate insensitivity to the patient. Therefore, intake forms

should capture both the patient's legal name, as well as the name they prefer to be called. Further, gathering information under the category of sex should be a two-step process. First, it should list male or female for their birth sex, and second it should ask the patient how they identify, using the choices of male, female or other (please specify). Additionally, the medical records should specify this information at the beginning of the medical record so that the patient is referenced as requested at each visit.

Minors

When treating minors, remember that the age of consent varies between individual states. Thus, it is important to know the age of consent in your state in terms of what type of care a minor can provide consent for, and in terms of what information can be shared with parents/guardians.

Policies and Procedures

As always, it is important to develop office practice policies and procedures that are consistent with federal/state laws and standards of care. When treating transgender individuals, office policies and procedures should include additional information regarding:

- Pertinent ADA issues;
- HIPAA/privacy training;
- Sensitivity training, for office staff;
- Identifying patients by the name/pronouns listed on the intake form and provided in the medical record; and
- Items that will incur a charge (including amount). For example, will you charge a fee for writing a letter or completing paperwork required by other providers, payors, etc., as part of the gender reassignment surgery process?

Anti-discrimination Laws

It is also important to understand the relationship between federal/state anti-discrimination laws and a patient's diagnosis. For example, although the Americans with Disabilities Act (ADA) specifically excludes protection for issues involving gender identity, courts have found the ADA provides protections for medical conditions resulting from gender identity issues. Therefore, a person who is transgender is not deemed disabled under the ADA because they are transgender. However, a transgender person experiencing gender dysphoria may receive protection under the ADA, and/or state anti-discrimination laws.

Conclusion

All patients should be treated equally regardless of sex, gender identity or sexual orientation. Being sensitive to the patient's identity and needs can go a long way toward limiting potential liability exposures, as well as maintaining a good relationship with the patient and providing a positive outcome in care.

¹ Source: Chokshi, N., One in Every 137 Teenagers Would Identify as Transgender, Report Says, NY Times, Feb, 23, 2017, <https://www.nytimes.com/2017/02/23/us/transgender-teenagers-how-many.html>.

² American Psychiatric Association, "What is gender dysphoria," (<https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>).

³ American Psychiatric Association, "What is gender dysphoria," (<https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>).

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