

Amanda Pritchard
Chief Executive
NHS England

Via email

1 November 2023

Dear Mrs Pritchard,

I am writing as the BMA's Representative Body Chair and Equalities Lead to express our dismay at recently announced Government proposals to amend the NHS constitution. We disagree with the position the Government has taken and seek confirmation that the NHS will ensure that transgender patients can continue to access services that align with their identity.

At this year's Conservative Party conference, the Health Secretary stated his intention to amend the NHS constitution to "recognise the importance of different biological needs". He also proposed that patients should have the right to refuse care given by healthcare workers who identify as a gender different from the sex they were assigned at birth.

The Health Secretary's statements have been widely interpreted as a proposal to ban transgender women from admission to women's hospital wards by amending the NHS constitution. If this is the case, the proposed changes to the NHS constitution are unworkable and likely unlawfully in breach of the Equality Act 2010, which prohibits discrimination on the grounds of gender reassignment. It is imperative that statutory bodies are clear about the expectations of healthcare professionals and employers to provide fair access to care for transgender and gender diverse people, as well as to protect transgender staff from unlawful discrimination.

Transgender and gender diverse people [already struggle](#) to access the healthcare they need - as with any other individual, they have the right to access healthcare that is timely, appropriate, and reflects their individual needs. Forcing these patients to use services that do not align with their identity will severely limit their access to vital NHS services and will result in increased discrimination and harassment.

We understand that patients may sometimes request that care or treatment is given by a clinician (or chaperone) of a specific gender, with good cause. These requests are rarely discriminatory in nature and are dealt with sensitively on a case-by-case basis. However, a patient does not have a right to know a healthcare worker's sex assigned at birth. Many doctors do not feel safe to be open about their gender identity at work. A recent [BMA survey](#) showed that just 34% of transgender respondents were open about their gender identity with everyone in their place of work or study and that almost half had directly experienced

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transphobia at work. Requiring healthcare providers to disclose their sex at birth to their patients and employers would be discriminatory in contravention of the Equality Act 2010 and put transgender doctors at increased risk of abuse.

In addition, we are extremely concerned by a letter from the Health Secretary sent on the 19 October to NHS organisations to encourage them to “cease recruitment into standalone DE&I roles”. Individual organisations are responsible for their compliance with the public sector equality duty, but many already do not meet the basic requirements for their diverse workforce. BMA research consistently shows that the persistent discrimination faced by doctors going through [menopause](#), as well as [ethnic minority](#), [disabled](#), [women](#) and [LGBTQ+ doctors](#) is leading them to leave their jobs. The cost to the NHS of replacing doctors who have been driven out by these experiences far outstrips the cost of employing diversity officers, who hold organisations to account in addressing poor workplace practices. Furthermore, our concerns at the start of this letter very clearly demonstrate why designated DE&I roles are vital in our NHS.

All people have the right to have fair access to NHS services and to be treated with dignity. Doctors providing care have been and will continue to make decisions with patients regarding what care best meets their individual needs. As healthcare professionals, we pride ourselves on providing patient-centred care rather than taking a one-size-fits-all approach. Making informed, respectful decisions with our patients is the best way to respect both staff and patients' dignity, autonomy, and human rights.

I invite NHSE to meet with the BMA to discuss how it will ensure that transgender patients can continue to access services that align with their identity, that transgender staff will be protected from discrimination, and that there will be no blanket targeting of the recruitment of DE&I roles.

Yours sincerely,

A square box containing a handwritten signature in black ink that reads "LPatel."

Dr Latifa Patel
Chair, BMA Representative Body