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WEALTH MANAGEMENT

# Transgender adults face daunting challenges in financial, legal and estate planning

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No discussion of diverse clientele and modern families would be complete without discussing the challenges facing the transgender community, but those challenges largely fall outside the traditional framework of planning. In this paper we address these practical—and fundamental—challenges before turning to a discussion of more traditional planning topics. Because transgender persons are far more likely to be marginalized, that discussion is not at the forefront of our examination of topics relevant to this community.

# Millions of transgender and non-binary adults<sup>1</sup> in the United States face obstacles that are not generally understood<sup>2</sup>

The US Census Bureau Household Pulse Survey has recently estimated that approximately 1.03% of the nation's adult population identifies as transgender<sup>3</sup>, equivalent to approximately 2.6 million Americans.<sup>4</sup> Financial instability in this community is widespread, with transgender persons much more likely to live in extreme poverty.<sup>5</sup> It is likely that stigma and discrimination—both in private biases and also in legally-sanctioned discrimination enacted and/or protected through state and local laws—play significant roles in this disparity.<sup>6</sup> Most Americans are unaware that transgender people face widespread discrimination in employment settings, in housing, in health care, in the extension of credit, and critically, in the refusal of certain government agencies at various levels to

issue essential identity documents that conform to the individual's gender identity rather than the gender assigned at birth.<sup>7</sup> Many state and local governments have targeted transgender persons with hundreds of new laws in recent years, each of which creates even greater uncertainty and instability for members of this community.<sup>8</sup> Recent studies found that over 40% of transgender Americans have considered moving to another state to escape legislative persecution.<sup>9</sup> Short of relocation, transgender Americans and their allies can consider some practical steps that can mitigate some—but not all—of the significant challenges that transgender individuals face.

<sup>1</sup> Editor's Note: Solely for clarity of discussion, this publication will use the term "transgender" to refer to persons who identify as transgender and/or non-binary (and/or "genderqueer," "genderfluid," "gender non-conforming," "gender diverse" or "gender expansive"). The authors recognize that the experiences of these persons who so identify are not monolithic and that language is subjective, evolving and imprecise. It is essential to trust, honor and respect the words that transgender and non-binary persons use to describe their own genders and experiences.

<sup>2</sup> Editor's Note: This publication addresses the financial and legal challenges of transgender and non-binary adults in the United States and specifically reserves discussion of the significant challenges facing transgender and non-binary minors, which are just as worthy of examination, but beyond the scope of this publication.

<sup>3</sup> <https://usafacts.org/articles/what-percentage-of-the-us-population-is-transgender/>; August 2023

<sup>4</sup> Researchers from different agencies and institutions – both governmental and private – vary in their estimates of this demographic population. See, e.g., the Williams Institute at UCLA Law estimating this population at 1.3 million, <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>; Pew Research estimating this population at 1.6 million, <https://www.pewresearch.org/short-reads/2022/06/07/about-5-of-young-adults-in-the-u-s-say-their-gender-is-different-from-their-sex-assigned-at-birth/>; June 2022

<sup>5</sup> <https://news.vanderbilt.edu/2020/04/13/transgender-americans-experience-significant-economic-health-challenges-study/>; April 2020

<sup>6</sup> <https://news.vanderbilt.edu/2020/04/13/transgender-americans-experience-significant-economic-health-challenges-study/>; April 2020

<sup>7</sup> <https://williamsinstitute.law.ucla.edu/publications/qol-tgi-los-angeles/>; <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; February 2015

<sup>8</sup> <https://www.dataforprogress.org/blog/2023/6/8/lgbtq-adults-do-not-feel-safe-and-do-not-think-the-democratic-party-is-doing-enough-to-protect-their-rights>; June 2023

<sup>9</sup> <https://www.dataforprogress.org/blog/2023/6/8/lgbtq-adults-do-not-feel-safe-and-do-not-think-the-democratic-party-is-doing-enough-to-protect-their-rights>; June 2023

# Inaccurate identity documents are an acute foundational problem with multiple negative consequences

Because of procedural complexity and expense, hundreds of thousands of transgender persons in the US do not have a single piece of official identification (birth certificate, passport, driver's license, Social Security card, military or veterans identification, etc.) that correctly identifies their gender identity or chosen name.<sup>10</sup> Having accurate government-issued identity documents is undeniably essential to many aspects of everyday American life, including:

- applying for school or a job
- finding a place to live
- exercising the right to vote
- boarding a plane
- crossing an international border<sup>11</sup>
- registering or driving a car
- or in some cases, even paying with a credit card



Indeed, presenting inaccurate identification in such contexts can subject transgender persons to unfair discrimination, harassment, invasive security screenings, detention, physical violence and can negatively impact mental health.<sup>12</sup> Many people – including many within the broader LGBTQ+ population – have never even thought what their lives would be like to lack identity documents that accurately reflect one's expressed gender identity or chosen name. Such documents traditionally only identify one's birth name and one's gender as assigned at birth.

<sup>10</sup> <https://williamsinstitute.law.ucla.edu/publications/gender-marker-policies/>; June 2021

<sup>11</sup> <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; February 2015

<https://williamsinstitute.law.ucla.edu/publications/x-gender-markers-passports/>; March 2022

<https://transequality.org/issues/identity-documents-privacy/>; <https://legacy.lambdalegal.org/know-your-rights/article/trans-identity-documents>

<sup>12</sup> <https://williamsinstitute.law.ucla.edu/publications/gender-marker-policies/>; June 2021

<https://transequality.org/issues/identity-documents-privacy/>; <https://legacy.lambdalegal.org/know-your-rights/article/trans-identity-documents>



### AS EXAMPLES:

- If one’s identity documents do not conform to one’s external gender expression, that person could be denied the constitutional right to vote by poll workers.<sup>13</sup>
- Without accurate identity documents, transgender persons are routinely targeted for additional security screening—often invasive—at TSA checkpoints. 26% of transgender persons with incorrect gender identity on their driver’s license have been pulled aside by TSA agents for secondary questioning and inspections.<sup>14</sup>
- Without accurate identity documents, one could be harassed, arrested or imprisoned for using a restroom or other sex-segregated space demarcated for persons whose gender identity is the same as their gender assigned at birth<sup>15</sup>
- Transgender persons applying for jobs share a pervasive fear that a prospective employer will react negatively when inaccurate identification documents are reviewed as part of routine employment verifications.<sup>16</sup>
- Lower-income transgender persons who lack accurate identity documents (a disproportionately large percentage of this population) are understandably reluctant to seek public assistance in the form of housing assistance, nutritional assistance, job training or other government-sourced benefits because of the legitimate fear of discrimination by government officials.<sup>17</sup>

The practice of “deadnaming” is also not generally understood. Without accurate identity documents, transgender persons are frequently referred to or addressed—intentionally<sup>18</sup> or not—by their “deadname,” the name a transgender person was assigned at birth but no longer wishes to use. When others use this name or misgender the individual, it can resurrect past trauma, cause stress, embarrassment or put the transgender person in physical danger by exposing them to harassment or violence.<sup>19</sup>

<sup>13</sup> <https://williamsinstitute.law.ucla.edu/publications/trans-voter-id-impact/>; September 2022

<sup>14</sup> <https://williamsinstitute.law.ucla.edu/publications/gender-marker-policies/>; June 2021

<sup>15</sup> [https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom\\_bans](https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans); August 2023

<sup>16</sup> <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; February 2015

<sup>17</sup> <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; February 2015

<sup>18</sup> Intentionally addressing a transgender person by their gender assigned at birth is known as “misgendering.” <https://www.health.harvard.edu/blog/misgendering-what-it-is-and-why-it-matters-202107232553>

<sup>19</sup> Gaskins LC, McClain CR. Visible name changes promote inequity for transgender researchers. *PLOS Biology*. 2021; 19(3):e3001104.

# Correcting name and gender marker on identity documents is complicated, expensive, time-consuming, and in some cases, impossible

The policies and procedures for changing one’s name or gender marker on identity documents vary widely from state to state, county to county, and sometimes can vary case to case depending on which judicial official is assigned. Many states require a complete invasion of personal privacy (mandating public disclosure of proof of surgery or other medical interventions) to correct identity documents—interventions that are frequently financially unfeasible to obtain or not even desired by the transgender individual. To illustrate the complexity, consider the three most common identity documents and how each is handled differently:

## » UNITED STATES PASSPORT

The US State Department has adopted among the most simple and progressive policies regarding correcting gender markers of any country in the world. In June 2021, the US State Department announced that it would no longer require passport applicants to submit medical certification to change the gender marker on their passports.<sup>20</sup>

Previously, applicants required a physician certification of “appropriate clinical treatment for gender transition.” And as of 2022, non-binary applicants may self-select an M, F or X gender marker if they so choose and it does not need to match the applicant’s identification or citizenship documents.<sup>21</sup> However, these policy changes are administrative, not statutory, and can be easily reversed by a future administration.



<sup>20</sup> <https://www.state.gov/proposing-changes-to-the-departments-policies-on-gender-on-u-s-passports-and-consular-reports-of-birth-abroad/>; June 2021

<sup>21</sup> <https://travel.state.gov/content/travel/en/passports/need-passport/selecting-your-gender-marker.html>; 2023

» **BIRTH CERTIFICATE**

Depending on the state, correcting one's gender marker on a birth certificate can be among the most difficult processes to undertake, if it is legally permissible at all.<sup>22</sup> As of 2022, most states and territories have an informal administrative process for correcting the birth certificate gender marker,<sup>23</sup> but about one-third of states require a formal court order,<sup>24</sup> and 2 states, Tennessee and Ohio, do not allow amendments of the birth certificate gender marker at all.<sup>25</sup> When a change is permitted, the proof required to obtain the gender marker change varies widely. Of the various US states and territories, approximately 10 do not require the signature of any medical provider,<sup>26</sup> but approximately 15 require proof of medically "appropriate treatment" (no surgery),<sup>27</sup> approximately 16 require proof of surgery,<sup>28</sup> and twelve have no official policy and simply leave it to the discretion of the judicial officer assigned to the case.<sup>29</sup> For the non-binary community, only a small minority of states allow for a gender-neutral designation on the birth certificate, typically "X."<sup>30</sup> And these processes are in a near-constant state of modification as various state legislatures target the transgender and non-binary communities.

» **DRIVER'S LICENSE**

Correcting the gender marker on one's driver's license is, in most places, somewhat easier than correcting a birth certificate. As of July 2021—on one end of the continuum—approximately 20 states and the District of Columbia do not require any certification from a medical provider with the application and allow a gender-neutral option.<sup>31</sup> On the other end of the continuum, ten states and territories require proof of surgery, a court order of gender change or an amended birth certificate.<sup>32</sup> Again, these processes are constantly subject to change.



<sup>22</sup> <https://legacy.lambdalegal.org/know-your-rights/article/trans-changing-birth-certificate-sex-designations>; September 2018

<sup>23</sup> <https://transequality.org/sites/default/files/images/Summary%20of%20State%20Birth%20Certificate%20Laws%20Apr%2028%202020.pdf>; April 2020

<sup>24</sup> Id.

<sup>25</sup> Id. Tennessee's prohibition is by statute; Ohio's is by current agency policy.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id. The American Medical Association (AMA), the nation's largest physician organization, called in 2014 for "modernizing" birth certificate policies by eliminating surgery requirements. <https://legacy.lambdalegal.org/know-your-rights/article/trans-identity-document-faq>

<sup>29</sup> <https://transequality.org/sites/default/files/images/Summary%20of%20State%20Birth%20Certificate%20Laws%20Apr%2028%202020.pdf>; April 2020

<sup>30</sup> Id.

<sup>31</sup> [https://transequality.org/sites/default/files/Drivers%20License%20Grades%20July%202021a\\_0.pdf](https://transequality.org/sites/default/files/Drivers%20License%20Grades%20July%202021a_0.pdf); July 2021

<sup>32</sup> Id.

**SUGGESTIONS:**

- » Because of the ease of making the change, transgender persons should consider updating their US Passport book or card<sup>33</sup> immediately and use that document as primary identification. Passport books and cards are valid for 10 years, even if a future administration changes the policies.
- » Consider applying for a formal name change through state courts. Consult the “ID Document Center” web site at the National Center for Transgender Equality for specific up-to-date information about particular state policies and procedures and to find local resources such as free legal clinics.<sup>34</sup>
- » Even when court involvement is not required for changing documents, transgender persons should consider applying for a court order declaring a change of gender for additional protection from uncooperative government officials who may be more likely to relent when presented with a court order.<sup>35</sup>
- » With a court order changing one’s name, transgender persons should update both name and gender with the Social Security Administration by submitting an application for a new Social Security Card and providing the name change order from the court. No additional documentation is required to update your gender with the SSA.<sup>36</sup>



<sup>33</sup> The US State Department issues both Passport Books and Passport Cards. Passport Cards cost less than Passport Books, but cannot be used for international travel other than physically crossing land borders with Mexico or Canada, or sea entry from the Caribbean or Bermuda.  
[https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Book%20vs%20Card%20\\_ENG\\_2022.pdf](https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Book%20vs%20Card%20_ENG_2022.pdf)

<sup>34</sup> <https://transequality.org/documents>; <https://legacy.lambdalegal.org/know-your-rights/article/trans-changing-your-documents-resources>; November 2023

<sup>35</sup> <https://legacy.lambdalegal.org/know-your-rights/article/trans-identity-document-faq>

<sup>36</sup> <https://faq.ssa.gov/en-us/Topic/article/KA-01453>; October 2022



# Finding a supportive employer is critical for transgender persons

In recent years, courts in the United States have held that transgender persons cannot be fired or discriminated against in the workplace based on their gender identity. Nevertheless, transgender persons should make a concerted effort to obtain employment with an employer that expressly values and protects transgender employees, both for employment security purposes as well as the substantial monetary value of employee benefits that may be available through such employers.

On June 15, 2020, the United States Supreme Court held in *Bostock v. Clayton County* that an employer who fires or discriminates against an individual simply for being transgender violates Title VII of the Civil Rights Act of 1964.<sup>37</sup> Nevertheless, more recent decisions of the Supreme Court have demonstrated that the Court's legal precedents relating to civil rights could be swept aside by a future Court with little notice. If the *Bostock* decision is reversed in the future, whether a transgender person is protected from employment discrimination would vary widely from state to state, with currently at least sixteen states and two territories where a person could be fired just for being transgender.<sup>38</sup>

Thus, while legal protection from employment discrimination is important, at least as important is a vigorous effort to identify and obtain employment with employers who treat transgender employees equally, regardless of the *Bostock* decision. In a stunning turnaround over the last two decades, most major employers now recognize that robust non-discrimination policies, employee benefits and other inclusive practices that recognize LGBTQ+ workers are essential to attract and retain the best and brightest employees and to compete for customers.<sup>39</sup> Such practices include:

- A comprehensive non-discrimination policy that explicitly covers protections based on gender identity
- Transgender-inclusive health care coverage
- Written gender transition guidelines (supportive protocols and considerations for managers of employees who are transitioning)
- Inclusive diversity training for all employees to address cultural competency relative to gender identity

<sup>37</sup> *Bostock v. Clayton County*, 590 U.S. \_\_\_ (2020); 140 S. Ct. 1731.

<sup>38</sup> [https://www.lgbtmap.org/equality-maps/employment\\_non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws); June 2020

<sup>39</sup> As of 2022, ninety-one percent of the Fortune 500 have gender identity non-discrimination protections, compared to 2002 when only **3 percent** of these companies did. <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/2023-Workplace-Equality-Transgender-Toolkit-PDF-For-Employers.pdf>



Best-in-class employers ensure their practices are inclusive across the workplace, including in recruiting, administrative and record-keeping practices, access and use of restrooms and other facilities, gender neutral dress codes, and gender self-identification in confidential human resources records.<sup>40</sup>

Various organizations maintain lists of employers who promote transgender workplace equality, which can provide critical information for transgender job applicants.<sup>41</sup> In addition to the factors above, job seekers could also do research on a company’s public brand, gender-expansive advertising, track record on public LGBTQ+ disputes, number of current transgender employees (including in management), employee

resource groups for the LGBTQ+ community, corporate patterns of charitable contributions to LGBTQ+ causes, and public awards received for the company’s DEI efforts especially as they relate to transgender policies.

**SUGGESTIONS:**

- » Transgender persons should carefully research potential employers to determine whether the workplace would be a supportive, welcoming work environment

<sup>40</sup> <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/2023-Workplace-Equality-Transgender-Toolkit-PDF-For-Employers.pdf>; 2023

<sup>41</sup> See, e.g., <https://www.thehrcfoundation.org/reports>; 2023

# Gender-affirming healthcare is expensive and increasingly unavailable

Gender-affirming healthcare is very expensive regardless of whether a person has health insurance or not. To attempt to pay for such care, many transgender persons go into significant debt or forego treatment altogether.<sup>42</sup> For example, at least one third of transgender persons have foregone gender-affirming care because of expense.<sup>43</sup> Compounding the problem is a trend among state legislatures in some states to pass legislation to severely restrict or ban gender-affirming care altogether, regardless of ability to pay.<sup>44</sup>

For those transgender persons with employer-provided health insurance, most major insurance companies recognize that transgender-related medical care is medically necessary and have written policies describing criteria for when plans will cover it.<sup>45</sup> Nevertheless, no comprehensive federal law requires insurers to cover gender-affirming care.<sup>46</sup> On the state level, a majority of states currently have no law or regulation addressing the issue and two states specifically protect insurers that

refuse to cover any gender-affirming care.<sup>47</sup> Thus, each insurer's written policies should be carefully examined for blanket exclusions for "gender reassignment surgery," "sex change," "sex transformation," or some similarly-worded broad exclusion. Transgender persons with a choice of employer coverage should carefully compare the policy documents and confer with other transgender employees to compare experiences.

For the approximately 276,000 transgender Medicaid beneficiaries in the US, whether gender-affirming care is covered at all, and to what extent, will vary widely state-by-state, leaving many without any access to coverage for gender-affirming care.<sup>48</sup> As of 2022, 59% of these transgender beneficiaries have access to coverage for gender-affirming care, 27% have uncertain coverage and 14% live in states with express bans that deny coverage for gender-affirming care.<sup>49</sup> Many states are considering legislation to even further limit coverage for gender-affirming care under Medicaid.<sup>50</sup>

<sup>42</sup> <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; February 2015

<sup>43</sup> <https://williamsinstitute.law.ucla.edu/publications/health-and-health-care-transpop/>; May 2021

<sup>44</sup> <https://www.nytimes.com/2023/04/22/health/transgender-adults-treatment-bans.html>; April 2023

<sup>45</sup> <https://transhealthproject.org/trans-health-insurance-tutorial/choosing-plan/#is-there-a-transgender-exclusion>; July 2020

<sup>46</sup> The Affordable Care Act prohibits insurers selling policies on the federally-mandated state insurance exchanges from excluding coverage for transgender persons, but does not require those insurers to pay for gender-affirming care.

<sup>47</sup> [https://www.lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies](https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies)

<sup>48</sup> <https://williamsinstitute.law.ucla.edu/publications/medicaid-trans-health-care/>; May 2021

<sup>49</sup> <https://williamsinstitute.law.ucla.edu/publications/Medicaid-trans-health-care/>; May 2021

<sup>50</sup> <https://www.nytimes.com/2023/04/22/health/transgender-adults-treatment-bans.html>; April 2022



### SUGGESTIONS:

- » If possible, transgender persons and their financial advisors should affirmatively plan and budget for the high costs of gender-affirming care.
- » Insured persons should carefully review plan documents relative to any exclusions for gender-affirming care.
- » When insurance policies do cover gender-affirming care, transgender persons should obtain pre-authorizations to ensure coverage is not subsequently denied on technicalities.
- » Insured persons initially denied coverage for gender-affirming care should appeal, both internally and at the state and federal levels, because an initial denial of coverage is frequently not the final answer from insurers.

# Credit issues are common for the transgender community

Transgender persons who successfully obtain new identity documents frequently confront vexing credit issues.<sup>51</sup> Americans routinely borrow to obtain higher education, to open or expand businesses or to buy a home. In addition, beyond borrowing money, credit reports are frequently checked in employment decisions, pricing of insurance, applying to rent a home, establishing utility and phone service, and numerous other areas of routine financial life that are not directly related to the borrowing of money.<sup>52</sup> Because use of deadnames of transgender persons on credit reports is widespread, credit discrimination against transgender persons is a significant problem and denies them the opportunity to build a better future for themselves.<sup>53</sup>

For example, a potential creditor may learn that an applicant previously used another name of a different gender association. While this information should be irrelevant to the question of creditworthiness, a potential creditor could improperly refuse to extend credit based on such information. In the majority of states, such a refusal to extend credit based on gender identity is not against that state's laws.<sup>54</sup> On March 9, 2021, the federal Consumer Financial Protection Bureau ("CFPB") issued an interpretive rule stating that federal

law prohibits discrimination in credit and lending based on sexual orientation and gender identity, thus allowing LGBTQ+ persons to file complaints with the CFPB.<sup>55</sup> While clearly a positive development—especially for transgender persons living in the vast majority of states that do not have similar state-level protections—the CFPB rule upon which this protection is based is purely administrative and can be reversed with little notice. And in any case, filing a complaint with the CFPB may help establish a pattern of systemic discrimination, but does little to help a specific consumer who has been denied credit.



<sup>51</sup> <https://19thnews.org/2023/07/credit-hurdles-transgender-nonbinary-fetterman-smith-bill/>; July 2023

<sup>52</sup> [https://www.federalreserve.gov/credireports/pdf/credit\\_reports\\_scores\\_2.pdf](https://www.federalreserve.gov/credireports/pdf/credit_reports_scores_2.pdf)

<sup>53</sup> <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; <https://www.lgbtmap.org/img/maps/citations-nondisc-credit.pdf>; March 2023

<sup>54</sup> <https://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>; <https://www.lgbtmap.org/img/maps/citations-nondisc-credit.pdf>; March 2023

<sup>55</sup> <https://www.lgbtmap.org/img/maps/citations-nondisc-credit.pdf>; March 2023



In addition, the credit reporting system can frequently be problematic for transgender persons after a name change, with many reporting that credit files are never updated or that their credit scores decline.<sup>56</sup> Unlike changes to one's last name—as is routine for marrying or divorcing persons—informing banks or other creditors of a change to one's first name on accounts does not automatically cause credit reporting agencies to update that person's credit file.<sup>57</sup> For this reason, transgender customers frequently see their deadname listed in credit reports, scores and transactions.<sup>58</sup> To address this issue, the credit reporting agencies require transgender persons to contact each of them (each with a different procedure) and provide proof of the name change with a court order, updated Social Security card and updated state identification.<sup>59</sup> As discussed, this heightened level of proof may be financially difficult if not legally impossible for many to obtain.

#### SUGGESTIONS:

- » Until policies change—for example, by automatically updating credit reports upon notification of creditors of a transgender name change—transgender persons must directly contact each creditor and each credit reporting agency and carefully follow each organization's specific procedures and documentation demands. Careful follow up is required to monitor that the changes are actually made and do not result in a change to one's credit score.

<sup>56</sup> <https://www.equifax.com/newsroom/all-news/-/story/changing-your-name-not-your-credit-score-helping-transgender-and-non-binary-people-with-name-changes-and-credit-reports/>; March 2021

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

# Life insurance for trans persons can be problematic

Life insurance is available for transgender persons, but applying for coverage, successfully navigating the medical underwriting process and the pricing transgender persons may be offered can be problematic.<sup>60</sup> Many life insurance companies offer policies to transgender persons, but among the companies that do offer such coverage, how they internally underwrite and price such policies can vary dramatically. Working with an experienced and sympathetic general insurance agent who can shop and compare among many carriers can be critical.

Because statistics on life expectancy and the insurance risk varies dramatically between genders, life insurance companies set policy premiums for men and women quite differently.<sup>61</sup> Most life insurance companies will set policy premiums based on a person's gender assigned at birth, but some will price a policy based on a person's stated gender. Life insurance applications are notoriously invasive of personal privacy and transgender persons should anticipate answering many questions and providing medical records relating to their history of gender-affirming health care, such as hormone therapy and/or surgical history, all of which may have an impact on availability and pricing of coverage.

## SUGGESTIONS:

- » Maximize group insurance coverage from employers to levels that does not require medical underwriting.
- » For coverage above what an employer provides without medical underwriting, work with a general insurance agent familiar with life insurance for transgender persons who can shop the entire market.



<sup>60</sup> <https://www.investopedia.com/qualifying-for-life-insurance-when-you-re-transgender-5075140>; June 2023

<sup>61</sup> Factors that are critical to life insurance underwriting that vary by gender include, but are not limited to, blood pressure, cholesterol and physical build.

# Supportive long-term care settings require careful consideration and vetting

Transgender seniors may have serious difficulty finding a supportive or welcoming living situation as their health deteriorates. Sixty percent of older LGBTQ+ adults are concerned about how they will be treated in long-term care settings, and especially fear having to go back into the closet.<sup>62</sup> Many states lack any legal protections against anti-transgender discrimination in public accommodations and housing.<sup>63</sup> Some long-term care facilities or their employees may not be welcoming or may even be actively hostile to LGBTQ+ persons and some states legally permit discrimination,<sup>64</sup> especially if the facility claims a religious basis for the discrimination.<sup>65</sup>



## SUGGESTIONS:

- » Before there is ever a need, begin researching and interviewing facilities about whether they accept and affirmatively protect transgender residents.
- » Interview the administrators and ask to see the institution's written anti-discrimination policies.
- » Create a list of transgender welcoming facilities should the need arise, and update it periodically.
- » Longer term, lobby local and national lawmakers to pass laws to further protect the transgender community.

<sup>62</sup> <https://news.bloomberglaw.com/social-justice/gay-elders-fear-being-shoved-back-in-closet-in-nursing-care-hunt>; June 2022

<sup>63</sup> [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/non_discrimination_laws)

<sup>64</sup> [https://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](https://www.lgbtmap.org/equality-maps/non_discrimination_laws)

<sup>65</sup> [https://www.lgbtmap.org/equality-maps/religious\\_exemption\\_laws/](https://www.lgbtmap.org/equality-maps/religious_exemption_laws/)



# Carefully review emergency and end-of-life legal documents for transgender persons

Because transgender people often have special health care needs and face unique forms of disparate treatment in accessing care—and cannot speak for themselves in many such circumstances—it is especially critical that this community work with their attorneys and trusted advisors to create customized emergency and end-of-life legal documents (such as health care powers of attorney, advance directives or living wills, and disposition of remains, as well as wills or revocable trusts).<sup>66</sup> If at all possible, such documents should be prepared by experienced attorneys who routinely work with members of the LGBTQ+ community because the laws for these documents are complicated and vary depending on the state or territory; if incorrectly completed, these documents could be found invalid or ignored.

These emergency documents should be prepared with the unfortunate expectation that health care professionals may ignore the patient's gender identity and treat the patient by their gender assigned at birth. The agents named in these documents—trusted friends or supportive family members—should be empowered to direct health care providers to address the patient by their chosen name and gender identity (regardless of name or gender markers on government documents

and irrespective of whether the patient has received transition-related medical care).<sup>67</sup> These providers should also be instructed to preserve the patient's appearance consistent with the patient's gender identity to the extent medically feasible during hospitalization or other institutionalization. Similarly, the agent in the legal document governing post-death disposition of human remains should be empowered to order service providers such as funeral home employees to similarly honor the deceased's wishes about appearance and during memorial services.<sup>68</sup>



<sup>66</sup> <https://lgbtagingcenter.org/resources/pdfs/End-of-Life%20PlanningArticle.pdf>; 2014

<sup>67</sup> <https://lgbtagingcenter.org/resources/pdfs/End-of-Life%20PlanningArticle.pdf>; 2014

<sup>68</sup> <https://lgbtagingcenter.org/resources/pdfs/End-of-Life%20PlanningArticle.pdf>; 2014



## In conclusion

Transgender and non-binary persons in the United States face considerable roadblocks on their journey to living an authentic life with dignity and respect. Widespread discrimination and disparate treatment under law mean that these communities must take extra care in areas of financial, legal and estate planning. Careful planning can mitigate some of these issues, but even with such planning, there remain many areas of modern everyday life in America where the problems confronting the transgender and non-binary communities are currently intractable. Allies can play a valuable role in advocating for policy changes at all levels of government that can reduce or eliminate these fundamental inequalities.

Thank you to the following JP Morgan Chase employees who provided insight, comments, editorial guidance and other support in the creation of this publication (in alphabetical order): Emil Anderson, Shelby Anderson, Brad Baumoel, Luke DiGangi, Adam Frank, Robert Hayes, Thornall Henderson, Tomek Siergiejuk, Katie Manghillis, Veronica Navarro, and Itoro-Abasi Udo-Imeh. Special gratitude to Stella Reed and Charity Grooms for their sustained efforts, expert assistance, and personal experience, without which publication of this white paper would not have been possible.

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