



WHITMAN-WALKER HEALTH

Mailing Address:

Whitman-Walker at LIZ
1377 R Street, NW, Suite 200
Washington, DC 20009

BEFORE THE MARYLAND SENATE COMMITTEE ON FINANCE

Testimony of Whitman-Walker Health in Support of Senate Bill 738 Health Care Providers and Health Benefit Plans – Discrimination in Provision of Services February 26, 2020

Whitman-Walker Health (WWH or Whitman-Walker) is pleased to offer these comments in support of Senate Bill 738, which would prohibit discrimination by hospitals, regulated health insurance providers and plans, and licensed or regulated health care providers.

Whitman-Walker is a community-based, nonprofit health care center offering health care and health and wellness-related services to residents of the greater Washington, DC metropolitan area, including the nearby Maryland counties and Virginia counties and cities. We offer primary medical care and HIV specialty care; mental health and addiction treatment services; dental care; medical adherence case management; testing and prevention services for HIV and sexually transmitted infections; and legal services. In calendar year 2018, our health care patients included 3,616 Maryland residents.

Whitman-Walker's patient population is quite diverse and reflects our commitment to be a health care home for individuals and families that have experienced stigma and discrimination, or have otherwise encountered challenges in obtaining affordable, high-quality health care. WWH has a special mission to serve lesbian, gay, bisexual, transgender and nonbinary, and queer or questioning (LGBTQ) individuals and families throughout the metropolitan area. In calendar year 2019, 60% of our health care patients and clients who provided their sexual orientation identified as lesbian, gay, bisexual, or otherwise non-heterosexual. Of these patients, 1,667 individuals were residents of Maryland. This was 61% of our total Maryland patients who provided their sexual orientation.

Whitman-Walker is a major provider of health care to transgender and nonbinary persons in the Mid-Atlantic – and in the entire nation. In 2019, our health care patients included 2,148 transgender and nonbinary persons – 10% of our entire patient population. Twenty-six percent of our transgender and nonbinary patients – 556 individuals – were Maryland residents. Our reputation as a welcoming medical home for persons of every gender and sexual orientation, and our expertise in gender-affirming care, attracts patients not only from Maryland, Virginia and the District of Columbia, but also from Delaware, Pennsylvania and West Virginia.

Whitman-Walker Legal Services was established in 1986 to provide pro bono legal assistance on matters related to HIV/AIDS, and today offers assistance to LGBTQ individuals and families regardless of HIV status, and to health care patients at WWH regardless of HIV status, sexual orientation, and gender identity. We provide legal representation on a wide range of issues including discrimination in employment and health care; federal, state and local public benefits programs; disability insurance; immigration; medical confidentiality; and name and gender marker changes in legal records for transgender and nonbinary individuals. The work of WWH Legal Services is critical to the health center's mission of providing comprehensive, integrated health care and related services to people living with HIV, the LGBT community, and others who rely on WWH for health care. Our Legal Services attorneys and paralegals are experts in transgender law. In calendar year 2019, we provided legal advice and assistance to 545 clients who identified as transgender, nonbinary, genderqueer or otherwise as non-cisgender – 21% of our total legal clients. One hundred thirty of those individuals – 24% of all our non-cisgender legal clients – were Maryland residents. Of the legal clients living in Maryland who provided information about their sexual orientation, 62% identified as gay, lesbian, bisexual or otherwise not heterosexual – 191 individuals.

Whitman-Walker also has a vibrant research arm that has investigated LGBTQ health and wellness issues, as well as research into HIV treatment and prevention, for many years.

Whitman-Walker strongly supports Senate Bill 738, which would clearly prohibit discrimination by hospitals, licensed or otherwise regulated health care providers, and regulated health insurance providers and plans because of race, color, national origin, religion, sex, age, disability, genetic information, sexual orientation, gender identity or marital status. Such discrimination is not only harmful to the individuals and families directly affected, but also harmful to the public health, and exacerbates the health disparities that continue to warp our society and health care system. Our testimony here is focused on the need for laws addressing health care and health insurance discrimination against LGBTQ individuals and families.¹

¹ Section 1557 of the federal Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability, by health care institutions, providers and health plans that receive federal financial assistance. However, the applicability of the federal statute to discrimination based on sexual orientation and gender identity is currently unsettled – in large part due to the hostility of the Trump Administration. Moreover, Senate Bill 738 has a significantly broader reach – it would apply to many institutions, providers and health plans regardless of federal funding, and would reach forms of discrimination not addressed by ACA Section 1557.

Discrimination by health care institutions, providers and staff. Sadly, discrimination by health care providers, staff and institution against LGBTQ people continues to be pervasive.² Discrimination, and fear of discrimination which discourages LGBTQ people from seeking health care, contributes to the many health disparities that LGBTQ people live with, including higher rates of depression, anxiety and other mental health challenges; delays in detecting cancers and other serious health issues, and poorer treatment outcomes; higher rates of sexually transmitted diseases; eating disorders and weight issues; and untreated substance abuse issues, which create risks of heart, lung and liver disease, hypertension, and certain cancers.³

Whitman-Walker physicians, nurses and other medical providers, therapists and counselors, attorneys and paralegals, hear many accounts from LGBTQ patients and legal clients of discriminatory experiences in hospitals, clinics, doctors' offices and other health care settings. These experiences are not only offensive and upsetting to our patients and clients; they also are damaging to health. Discriminatory incidents delay or deny needed health care, and discourage LGBT individuals from seeking care and from fully disclosing personal information that health care providers need for proper diagnosis and treatment. Patients come to Whitman-Walker sicker than they would otherwise be; their negative experiences outside Whitman-Walker make them distrustful of health care providers and reluctant to fully engage in treatment; and also make it more challenging for Whitman-Walker providers to make appropriate referrals for specialty care that we do not provide.

² For surveys of experiences of LGBT patients with health care providers, see, e.g.:

- James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M, *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality (2016), available at <http://www.ustranssurvey.org/report>, pp. 96-99, 108-11.
- National Senior Citizens Law Center *et al.*, *LGBT OLDER ADULTS IN LONG-TERM CARE FACILITIES: STORIES FROM THE FIELD* (2011), available at <HTTP://WWW.LGBTAGINGCENTER.ORG/RESOURCES/RESOURCE.CFM?R=54>.
- *When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV* (2010), available at www.lambdalegal.org/health-care-report.

³ See, e.g.:

- Institute of Medicine, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* (2011), available at <https://www.ncbi.nlm.nih.gov/books/NBK64806>, pp. 62-66, 75.
- The Joint Commission, *ADVANCING EFFECTIVE COMMUNICATION, CULTURAL COMPETENCE, AND PATIENT- AND FAMILY-CENTERED CARE FOR THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) COMMUNITY: A FIELD GUIDE* (2011), available at <https://nursing.uiowa.edu/sites/default/files/documents/diversity/LGBTFieldGuide.pdf>, pp. 1, 2, 22-23.

Among the many recent incidents reported by our medical, behavioral health and legal services providers are the following:

- Whitman-Walker was recently contacted by a transgender woman suffering from painful tonsillitis. She wanted treatment but knew of no hospital or facility other than Whitman-Walker where she could go without being disrespected and poorly treated.
- Transgender couples seeking information about their options for pregnancy have been turned away from area fertility clinics and told that their services were not available for people like them.
- Transgender patients of Whitman-Walker have been refused when they attempted to fill prescriptions for hormones prescribed to assist in their gender transition at non-WWH pharmacies. Gay male patients seeking to fill prescriptions for Truvada for Pre-Exposure Prophylaxis (PrEP) to prevent HIV transmission during sex have also been refused by some area pharmacies.
- Local hospitals and surgeons have refused to perform gender-transition-related surgeries on Whitman-Walker transgender patients, even when they routinely perform the procedures in question on non-transgender patients, including in situations where the patient's insurance would cover the procedure or when the patient was able to pay for the procedure. This has happened with orchiectomies, breast augmentations, and breast reductions – procedures which are routinely performed for treatment of cancer or for other reasons not related to gender identity.
- Our providers have seen situations in which teenagers who are transgender or gender-nonconforming have presented at local hospitals with symptoms for which hospitalization was indicated, but their hospitalization was delayed and even denied because hospital personnel took them less seriously than they took other young people with similar presentations who were not transgender.
- Our behavioral-health providers who regularly interview our transgender patients to assess their stage of gender transition and readiness for gender-affirming surgical procedures, or who provide psychotherapy for these patients, report that the large majority of the patients they meet with – as many as four out of every five – report incidents of mistreatment or discrimination by health care providers and staff at hospitals, other clinics, doctor's offices, and other facilities.
- Whitman-Walker behavioral health staff often receive calls or other communications from LGBT persons expressing desperation about finding a therapist or substance use professional who will not discriminate against them because of their sexual orientation or gender identity.

Our patients also report discriminatory incidents in addition to sexual orientation and gender identity discrimination. Whitman-Walker has a number of patients whose primary language is Spanish and who lack English proficiency. Our providers have patients who, in hospital and medical clinic settings, were refused Spanish language interpreters, even when such interpreters were available in the facility, because the provider or other staff thought that the patient ought to know English, or because of bias against immigrants. Patients in these situations have had difficulty understanding their diagnosis and /or treatment plan, greatly increasing risk of a negative result and harm. Senate Bill 738's prohibition of discrimination based on national origin, race and color would help put a stop to such incidents.

Discrimination by health insurers and health plans. Whitman-Walker medical and behavioral health providers, care navigators and attorneys assist hundreds of transgender patients every year to navigate private health plans, Medicaid, and Medicare to obtain the gender-affirming services that they need – including a wide range of surgical procedures and hormone therapy. Many private and public plans continue to resist coverage of medically necessary procedures – if not through blanket exclusions of “sex change” or “sex transition” procedures, then through denials of coverage of specific procedures. For instance, many plans that do not contain blanket exclusions of all “sex reassignment” procedures still exclude many essential types of surgeries related to gender transition, including facial or chest surgery, and plans that are more inclusive commonly exclude revision work (labiaplasty and glans reconstruction). In addition, many insurers deny coverage of other specific treatments needed to complete an individual's transition on grounds that the procedure is “cosmetic” – either by relying on general plan language excluding cosmetic procedures or concluding that a procedure is not medically necessary. In many cases, plans specifically exclude procedures that are routinely considered cosmetic for most cisgender persons, but may be part of a medically recognized course of treatment for a transgender person. Examples of such procedures, which are categorically excluded as “cosmetic” in many plans and by many utilization reviewers, include:

- Surgeries of the head and face, such as hair transplant, scalp advancement, brow reduction, lip reduction or augmentation, rhinoplasty, cheek and chin contouring, jawline modification, blepharoplasty, and other facial reconstruction procedures for transgender people.
- Laser hair removal and electrolysis, on the face and elsewhere on the body.
- Surgeries involving the neck, such as cartilage reduction (modification of the Adam's Apple) and vocal cord surgery.
- Breast augmentation, mastectomy, and chest reconstruction (including nipple reconstruction).

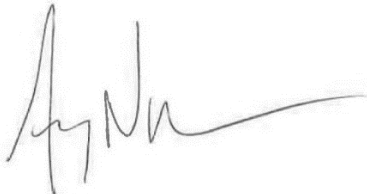
- Other body contouring procedures, such as waist reduction, hip/buttocks implants, fat transfer, and pectoral implants.
- Multiple-staged phalloplasties and other surgical procedures.
- Lessons/training to modify the vocal range.
- Reproductive procedures, such as cryopreservation.

Although Whitman-Walker lawyers and providers are sometimes able to obtain reversals of coverage denials through negotiation or appeals to the Maryland Insurance Administration, the process is lengthy and uncertain. A clear statutory nondiscrimination mandate would be very helpful for our transgender patients and legal clients and would provide needed guidance to Maryland health plans and insurers.

In conclusion, Senate Bill 738 is a major step forward in ensuring that all Marylanders have access to nondiscriminatory health care and health insurance coverage. We urge this Committee, and the Senate, to promptly approve it.

Thank you for this opportunity to offer our views. We would be happy to provide additional information or to assist the Committee in any other way.

Respectfully submitted,



Amy Nelson, JD
Director of Legal Services
202-939-7625
anelson@whitman-walker.org



Daniel Bruner, JD, MPP
Senior Director of Policy
202-939-7628
dbruner@whitman-walker.org