May 30, 2019

PLEASE STAND BY FOR WEBINAR TO BEGIN. WELCOME TO THE WEBINAR.

>> HI, EVERYBODY.

This is Kelli Garcia from the National Women's Law Center. Thank you for your patience. We've been having technical difficulties over here, but I think we are all up and good now. We are so thrilled that you are all here to talk with us today. We wanted to go over gender-based discrimination protections in health care and the protections that are available as you are thinking about and talking to potential clients.

I am joined right now by Michelle Banker, who is Senior Counsel at National Women's Law Center and Dale Melchert will join us from the Transgender Law Center. I just want to give you a quick overview of what today's presentation is going to look like. I'm Kelli Garcia, I'm the Director of Reproductive Initiatives at National Women's Law Center and I work on our health care and antidiscrimination protections.

I'm going to start out today by just giving a broad overview of what is in the health care rights laws, which you may have heard of section 1557 of the ACA, and then talk a little bit about the kinds of intakes that we have seen coming through our intake lines here at the National Women's Law Center and through the Legal Network. Then I'm going to turn it over to Michelle to talk about some specific litigation and the pros and cons of bringing these kind of cases under section 1557. She will turn it over to Dale who will talk more specifically about protections with 1557 as well for transgender people. And then hopefully we will have time for questions.

So right now, everybody is on mute and given the number of people that we have, we're going to ask that if you have questions, please send them through your chat function.

I want to start out with what exactly the health care rights law is, or section 1557 of the ACA. Health care rights law is passed and is the section of the Affordable Care Act, and it prohibits discrimination on the basis of race, color, national origin, age, disability and sex, in health programs or activities that receive federal financial assistance, were created by Title I of the ACA, or are administered by an executive agency. This is the first broad prohibition against sex discrimination and health care at the federal level. It's a landmark and important piece of legislation and piece of the ACA. Gender based discrimination should be understood to include discrimination based on pregnancy, termination of pregnancy, sex stereotyping which should include protections based on discrimination based on sexual orientation, as well as discrimination based on gender identity. In addition, sex-based discrimination under the health care rights law should be understood to include discrimination by harassment by health care providers and it protects all of these forms of discrimination. Because it's this broad set of protections, it's a truly intersectional piece of legislation.

If you are familiar with filing claims, for example, under Title VI or Title IX, those can be single-issue claims and you can run into problems. If somebody has discrimination based on disability as well as based on sex or disability, race, and sex at the same time, that might make it harder, particularly if you're trying to file claims through OCR based on multiple issues. Part of what was really landmark and helpful about section 1557 was that it provides one statute under which someone can base a claim if they're experiencing discrimination in health care.

The way enforcement of Section 1557 works is that people are in two avenues. One is that you can file complaints with the Office for Civil Rights at HHS if that's where your funding stream is, or there's a private right of action as well under the health care rights law. Be aware that you have these two options. There's an administrative option, filing a complaint, as well as going directly to court, and there is no exhaustion of remedies under the health care rights law and you can go directly to court. You don't have to go through the complaints system.

Who is required to comply with the health care rights law? As I said before, it's any health program or activity that received federal financial assistance, and so it really should cover almost the whole world of health programs. Most health clinics and activities, particularly hospitals and clinics and insurance companies, are receiving some form of federal financial assistance. The way section 1557 was written is that federal financial assistance includes contracted insurance credits and subsidies and that means that if hospital is participating in Medicaid or if the clinic is participating in Medicaid, they are receiving federal financial assistance and should be covered by 1557 and that means that-- that really means and that is going to be most clinics and most hospitals under 1557. If a health program or activity is receiving federal financial assistance in one area, then the entire program is covered. For example, if an insurance company is participating in the federal marketplaces, which means that they are receiving subsidies as part of the federal marketplace, all of their plans are covered by section 1557. Even the ones that are not receiving the federal financial assistance directly.

Another place that's important to remember is the health care rights law applies to any program or activity administered by an executive agency and includes federal health programs like Medicare, Medicaid shifts and those federal programs are also covered by the health care rights law. And any program or activity that was created by Title I of the ACA, and that is the health insurance marketplaces are the things that are kind of most thinking about when we talk about that piece of it. In addition, it doesn't say this, but if a state is running a health program or activity that receives federal financial assistance that is also covered, and they must comply with section 1557.

Section 1557 is the federal finance cost action and it's tied to federal financial assistance. In 2016, the Obama administration issued regulations detailing what it means and what their expectations are for compliance with section 1557. There has been pushback on these regulations and in particular-- and I think Dale will talk more directly about this-- but almost immediately after the 2016 regulations were issued, several states and religious affiliated insurance companies sued to enjoin the protections of 1557 that's particularly related to protections on the basis of gender identity and termination of pregnancy, and there has been since 2017 a nationwide injunction on just those two provisions for-- with respect to regulations. They haven't been able to enforce those regulations but that doesn't mean that 1557 and health care rights law are not good law. They are good law. The law, itself, continues to be in place and then the injunction only applies to HHS enforcement of those specific pieces of the regulation.

On Friday, less than a week ago, the Trump administration issued a notice of proposed rulemaking which has the goal of trying to roll back various portions of these protections, but in particular rolled back protections around gender identity and would narrow some of the scope of what applies to 1557, particularly with regulations to insurance companies. That being said, I want to be very clear that this was a notice of proposed rulemaking. The 2016 regulations are still in effect. They are still in place and the health care rights law, itself, continues to be good law. It is still in place and because there is that

private right of action, you're not reliant on going through HHS enforcement. If you want to bring a complaint, you can go directly to court. That's really important.

So while we're worried about what we were going to talk about because of this webinar-- because there's this potential rollback and how we will handle that-- it is important for everyone to know that their rights are still protected by the health care rights law, that this notice of proposed rulemaking has not gone into effect and we want to make sure that people have the word that it's still good law. We don't want people to think that their rights aren't still protected and it's that much more important to be on a webinar to be hearing and learning about these pieces.

There will be an opportunity for public comments and we would love to have as many comments from people who are representing clients on how important this law is to protect the people who are their clients and the people they are seeing. Keep your eyes out for opportunities to comment. So at the National Women's Law Center, we have seen discrimination and I'm going to mostly talk about the types of calls that we see from our intake lines. One whole set of calls that we get are denials of care, particularly people being denied access to reproductive health care and being turned away from a pharmacy that could very well be covered under section 1557. They're being turned away at a pharmacy if they're trying to get treatment for miscarriage management, people being turned away and unable to get treatment for entopic pregnancy and people turned away because they've had an abortion, and we really see a set of denials of care of people being turned away -- and again, Dale's going to talk more in detail about what that looks like when we're talking about discrimination on the basis of gender identity and people being turned away because of gender identity or their sexual orientation or relationship with somebody.

So just to say that's one set of calls and intakes that we get that people have been looking for and wanting referrals and they're turned away from care. The other kind of set of things that we get are denials of insurance coverage. When we talk about denials of insurance coverage, it can be a whole set of things -- Michelle is going to talk a little bit more about what this can look like -- but one of the very specific sets of things that we see in terms of denials of coverage are people who are adult-dependent children. The ACA requires insurance plans to cover adults and children up to the age of 26, and that has been seen more in the increase of the numbers of young people still covered on their parents' plans and those plans often don't cover maternity care for dependent children and don't cover maternity care and sometimes it's other things they don't cover.

In addition, we get calls from people who are denied care in ways that are very clearly discriminatory, such as based on marital status. 1557 should be understood to cover discrimination and we think about sex stereotyping and what that means and the argument to be made there. The other thing that we see is we get people who are treated really badly when they go into see a doctor, so you know, there's a range of things in emergency situations and it's a range of being told to wait, being forced to wait a really long time when they're in pain or kind of having their pain not taken very seriously, it's not sexual harassment or but inflammatory themes that seem to be discriminatory and could be violations of section 1557. For example, saying, "Oh, we know women. They just whine all the time so I don't really think you're in that much pain. Don't you think you're exaggerating that, honey?" Those kinds of comments that show that somebody is not getting the types of treatment and the type of care that they should be, and the treatment of care is being treated properly by stereotype or belief about someone's gender.

Also again, just a reminder that section 1557 covers race, color, national origin, age and disability, so it can be intersectional. It can prohibit discrimination based on race and that kind of treatment in the emergency room, doctor's office for any of these other reasons as well.

Finally, we get a decent amount of calls from people in various ways being sexually harassed by providers. Section 1557 protects against sexual harassment by providers and the thing that is tricky about sexual harassment by providers is that sometimes it can be ambiguous, because when you are seeing a health care provider and you're in this space, you're disrobing. You're taking your clothes off. It is hard to tell what is truly medical exam and what has crossed the line and if you kind of deal with these cases. You can second guess what has happened. Part of the thing that we from people who have experienced sexual harassment by health care providers is that they wait a long time and were under time pressure to get referrals out because we need to move quickly. It's taken a little while for somebody to feel empowered or feel ready to make that call. This was sexual harassment or they saw something in the news and oh, this is something that happened to me and now I can make this phone call and they didn't know there were sources available to them. I want to flag that a lot of times there are things that you could be running up against and running up against the statutes of limitations. Adjusting things here just a little bit.

I wanted to show this video which I think does the best job of explaining what sexual harassment in health care can look like and what the real implications for patients are when they experience sexual harassment. In this video a client was talking about her experience of being harassed by a chiropractor and she went through all the things I talked about. It was really devastating to her. She was going to see the chiropractor because she was having issues that had resulted in her having back problems. She went to the chiropractor to get the help that she really needed, and it kind of started out with weird comments and comments on her clothes and then sometimes comments while he was touching her, and then asking her to move around and do things in weird ways, and then, you know, hints that he would like to hang out with her and go out with her, and what was she doing on the weekend, and it felt really wrong to her but honestly, she went back two or three times after the first incident before she felt like she could turn away. It wasn't until she heard a presentation on sexual harassment in health care that she's like, oh, that's what happened to me and I think it's really important.

I just want to flag that these cases happen. We get clients calling us and we really want to be able to connect people who are calling us with attorneys who can handle the cases with sensitivity and care and take them on. So finally, I will say that section 1557 provides protections, private right of action as well as opportunities to file complaints through OCR, but also I'm talking about section 1557 and the health care rights law. If you are talking to clients who are experiencing sexual harassment and who have experienced sexual harassment by a health care provider, there are also other options available. You should definitely look into and be aware that there should be additional state protections as well as potential medical malpractice claims and this is one piece of the potential protections, but there should be a whole host of other things that we're not talking about today. With that, I'm going to turn it over to Michelle.

>> Thank you, Kelli. Hi, everybody. My name is Michelle Banker. I am Senior Counsel at the National Women's Law Center and I focus on litigation for reproductive rights and health. I wanted to talk to you all today about a case that we are working on called Weinreb vs. Xerox. I wish I could raise this case to

you as an example of litigation success. It still might be. We are still awaiting decision from the court, but I more raise it today because this case is a cautionary tale. It should have gone our way but instead, we got a very bad decision that now is being used against us by this administration, which cited this very decision in the notice of proposed rule making that dropped on Friday.

I will start by saying that this case presents the extent to which disparate impact claims are available of Section 1557 of the Affordable Care Act specifically for sex discrimination claims and I will preface it by saying that all Section 1557 litigation is still in its infancy. The jurisprudence is young and we are making claims to make it as we want it to go and make it as protective to people as possible. This case involves sex discrimination and health benefit design. It originated as a claim for benefits in the southern district of New York. I have some of the facts of this complaint up here on the screen. The facts are terrible.

The plaintiff, Miss Weinreb, suffers from a rare pregnancy related disease and there's no drug therapy that's been developed because the small market would make the research and the drug unprofitable. The disease causes Miss Weinreb to suffer constant labor-like contractions and so it's very, very painful. The only drug that has been effective at treating the pain is fentanyl and for years, her health plan and her husband's employer, covered the fentanyl. In 2014, she got a new pharmacy benefit manager and after some back and forth with her physician, the pharmacy benefit manager informed her that it would be denying coverage for the treatments altogether, citing a provision of the benefit plan that limited coverage of fentanyl to cancer patients. Miss Weinreb filed suit in the Southern District in August of 2016, initially bringing only a claim for benefits under arisa. After the parties briefed summary judgment, the judge asked if this is sex discrimination, under Title VII, pregnancy discrimination action and section 1557 of the ACA. Not withstanding the fact that the court had raised sex discrimination question on its own and had actually given the plaintiff a leave to amend her complaint to actually plead sex discrimination claims, the court issued an order granting defendant's motion to dismiss in August of 2018.

The decision by the court was truly sweeping because it wasn't limited to the facts of the case in any way and it went straight to the heart of the legal standards and what causes of action are available under Section 1557. What it said was that Section 1557 just does not permit disparate impact claims of sex discrimination. The court made this decision without any analysis of the text or legislative history of 1557 or of the 2016 HHS regulations in deciding that disparate impact claims for sex discrimination under 1557. It relied on lower court decisions saying such claims are not under Title IX and concluded that plaintiff's claims for sex discrimination under 1557 only have remedies available under Title IX, therefore, plaintiffs are out of luck and cannot bring such claims under 1557 either. Title IX protects against sex discrimination and education and it is one of the four statutes that 1557 references. The court's decision was that if we're in the realm of sex discrimination, then we're limited to only those enforcement mechanisms and remedies available under Title IX, which is something that we think is not supported by the plain language of the statute.

Upon learning of this decision, we teamed up with the plaintiff's counsel to file motion to amend the judgment to explain why the court's analysis of disparate impact was incorrect. We argued that under the plain language of Section 1557, the legislative history of the ACA and Section 1557 in particular, and HHS's 2016 rules implementing Section 1557 that any plaintiff bringing a claim under the health care rights law, regardless of their protected class status, be it race, disability, gender, may bring a claim for disparate impact under 1557.

I will walk through our arguments in the next couple of slides but I do want to reiterate that we have yet to receive a decision on this. Although we advanced an argument grounded in the statutory language and legislative history of 1557, as well as the 2016 rule, it is quite possible that the new NPRM that dropped on Friday may impact the outcome of this case and the future claims under Section 1557. It is a lot that happened since the change on Friday.

I also wanted to point out that going forward, it will be even more important than before to really ground arguments that disparate impact claims are recognizable in congressional intent and to emphasize that the text in the legislative history of Section 1557 reveals that Congress intended to create a singular standard for 1557 claims that include disparate impact claims. So you'll see here, we have some development text of the statute, itself, it's like the enforcement mechanisms provide for and available under Section 6, Title IX and age discrimination action should apply for versions of this subsection. Because Section 504 of the Rehabilitation Act does permit claims for disparate impact discrimination and it's incorporated into Section 1557, our contention is regardless of whether you're basing your claim on race, sex, disability or age, disparate impact is available.

Part of this is that the text does not state that only Title IX enforcement mechanisms are available for claims of sex discrimination. Our textual argument is both that the text, itself, doesn't support the district court's reading of the statute and also that it would yield absurd results and insidious results if an individual's protections under 1557 would vary depending on their particular characteristics. Additionally, it would provide courts no guidance of providing a claim discrimination based on multiple characteristics, based on race, age, and sex. We argued in our brief that statutory construction applicable to civil rights statutes and remedial statutes really weigh in favor of a broad reading of Section 1557 and requiring sex discrimination plaintiffs to prove intentionality when the plain language doesn't require it without these canons of construction.

We also cited extensive legislative history making clear that in passing the ACA, Congress intended to eliminate discrimination in health care and health insurance. On the screen, I have a statement by Senator Leahy that really shows that Section 1557, itself, was specifically intended to ensure that all Americans are able to reap the benefits of health insurance reform equally without discrimination. It also points to the fact that the purpose of 1557 was to remedy the shameful history of insidious discrimination and stark disparities in outcomes. It gets to disparate outcome and giving people different levels of protection based on their protective class, such that somebody who would be bringing a claim for disability discrimination as opposed to sex discrimination would get more protection would actually embed discriminatory practices into Section 1557 which is antithetical for care.

We made the argument that Congressional intent is clear and at the end of matter, it's not even necessary for those who are familiar with the Chevron framework to consider how the agency has interpreted the statute because the statute, itself, is clear. Again, grounding this in statutory interpretation is the safest bet now that, this week, where the agency's interpretation is in flux.

So here's where things have gotten tricky since Friday. Our next argument was that even if the statute is determined to be ambiguous, the court needed to give deference's to HHS's interpretation of 1557 as found in the final rule and the preamble to that rule, and the preamble of the 2016 rule explicitly states that Section 1557 permits disparate impact claims for all classes protected under the statute. And this is in response to comments submitted to HHS during the rule-making process that asked for clarification that all enforcement mechanisms available under the statutes listed in Section 155 are available to each

Section 1557 plaintiff, regardless of the plaintiff's protected class. HHS said yes, and it responded in the affirmative, as you can see on the screen. From there, we argued that the complainants stated the claim for disparate impact, sex discrimination under Section 1557. The new NPRM would back track on HHS's 2016 position that a single uniform standard applies to Section 1557 claims, that includes claims for disparate impact discrimination. They have indicated in their rules and their intent that as of the date the NPWRM was issued, all guidance, including the preamble to the 2016 rule, is no longer in effect.

The take-away from all of this is that none of these issues were briefed before the court and none of these arguments about statutory interpretation or legislative history were before the court in the case. The result was that we got a bad decision that is being used against us, and so going forward I think we all need to think carefully when we bring claims under 1557, recognizing how young the case law is and how one district court decision can really be very compelling to courts all around the country. I would encourage you if you are planning to file a claim under sex discrimination under 1557, and particularly disparate impact claims, to reach out to us or another organization that really focuses on this practice, we'd be happy to talk with you and with that. I will turn it over to Dale. Thank you.

>> Hello, everyone. My name is Dale Melchert. I'm a Staff Attorney at the Transgender Law Center and as Kelli and Michelle said, I will talk a little bit about litigating health care discrimination claims for transgender patients.

For the next 15 minutes, I'm going to cover legal protections under the Affordable Care Act for transgender people and provide some context to understand why protections are so important. Then I'll end on providing some best practices for working with transgender and gender non-conforming clients.

First, I wanted to provide some terminology for some of the words that I will be using. "Transgender" refers to a person whose gender does not correspond with the sex assumed at birth. For example, a transgender woman has the internal sense that she is a woman despite being assigned as male at birth. Conversely, "cisgender" refers to someone who identifies with the sex they were assumed to be at birth. If you are assumed to be female at birth and identified as a woman, you are cisgender. "Gender non-conforming" is a term that refers to people whose gender identity and/or expression does not fit within stereotypical and societal expectations of how a man or woman should act or present themselves. "TGNC" is an acronym and abbreviation for "transgender or gender non-conforming". It's an umbrella term that comes in handy. "Gender dysphoria" is recognized by the American Psychiatric Association that many, but not all, transgender people live with.

As we've discussed quite a bit already, Section 1557 of the Affordable Care Act prohibits health care facilities who receive federal funding from discriminating on the basis of class and other classes pro-prohibiting expressions based on statutes and sex comes to mind. This is a source of (inaudible) for trans people.

So what exactly does discrimination on the basis of sex mean for trans people in the health care context? This means blanket categorical bans not based on an assessment of medical necessity of gender affirming care violates the Affordable Care Act. For example, the Affordable Care Act prohibits the insurance policy from outright refusing coverage for hormone replacement therapy or sex reassignment procedures. The Affordable Care Act covers a procedure if covered for someone of another gender. What I mean by that is if a pap smear is covered by an insurance company for a cisgender woman it can't be denied for a transgender man because of his gender under the Affordable

Care Act or prostate exams for trans women. It also prohibits refusing to enroll applicants, cancelling coverage, or charging more for coverage because of transgender status.

These protections have been interpreted in different ways by federal courts. There's not a lot of case law, as Kelli and Michelle mentioned, but the majority of the decisions thus far found that the Affordable Care Act prohibition encompasses trans people and I listed the case law on this slide. Most of the existing case law revolves around blanket coverage for transitional care, be they Medicaid bans or insurance policies by private employers.

For example, *Flak vs. Wisconsin Department of Health Services* has been challenged to Wisconsin's blanket ban and 1557 was used to challenge the blanket ban of health care. In that case, New York's Medicaid regulation excluding coverage has been revealed. And in *Boyden vs. Conlin*, categorical ban for care for state employees was held unlawful under this Affordable Care Act Title VII, another good outcome. *Ovar vs. Essential Health*, similar situation, a private employer who refused to provide care and the plaintiff's son diagnosed with gender dysphoria because of a blanket ban. The mother lost in the district court level and the circuit remanded to the district court.

And then *Prescott vs. Rady Children's Hospital* is a Transgender Law Center case. It's somewhat different than these cases because in that case, the Affordable Care Act was used to challenge discriminatory treatment the son received in a health care facility. That case was about a mother who had a transgender son. She took him to a psychiatric hospital in San Diego because he was in crisis. He was having suicidal ideations related to gender dysphoria and she didn't make that decision lightly. She asked for assurances from the hospital that they would respect his gender and only use male pronouns and in all respects treat him as a boy. They assured her multiple times that they would and they advertised themselves as being a second home for transgender children in San Diego. Unfortunately, that was not his experience at all. Staff repeatedly misgendered him. One nurse even said "I would call you 'he' but you're such a pretty girl", or something to that effect. This made his condition much worse. The practice for somebody on psychiatric watch is to hold them for 72 hours, and Kyler was having a terrible time that his mother kept calling to have him released early. At one point, the nurse got so frustrated that she kept calling that she blocked the mother's calls. They did manage to get him released early and a doctor admitted that they had made his condition worse. That was the reason that they were releasing him, and tragically, two weeks after he was released, Kyler died by suicide.

That case is a discrimination case. Katherine started researching what to do as soon as she got back from the hospital to makes sure that didn't happen to another transgender child because Rady serves something like 60% of children in San Diego, so they reach a lot of children and definitely transgender children. In that case, we got two good decisions of two different motions to dismiss, and in those decisions, the court found that Katherine had made a claim of sex discrimination under the Affordable Care Act itself, and not the regulations, and that's significant because, as you know, HHS promulgated regulations that explicitly included gender identity in its interpretation of sex but instead of holding the regulations, the court ruled that the statute was discrimination and that Katherine and Kyler faced it.

So other courts; Northern District of Texas found that the prohibition against sex discrimination under the Affordable Care Act alone does not encompass gender identification. This is the case of a transgender woman who was denied a procedure at *Baker vs. Aetna Life Insurance Company* and this is an outlier. The judge noted that HHS's regulations were not in effect at that time and that sex stereotyping theory under Price Waterhouse had not been adopted by the Fifth Circuit.

As previously discussed in 2016, HHS promulgated regulations interpreting Section 1557. This regulation that interpreted the prohibition against sex discrimination to explicitly encompass gender identity after they went into effect, three private religious organizations and eight states sued the federal government and the Northern District of Texas in a pre-enforcement challenge alleging the regulation violated referendum. And this (inaudible) is the alliance that Kelli already discussed. The plaintiffs argue that their deeply held religious beliefs were inconsistent with providing transition related care and they obtained a nationwide preliminary injunction that prevented the regulations from going into effect. At that time, it was stopping the processing complaints on the basis of gender identity. That's a nationwide injunction.

While the Affordable Care Act provided key protections for transgender people in health care, there's limited case law at the this time and there's several things that have chipped away at these protections already. Those include the nationwide preliminary injunction from Franciscan Alliance and the case is still being litigated. And last Friday, as we've spoken about, it was just issued an NPRM to roll back direction protections for transgender people as well as those for people seeking reproductive health care.

I wanted to make a quick plug for if you are interested in submitting comments to this NPRM, there's a coalition called Protect Trans Health Care. It's an effort by TLC as well as the National Center for Transgender Equality, and some other organizations as well. We're collecting comments and acting somewhat as a clearing house to submit them. I encourage folks, if you are interested in writing comments, it's never a bad idea to submit handwritten comments because they take longer to process.

Other things that have chipped away at these protections are things to keep in mind if you are thinking about litigating a 1557 claim for discrimination against transgender people, of course, several states have passed exemption conscious-wise that prevents providers from treating transgender patients and that's important. The last refusal rule issued by HHS prevents health care providers who provide care based on religious or conscience belief. Because of the different case law in changing regulations, interpretations of the Affordable Care Act is uncertain at this time.

As Kelli said, all these cases are still good law but we want to be cautious about not creating bad law. I urge you not to shy away from considering these cases because discrimination is rampant against TGNC people and I encourage to you reach out for technical assistance. There's a lot of organizations, whether they're trans-focused or health care rights-focused like the National Women's Law Center, TLC, NCTE and regional organizations, so please reach out to us.

In this section, I want to provide context for why these protections are so important for trans people. Many but not all trans people seek medical interventions to assist with their transition and even for trans people who don't, everyone has some kind of medical need and has to see a doctor or receive some type of health care. And unfortunately, many medical providers are not up to speed on the standards of care for TGNC people and they frequently face discrimination and abuse while seeking health care. The National Center for Transgender Equality conducted a national survey in 2015 of transgender people living in the United States. The survey found several critical things. It found that nearly 1 in 5 survey participants reported being refused care outright because they were transgender or gender non-conforming and 28% of survey participants reported postponing medical care when sick or injured due to discrimination or disrespect. 28% respondents were subjected to harassment in medical settings and 50% of the those reported having to teach their medical providers about transgender care.

The survey also shed light on the high health care needs of TGNC people and respondents reported four times the national average of HIV infection and that number increased for respondents who are unemployed or engaged in sex work and over a quarter respondents reported misusing drugs or alcohol due to the discrimination of their gender identity or expression and 41% respondents reported attempting suicide compared to 1.6% of the general population.

TLC's program also showed that trans people are disproportionately impacted by HIV. In a national needs assessment of transgender Americans living with HIV in 2016, it found that transgender women are 49 times more likely to be living with HIV than other adults globally and that transgender women of color, specifically black trans women in the south are especially impacted. The survey also showed that 41% of respondents went without medical care after HIV diagnosis for six months or more and this increased for trans people who were incarcerated or detained. These surveys show how TGNC communities face rampant discrimination and have high health care needs due in part to discrimination.

I wanted to talk a little bit about some best practices working with TGNC people. I hope that everyone takes cases on behalf of trans people and it's important to have some background in the most respectful way to do that. Respecting self-determination and identification is really critical. Use the correct pronouns, titles, and names for your clients, and the only way to know someone's names and pronouns and preferred name is to ask. I think the best way to do this is to institutionalize this practice by making it a routine part of intake process. Review your intake forms. Is there a question in your intake form that asks about preferred name or legal name or preferred pronouns? Does your organization or firm's database have an option to enter that as a field and is there a way to add that if it doesn't currently have that? If you are not currently in the habit of asking everyone in intake about their gender identity or their pronouns, it might feel awkward at first, but you and your colleagues will adjust. If a potential client is confused or taken aback, I have had cisgender clients had this reaction before, I just explain that it's a practice that we ask of everyone. Again, institutionalizing this practice is helpful. If you make a mistake using the wrong pronoun or name, apologize that you are wrong and continue to use the correct pronoun and avoid over-apologizing because that can make the impact of your mistake worse.

I think it's a good practice generally to speak in a more inclusive way. If get in the habit of doing this, it's easier to avoid mistakes. What I mean by that is to opt for gender neutral language if you don't know someone's pronouns, you they and them and of course, once you find out someone's correct pronoun, use that. Try to avoid terms like guys, and that's hard for me because I'm from California, and it's part of everyone's nomenclature. Or terms like ladies or formal gender titles like Miss or Sir unless you know that person uses those.

Not only is it important to make sure you have grounding in how to interact with transgender clients in an affirming way but it's important to make sure that your office is as well. Take an assessment of your office. If your client comes to the office, will they be able to use the restroom comfortably? Do you have a gender-neutral restroom? If not, is that something you can change? Can you put in place a policy that everyone can use the restroom in accordance with their gender identity and post placards explaining so anyone there is informed and feels welcomed. Another thing to consider is security at your building. Do entrants have to go through security and show identification? A lot of trans people haven't had access to change their identification to reflect their name and correct gender marker and that can pose difficult situations. Trans people face an incredible amount of discrimination and violence and you never know-situations with security and that kind of thing might be something that makes your client

uncomfortable. And if those are the case, like there is security in your building, what have you, talk it through with your client in advance so they know what to expect. You can make a plan to make sure they're as comfortable as possible and talk to security about altering protocols or just giving them a heads up that someone is coming and provide their name. You can also just meet your client at the front and walk them through security to make them a little bit more comfortable.

Other ways of supporting TGNC clients include checking in with yourself about your assumptions. We all have assumptions and biases based on our experiences and it's important to know what they are for you so you can avoid doing something harmful. Familiarize yourself with TGNC issues. There are lots of resources out there I'm happy to share with you. Feel free to email me for resources down the line if something comes up and you want assistance. There are also organizations that do this work as well or provide free printings and it's important to acknowledge what you don't know. Seek supervision and support if something is beyond your area of expertise. Be cautious about stereotypes and I think that's a good, general rule to live by and it's important to confront discrimination and prejudice. If someone makes a comment or joke, say something about it because silence is complicity. If you want more information, reach out to me. I have a lot more materials on the topic. That's it for my section. I think we will move to the portion on questions. Thank you.

>> Thank you. Thank you so much. We have a few questions and I appreciate everyone who is sticking around. I know we're going a little over our time. So Michelle, I wanted to ask you a question. Could you explain a little bit more about what the judge said relying on Title IX 9 and why that was important?

>> Sure, sure. So as we mentioned, there are four statutes that Section 1557 expressly references and the statute says that the enforcement available under Title VI, Title IX, age discrimination in Section 504 of the Rehabilitation Act are available for purposes of this section. Courts have had conflicting views as to what that means and whether it means that for those people who bring claims of sex discrimination, they can only look to the enforcement mechanisms under Title IX. Whereas, those who bring claims of race discrimination can only look to those enforcement mechanisms available under Title VI and as I discussed, we reject that. We think that would lead to absurd results. We think it would really not be workable in the case of somebody experiencing intersecting forms of discrimination, but because Title IX is about sex discrimination in education and because Section 1557 says that it allows for discrimination on the basis of the statutes that it incorporates, including Title IX, courts have reached the conclusion that means that if you are bringing a claim of sex discrimination, really your remedies are co-extensive with Title IX, which again, the argument is that's not the case.

>>Thanks, Michelle, and we have a question for Dale. So how do you handle addressing "dead names" for conflict checks or background checks on clients?

>> That's a good question. During intake, I always ask someone's legal name and their preferred name and that way, I can run both for conflict checks and it's important just to know you might need to make a reference to that and any court documents that you are filing and everything is in confidence. I had situations where I also asked the court to keep someone's name anonymous for being as outed as trans and facing violence.

>> We have time for one last question. How do you get fees on these types of cases?

>> This is Kelli. It depends on the types of cases. We were talking earlier about Section 1557 and we are all attorneys and have somewhat different (inaudible) and I would say in other cases, particularly if you are doing negotiations and you're looking for settlement, there's opportunities to negotiate when you're looking at monetary award for your clients. Any time when you are doing that, particularly in places where you might be bringing in cases where we have other claims that aren't necessarily Section 1557, in some of the other cases there might be medical malpractice and other state laws or tort-based claims. I will say, I don't think any of the three of us are experts on that and that's one of the places you can be thinking about in fees.

That's all the time we have. I appreciate everyone staying late. Again, I apologize for the technical difficulty and I appreciate you taking the time to listen to this webinar.