

DMH POLICY

Title: LGBTQIA+ Non-Discrimination Policy #: 21-01

Date Issued: January 4, 2021

Effective Date: January 4, 2021

Approval by Commissioner:



Signature: Brooke Doyle, M.Ed., LMHC Last Reviewed: April 16, 2024

I. PURPOSE

Consistent with Executive Order 592, as well as the Massachusetts public accommodation and non-discrimination statute (G.L. c. 272, §§ 92A, 98) and the Massachusetts employment discrimination statute (G.L. c. 151B), it is the policy of the Massachusetts Department of Mental Health (“DMH”) to provide an environment for all individuals that is supportive, safe, and discrimination-free. This policy provides specific rules and guidelines to protect the rights of Employees and Individuals Served who identify as, or are perceived to be, lesbian, gay, bisexual, transgender, queer, questioning, intersex, or affirming (LGBTQIA+¹). It establishes clear expectations that all individuals will be treated with dignity and respect, and it mandates reporting and investigation of all prohibited practices. It also requires affirmative measures to improve program design, provide relevant training and education for staff, and to develop and disseminate best practice guidelines.

DMH has developed detailed guidelines for the implementation of this policy. These guidelines address specific concerns that may arise in the workplace or treatment environment such as room assignments, restrictions on personal attire, or access to designated bathroom and shower facilities for transgender persons and Gender Non-Conforming individuals. In addition, the guidelines acknowledge and respect an individual’s choice of name or personal pronoun.

¹ For the purposes of this policy, DMH is using the term “LGBTQIA+.” However, the intent of the policy is to include all persons who, in any way or manner, identify on the spectrum of diverse Sexual Orientations and Gender Identities.

II. SCOPE

This policy provides protections to DMH Employees and Individuals Served and specifies Employee responsibilities for compliance with the policy. It also requires DMH contracted vendors (see Section IV.G) to adopt standards consistent with this policy.

III. DEFINITIONS

Center of Expertise: The office within the Commonwealth's Human Resources Division that investigates complaints related to Discrimination, Sexual Harassment, domestic violence/sexual assault/stalking, workplace violence, and retaliation.

Disability: A physical or mental condition that substantially limits one or more major life activities of a person; a record of having such impairment; or being regarded as having such impairment.

Discrimination: Any unlawful work-related act, policy or practice by which DMH or a contracted vendor, by itself or through its agent, and because of actual or perceived membership in a Protected Class, commits Harassment, discharges or refuses to hire or employ an individual, or discriminates against an individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

Diversity Officer: The Executive Office of Health and Human Services Employee who is responsible for planning, organizing and directing all aspects of diversity, affirmative action, and equal employment within the DMH.

Employee: Any individual holding a full or part-time position, including a state employee, contract employee, individual consultant, temporary employee, volunteer, trainee, intern, or student, regardless of whether the individual receives compensation and the source of funding for the position. An individual being served by a facility or program who provides services at that facility or program as a component of their treatment or service plan is not considered an employee for purposes of this policy. Such individuals are, however, expected to comport themselves in a manner consistent with the purpose of this policy, and shall receive training and supervision in the principles of this policy as appropriate to their individual circumstances.

Gender Expression: The manner in which a person expresses gender through clothing, appearance, behavior, speech, etc. A person's gender expression may vary from the norms traditionally associated with the person's assigned sex at birth. Gender expression is a separate concept from Sexual Orientation and Gender Identity. For example, a male may exhibit an effeminate manner, but

identify as a heterosexual male. Gender expression may look different throughout time and in different cultures.

Gender Identity: An individual's internal view of the individual's own gender; one's innermost sense of being male, female, both or neither. One's gender identity may or may not correspond to the sex assigned at birth. Gender identity includes, but is not limited to, trans woman, woman, trans man, man, agender, genderqueer, genderfluid, Non-Binary, and many others.

Gender Non-Conforming (GNC): A person who does not follow culturally dominant ideas and/or stereotypes about how the person should look or act based on the male or female sex they were assigned at birth.

Harassment: Any unlawful work-related speech or behavior that is subjectively and objectively unwelcome, offensive, or intimidating, and is based on actual or perceived membership in or association with a Protected Class that creates an abusive working environment.

Individual Served: A person who is receiving DMH services at a DMH operated or contracted inpatient facility, mental health center, or other community program.

Intersex Condition: A spectrum of conditions involving natural variations of the sex chromosomes, reproductive systems, and/or genitalia, outside of what is typically considered "male" or "female."

LGBTQIA: Lesbian, gay, bisexual, transgender, queer, or questioning, intersex, affirming.

Non-Binary: Individuals who do not identify their Gender Identity as a man or a woman, but might identify as both a man and a woman, an identity in between the spectrum of man and woman, or completely outside of the spectrum of man or woman. Non-binary individuals reject the idea that there are just two genders. Other terms that often fall under this umbrella are genderqueer, gender fluid, agender, and many others.

Protected Class: A group of people protected by law from Discrimination or Harassment based on their membership or association in the group. Pursuant to M.G.L. 151B, protected categories include race, color, religion, national origin, ethnicity, ancestry, age, Disability, Sexual Orientation, Gender Identity, Gender Expression, Intersex Condition, military status, and criminal record (for employment applications only).

Sexual Orientation: A person's emotional, romantic, and/or sexual attraction to others.

IV. POLICY

A. Prohibition of Discrimination and Harassment in the Workplace or Treatment Environment

1. DMH Employees shall contribute towards the creation of a workplace or treatment environment that is safe and welcoming for all, including LGBTQIA+ individuals.
2. Every DMH Employee and Individual Served should be treated with respect and dignity and should not be subjected to Discrimination or Harassment.
3. No DMH Employee shall engage in any form of Discrimination or Harassment.
4. DMH Employees shall respect an individual's self-determined Gender Identity and Sexual Orientation and DMH shall design programs compatible with those identities, as clinically appropriate.
5. All persons shall be addressed by their self-identified/chosen name and referred to by their chosen pronoun such as "he," "she," "they," or "ze/hir."
6. Individuals shall be allowed to use bathroom and shower facilities that correspond to their Gender Identity.
7. Gender Non-Conforming clothing and grooming practices shall be accepted.
8. In an inpatient unit, program, or housing, which is sex segregated, transgender or intersex individuals may be placed in rooms, programs, and/or housing of the gender with which the individual lives and identifies.

B. Training for Employees

DMH shall provide training regarding this policy and on any additional guidelines and procedures that may be related to such policy, including what behavior constitutes Discrimination or Harassment and the procedures for preventing and reporting such behavior. These trainings shall include an introductory level curriculum regarding LGBTQIA+ identities and how to

provide services in a respectful and competent manner. All DMH Employees whose work includes regular and ongoing interaction with other DMH Employees or Individuals Served shall be required to take training as prescribed by DMH.

C. Resources and Policy Dissemination

1. DMH shall provide verbal and written information and education, in an individual's preferred language, to all Individuals Served regarding this policy, including their rights and responsibilities under this policy and the procedures for reporting complaints.
2. At all DMH operated locations Individuals Served shall have access to LGBTQIA+ diversity resources such as LGBTQIA+ community support group directories and programming.
3. DMH will disseminate best/emerging practice guidelines and adopt procedures to ensure its services are respectful and culturally responsive.

D. Employee Reporting Requirements

1. Employee's Duty to Report Discriminatory or Harassing Behavior towards Individuals Served

- a. **Conduct by Employees.** If an Individual Served is believed to have been subjected to Discrimination or Harassment in violation of this policy by an Employee or DMH contractor, Employees must follow the reporting requirements of 104 CMR 32.00. Additional reporting may be required by law, e.g., to the Disabled Persons Protection Commission, the Executive Office of Elder Affairs, or the Department of Children and Families, as applicable.
- b. **Conduct by Individual Served.** DMH shall take immediate steps, as appropriate, to intervene in any situation that involves alleged behavior that is contrary to this policy by an Individual Served. Employees shall document in the medical record the behavior and the intervention in accordance with current policy and practice.

2. Reporting Discriminatory or Harassing Behavior toward or between Other Employees

Complaints of Discriminatory or Harassing behavior toward or between DMH Employees may be directed to a supervisor, another DMH manager, the DMH Diversity Officer, or directly to the Center of Expertise.

Managers, including the DMH Diversity Officer, in receipt of information regarding a violation, or alleged violation, shall immediately report the information to the Center of Expertise.

E. Individuals Served Reporting Discriminatory or Harassing Behavior

1. Any Individual Served, or anyone on their behalf, who believes the individual has been subjected to behavior that is contrary to this policy may report such incident or condition by:
 - Filing a written complaint pursuant to 104 CMR 32.00;
 - Reporting the incident verbally or in writing to a DMH Employee who will then file a complaint on their behalf; and/or
 - Reporting the incident to a DMH Human Rights Coordinator, DMH Human Rights Officer, or the DMH Director of Human Rights who will then file a complaint on their behalf.
2. In accordance with Massachusetts General Laws, if the reporter believes that the complained of behavior constitutes abuse or neglect, a complaint may also be filed with the Disabled Persons Protection Commission, the Executive Office of Elder Affairs, or the Department of Children and Families, as applicable.

F. DMH Investigatory Processes

1. Complaints will be addressed in accordance with 104 CMR 32.00 by administrative resolution, 10 Day Fact Finding, or full investigation. If complaints are referred or reported to the Center of Expertise, they will be investigated pursuant to the Center's investigation policies or practices.
2. There shall be no retaliation against any individual who reports an allegation of a violation of this policy in good faith.

G. DMH Contracted Vendors

A vendor that operates a DMH program or facility must develop and implement a Non-Discrimination and Harassment policy that is consistent with this policy and Executive Order 592, and comply with all applicable state and federal laws pertaining to Discrimination and Harassment.

V. POLICY IMPLEMENTATION

The DMH Chief of Staff and DMH Diversity Officer are responsible for collaborating with Area Directors, the Human Resources Division, Staff

Development and Training, as well as any other pertinent entities, to implement the provisions of this policy.

VI. REFERENCES

The following statutes, regulations and policies are applicable to this policy:
Executive Order 592 (*Non-Discrimination, Diversity, Equal Opportunity, And Affirmative Action*);
Chapter 199 of the Acts of 2011 (*An Act Relative to Gender Identity*);
Chapter 134 of the Acts of 2016 (*An Act Relative to Transgender Anti-Discrimination*);
M.G.L. c. 151B (*Unlawful Discrimination and Public Accommodation*);
M.G.L c. 272, secs. 92A, 98 (*Public Accommodation*);
Section 1557 of the Affordable Care Act (ACA).

VII. REVIEW OF THIS POLICY

This policy and its implementation shall be reviewed annually.