

## TRANSGENDER EMPLOYEE TRANSITION GUIDANCE

- 1. REASON FOR ISSUE:** This handbook provides guidance on the Department of Veterans Affairs (Department or VA) policy and procedures on facilitating smooth and supportive transition for transgender and gender non-conforming employees undergoing gender transition in compliance with all applicable workplace laws, regulations, and directives.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook establishes workplace procedures and protocols for creating and implementing guidance for VA employees who identify as a gender different from their sex assigned at birth and undergoing gender transition.
- 3. RESPONSIBLE OFFICE:** Office of Diversity and Inclusion (06), and Office of Human Resources and Administration (006).
- 4. RELATED DIRECTIVE:** VA Directive 5975, Diversity and Inclusion.
- 5. RECISSIONS:** None.

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## TRANSGENDER EMPLOYEE TRANSITION GUIDANCE

### 1. PURPOSE

This handbook provides guidance on procedures and protocols in support of Department of Veterans Affairs (VA) employees who are transgender or gender diverse (gender affirming/gender non-conforming employees) undergoing gender transition. This handbook also provides guidance for supervisors and colleagues regarding the Department's non-discrimination policy and to minimize gender-related workplace bias, enabling all employees to perform at their optimum potential in service to our Nation's Veterans.

### 2. BACKGROUND AND SCOPE

a. VA is committed to equal employment opportunity (EEO) diversity, and inclusion in the VA workplace. VA defines diversity in its broadest context to include race, color, sex, religion, national origin, age, disability, genetic information, marital status, political affiliation, culture, sexual orientation, gender identity and expression, parental status, educational background, socioeconomic status, military affiliation, intellectual perspective, organizational level, and more. Numerous empirical studies have positively correlated workforce diversity and organizational performance. Research shows that diverse teams are more creative, perform better in problem solving, and result in better decision-making than homogeneous teams.

b. Executive Order 13583. *Establishing a Government-wide Diversity and Inclusion Initiative*, signed by President Barack Obama on August 18, 2011, requires Federal agencies to maintain specific Diversity and Inclusion (D&I) Strategic Plans. VA's D&I Strategic Plan provides a roadmap for creating a diverse workforce and cultivating an inclusive work environment.

c. The VA Special Emphasis Programs (SEPs) serves to eliminate barriers to EEO and promote a diverse work force and inclusive work environment. Authorized under Title VII of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973, as amended, the SEPs purpose is to ensure equal opportunity for all persons and to assist with prohibiting discrimination in employment because of race, color, religion, sex (including sexual orientation, gender identity and expression), national origin, age, genetic information, or disability and to promote the full realization of EEO through a continuing affirmative program in each agency. The SEPs generally focus on groups with less than expected representation in the workforce; experience barriers to EEO; or otherwise have unique needs that warrant attention. VA has established employee SEPs, work groups, and committees for employees that include but are not limited to:

- (1) African American/Black Employment Program
- (2) American Indian/Alaska Native Employment Program
- (3) Asian American/Pacific Islander Employment Program
- (4) Disability Employment Program
- (5) Federal Women's Program
- (6) Hispanic Employment Program
- (7) Lesbian, Gay, Bisexual, and Transgender Program (LGBT)

d. Together, the D & I Program and SEPs provide a comprehensive and synergistic framework for creating a diverse workforce in VA.

### 3. DEFINITIONS:

a. **Birth Sex.** This refers to the classification of individuals as female or male on the basis of their external genitalia. This information is the sex recorded on one's original birth certificate.

b. **Gender.** Gender refers to the behavioral, cultural, or psychological traits that a society associates with birth sex or gender expression. Common gender categories are man and woman.

(1) **Gender identity.** Gender identity refers to how an individual identifies the self as belonging to the male (i.e., boy/man) or female (i.e., girl/woman) gender category or some other gender category. Administrative staff records this information as self-identified gender identity.

(2) **Gender expression.** Gender expression is the external display of one's gender, through a combination of dress, social behavior, and other factors. Sometimes gender expression is consistent with gender identity and sometimes it is not consistent.

(3). **Gender confirming/affirming procedures.** Gender confirming/affirming procedures (also referred to as sex reassignment surgeries) include any of a variety of surgical procedures (including vaginoplasty and breast augmentation in transgender women and mastectomy and phalloplasty in transgender men) done simultaneously or sequentially with the explicit goal of gender transitioning.

(4). **Gender Dysphoria** . Gender Dysphoria is the current Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnosis for persons who experience distress related to an incongruence between the gender with which the person identifies and their birth sex. Not all transgender people will meet criteria for this diagnosis. Note that this term supplants the outdated terminology of Gender Identity Disorder (GID). GID is an outdated diagnosis from DSM-IV that described a conflict between a person's birth sex and the gender with which the person identifies. Gender Dysphoria (DSM 5) is the current relevant diagnosis.

c. **Transgender**. Transgender is the umbrella term used to describe people whose self-identified gender identity or gender expression differs from that usually associated with their birth sex.

(1) **Transgender women**. Transgender women are a subset of transgender individuals who are assigned male sex at birth but self-identify as female and often take steps to socially or medically transition to female, including feminizing hormone therapy, electrolysis, and surgeries (e.g., vaginoplasty, breast augmentation). Generally, the pronouns for these individuals are "she," "her," or "hers", unless VA employees and Veterans request different pronouns.

(2) **Transgender men**. Transgender men are a subset of transgender individuals who are assigned female sex at birth but self-identify as male and often take steps to socially or medically transition to male, including masculinizing hormone therapy and surgeries (e.g., phalloplasty, mastectomy). Generally, the pronouns for these individuals are "he," "him," or "his," unless VA employees and Veterans request different pronouns.

d. **Gender affirming or non-conforming (G/NC) (also referred to as Gender Diverse)**. Gender affirming or non-conforming are the terms that describe those who do not fit into traditional gender expectations and who prefer an identity that is not consistent with traditional binary definitions of male or female. Sometimes these individuals use gender neutral pronouns such as "they" or "them" instead of "he" or "she".

e. **Transsexual**. Transsexual is an older, less common term that refers to a subset of transgender individuals who often take steps to socially or medically transition to their preferred gender. Transgender women are sometimes referred to as male-to-female transsexuals. Transgender men are sometimes referred to as female-to-male transsexuals.

f. **Transition**. In the context of transgender discussions, transition is the process of changing one's outward presentation to align with one's internal sense of self. This may include hormone therapy (HT), sex confirmation surgery, legal name change, issuance of corrected birth certificate, state identification, passport, and/or other identity documents.

#### 4. POLICY

It is VA policy that all employees, Veterans, and individuals doing business with VA are to be treated with dignity and respect, in accordance with VA Secretary's EEO, D&I, No FEAR, and Whistleblowing Protection Policy Statement ([http://www.diversity.va.gov/policy/files/EEO\\_Policy\\_Statement.pdf](http://www.diversity.va.gov/policy/files/EEO_Policy_Statement.pdf)).

Accordingly, VA employees who are transgender and Gender Diverse are to be treated with the same level of respect and dignity afforded to all individuals in the workplace. This includes, among other things, addressing individuals in accordance with their self-identified gender identity and permitting use of the restroom and other facilities consistent with their gender identity. VA emphasizes that repeated, intentional use of the individual's former name and pronoun and denial of use of VA or VA-controlled facilities constitutes actionable harassment.

#### 5. RESPONSIBILITIES:

##### a. Under Secretaries, Assistant Secretaries, and Other Key Officials, shall:

- (1) Ensure compliance with all VA-wide EEO, diversity, and inclusion policies.
- (2) Implement and monitor programs and procedures in accordance with this directive and with the VA Diversity and Inclusion Strategic Plan.
- (3) Establish accountability measures for executives, managers, and supervisors to ensure the aforementioned compliance, through reporting requirements, and other appropriate strategies in accordance with this directive.
- (4) Designate EEO/D&I managers and SEP managers as required and as appropriate to comply with the requirements and provisions contained in this directive, including, but not limited to, workforce/barrier analysis, affirmative employment planning/reporting, outreach, retention, SEP program implementation, training, and expectations.
- (5) Allocate sufficient resources to ensure efficient and successful operation of a continuing affirmative EEO program in accordance with 29 CFR 1614.101, and to perform the functions necessary to comply with the policies contained in this directive.
- (6) Promptly and accurately comply with all Office of Diversity and Inclusion (ODI) requests for information, data calls, reporting deadlines, self-assessments, technical assistance reviews, etc.
- (7) Ensure that each staff has sufficient resources and that it possesses or has access to the requisite training and knowledge required to effectively perform in its respective capacity regarding the EEO, diversity, and inclusion processes.



**b. Diversity and Inclusion in VA Council.** The D&I in VA Council (the Council or DIVAC) is an independent executive level body that provides advice and recommendations to the Secretary of Veterans Affairs on areas related to D & I.

(1) The Council is co-chaired by the Assistant Secretary for Human Resources and Administration and the Deputy Assistant Secretary for D&I; it is composed of representatives from each of the Department's major organizations, staff offices, and stakeholders; and serves as a communications link between the workforce and leadership as well as a forum to share best practices, consider new initiatives, leverage resources, and ensure accountability in the area of D&I.

(2) The Council serves as a mechanism to incorporate input from all VA organizational components and stakeholders into the VA D&I Strategic Plan and VA D&I Performance Reports.

(3) Council members serve as steering, nominating, and/or judging committee members for the Secretary's D&I Excellence Awards.

**c. Assistant Secretary for Human Resources and Administration.** The Assistant Secretary for Human Resources and Administration (ASHRA) will:

(1) Issue the VA D & I Strategic Plan, and the VA D & I Performance Report.

(2) Provide resources and support to ODI to develop and implement the VA D&I program.

(3) Communicate D&I policies, plans, programs, and initiatives to VA officials and employees, and provide VA-wide guidance, monitoring, and oversight.

**d. Deputy Assistant Secretary for Diversity and Inclusion.** The Deputy Assistant Secretary (DAS) for ODI will:

(1) Lead and oversee VA – wide compliance with the D&I policies and programs.

(2) Advise the Secretary, ASHRA, and senior leadership on all matters related to workforce diversity and organizational inclusion.

(3) Serve as a co-chair of the D&I in VA Council.

(4) Lead the development and implementation of the VA D&I Strategic Plan and VA D&I Performance Report, in conjunction with the D&I in VA Council.

(5) Develop, implement, and oversee the VA-wide D&I program, in accordance with applicable laws, regulations, executive orders, policies, and the VA D&I Strategic Plan.

(6) Co-chair VA leadership development programs as appropriate to eradicate barriers and ensure D&I in VA leadership development programs.

**e. Deputy Assistant Secretary for Human Resources (HR) Management.** The DAS for HR Management will:

(1) Collaborate with ODI to ensure HR policies and programs are consistent with EEO and diversity policies and do not adversely impact diverse populations.

(2) Partner with ODI to perform targeted outreach and retention to build a diverse pipeline to VA employment and to cultivate an inclusive workplace in VA.

(3) Participate in the D&I in VA Council as appropriate.

**f. Deputy Assistant Secretary for Office of Resolution Management (ORM).** The DAS for ORM will:

(1) Collaborate with ODI to ensure EEO complaint processing policies and ORM programs are consistent with the policies in this directive.

(2) Partner with ODI to perform training and technical assistance reviews as needed and appropriate.

(3) Participate in the D&I in VA Council as appropriate.

**g. EEO/D&I, HR Staff, and Union Representatives.** Every VA sub-component and organization must have a designated EEO/D&I Manager, HR Staff, SEP manager and/or a Union Representative (if the employee so requests) responsible for addressing and meeting the requirements of this handbook. The number, grade level, and status (i.e., full-time or collateral duty) of such staff will depend on the size, resources, and EEO/diversity workload of the facility. However, irrespective of these dependencies, the functions, requirements, and expectations contained in this handbook must be met.

**h. Employees.** Transitioning employees are responsible for working with designated VA EEO, HR, Diversity staff and Union Representatives (if the employee so requests) maintaining communication and adjusting the transition plan with the employer (as needed and as required) to ensure that they communicate any changes or adjustment to said plan as they progress.

## 6. TRANSGENDER EMPLOYEE TRANSITION OBJECTIVES

The primary objective of this handbook is to provide guidance concerning procedures and protocols in support of VA employees who are transgender or gender diverse undergoing a transition. The handbook, in conjunction with [VA Directive 5975](#), aims to identify and eliminate discriminatory practices and policies and to ensure that all VA employees and applicants for employment have an equal opportunity to compete

fairly in all aspects of their recruitment, hiring, training, upward mobility, career counseling, developmental details, promotions, and any other condition of employment. This objective includes ensuring that the workplace is welcoming and inclusive of all groups. (**VA Secretary's EEO, Diversity and Inclusion, and No FEAR Policy Statement**) ([http://www.diversity.va.gov/policy/files/EEO\\_Policy\\_Statement.pdf](http://www.diversity.va.gov/policy/files/EEO_Policy_Statement.pdf)).

VA employees who are also Veterans and receive medical care at VA medical centers should review VHA Directive 2013-003.

([http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub\\_ID=2863](http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863))

This directive is related to care of transgender patients at VA and may offer additional protections and benefits.

## 7. MANAGEMENT ASSISTANCE AND CONSIDERATIONS

a. Decisions by employees to transition are personal choices that can positively benefit their health, work productivity, morale, and collegiality as they do not have to live “two lives” inside and outside of work. Further, living in a gender that does not align with their internal sense of self requires great effort and energies that can detract from their work and can leave them vulnerable in other areas (Sheridan, 2009). The creation of an environment where an employee feels comfortable being their true self allows all employees to bring their whole selves to work. Supervisors, EEO staff, HR, and facility leadership should assist with facilitating the employee with this transition since such assistance is crucial for successful transitions for the employee who is transitioning and their colleagues who are adjusting to the transition.

b. With the potential benefits of successful employee transitions in mind, this section provides information about how management may best assist or facilitate to support employees who are transitioning. One of the biggest considerations is proper planning concerning personnel records changes and the appropriate legal documentation to support a name change (or not, as all employees who transition, will not necessarily change their name) in the following areas:

- (1) Accessing new Personal Identity Verification (PIV) cards
- (2) VA email address and updating the Global Address List
- (3) Business cards
- (4) Office door signage
- (5) Updating applicable licenses and professional credentials in VetPro
- (6) Bathroom use policies
- (7) Employee benefits including health insurance, life insurance and spousal benefits

(8) Personnel record (payroll and leave)

(9) Thrift Savings Plan

(10) Federal Employees Retirement System or Civil Service Retirement System

(11) Flexible Spending Account (if applicable)

c. Employees preparing to transition are encouraged to inform their direct supervisors and the servicing HR offices. In this regard, the employee must decide whom to inform, how to do so, and how much information the employee wishes to divulge. The employee should consult in particular, with benefits officers or individuals in that office who are familiar with benefits and their processes to ensure that the employee receives complete guidance in this area. From a benefits perspective, an employee may choose to legally change their name, have VA HR change their name, and that name would transition to all of the benefit programs. Contrary to prevailing thoughts in this area, there is no new or different approach at this present time for employee transitioning because the only affected element from a benefits perspective is the name change and VA HR would approach this in the same manner as any other name change. As such, like other major life and health events involving name changes (e.g., marriage and divorce), transitioning for some requires ample planning and support.

d. Together, the employee, supervisors, Facility EEO/D&I Managers, and HR specialists can work together to identify a plan outlining how, when, and with whom the transition will be communicated and identify or develop a support team to assist the employee throughout the process (Out & Equal Workplace Gender Identity and Transition Guidelines, 2015). Support teams may include the employee's supervisor, EEO, HR, Union Representatives, LGBT Special Emphasis Program Managers, LGBT Veteran Care Coordinators (for those employees who are also Veterans or patients facing any major medical issue, especially one where it may be evident to others that something has changed) and other VA employees who have transitioned. These team members are recommended personnel in this process, and should be generally appointed by senior leadership at the facility level.

## **8. TRANSITION PLAN ELEMENTS**

a. VA does not prescribe a single method for how an employee should transition. Transitioning is an individual process that may require adjustment based on the need of the transitioning employee. The fundamental principle in this regard is that an employee's gender transition will progress smoothly and present minimal distraction from day-to-day operations. To this end, it is advisable to develop a plan to ensure all needs are addressed, to the best extent possible. Privacy is imperative as information regarding gender transition and transgender identity are protected under privacy laws like the Health Insurance Portability and Accountability Act (HIPAA). Any information about the employee's transition may only be made with the expressed permission of the

transitioning employee (i.e. the person who is in the best position to assess and who will be most directly impacted by the risks and benefits of disclosure). This guideline is also inclusive of VA records containing official biographies, profiles, or files on shared drives, web pages, and media containing a previous name or other information that may reveal the employee's gender history.

b. The overall transition plan should be specific to each individual and situation; however, an appropriate plan should include the following steps:

**(1) Pre-Transition Activities:**

- (a) Assemble a support team to facilitate the transition in the workplace and identify members and the roles and responsibilities they will assume, to include communications, HR, employee benefits/insurance, privacy/security, EEO, labor relations, and other recordkeeping requirements.
- (b) Develop a communication plan that identifies if, when, and how the transition is to be communicated to colleagues, patients, and VA contractors with whom the employee works (e.g., Vet Center and Residential Care Home staff). Some employees may want colleagues to be informed of the transition in a staff-wide meeting while others may prefer to inform colleagues on a one-to-one basis or in sub-workgroups, while others prefer no public notice be made of the transition. There are potential benefits and challenges to each notification plan, and these should be discussed among the support team. It is imperative that confidentiality and privacy are maintained all times per the employee's preference.
- (c) Identify a plan to manage problems should they occur with colleagues, patients, or community members. For example, who in HR or EEO will address concerns from colleagues and remind them of VA's commitment to a diverse and inclusive workforce? What are some of the options available for those transitioning employees who perceive that the process is failing, or further perceive that management is not assisting with and/or facilitating their transition? While the objective or underlying goal is how management may best assist or facilitate to support employees who are transitioning, in any event, the employee, at any time, may utilize the EEO process to address those concerns. Who in the Patient Advocate's Office and/or Clinical Service will address concerns from patients, etc.? When discussing the concerns of patients, or our Veterans, the Department has to recognize that Veterans receiving healthcare may not be comfortable receiving treatment from transgender individuals and should have the opportunity to change providers if they request to do so. While a Veteran's request to change providers under such circumstances may not be granted, such a change may be considered if it is determined that doing so would be in the best therapeutic interest of the patient.
- (d) Outline the necessary steps to record the employee's sex and name change (if applicable) per his/her specific VA position or (e.g., if there is a uniform, office

signage, business cards, Outlook email address, Occupational Health, PIV card, Talent Management System (TMS) profile, and name in payroll and retirement account, etc.).

- (e) Ensure that the employee has access to safe restroom and locker room facilities corresponding with his/her identified gender. Although this guidance is primarily predicated on Federal laws, management should be mindful when sending transgender employees to States with discriminatory laws that may prevent transgender people from using public restrooms. Alternative arrangements, if necessary, will be made in such a way as to maintain the confidentiality of the transitioning employee.
- (f) Identify the type of support if any, the employee desires from a supervisor, HR, LGBT SEP manager, LGBT Veteran Care Coordinator, Union Representatives, facility police etc. in educating colleagues about gender transition. Management should be mindful that gender transitioning may be extremely stressful, emotional, and expensive for most employees undergoing this process. With this in mind, management should be flexible and sensitive to the best extent possible to accommodate those special needs (i.e. numerous appointments for medical care, therapy, legal issues, family, and other considerations). In addition, management should also be cognizant that those needs will often vary between male and female transgender employees. These special needs also include the underlying goal or objective of employees having the assurances of their physical, as well as psychological, safety. Some employees will feel comfortable fielding questions from colleagues while others may prefer someone from their support team responding to these questions (e.g., overview of transition-related terms, guidance on the types of questions which are appropriate and inappropriate of colleagues who are transitioning, clarity on VA policies regarding restroom access, workplace violence policy (<https://vaww.portal2.va.gov/sites/wvpp/SitePages/Home.aspx>), TMS trainings on the topic, and VA's commitment to diversity and inclusion in the workforce).

## **(2) Initiating the Transition:**

- (a) Implement the communication plan. In the beginning phase (days or specified time period), **with the consent of the transitioning employee**, the transition will be made known to the work team or group in the following manner:
  - 1. Have a work team transition meeting, which may include the transitioning employee, the employee's supervisor, the employee's co-workers, and any other team or regional leadership if they are able to attend in person. Otherwise, the employee may wish to remote conference any members of the transition team or the employee's work team that cannot be there in person. It's important to have this meeting in person if at all possible. If the employee thinks it would be helpful, a handout about transgender issues can be provided at this meeting. It

is up to the employee whether he/she feels comfortable attending or would prefer not to be there.

2. The head of the employee's work team/group/division should announce the transition, along with any other high - level management who are present and indicate their intent to assist the transitioning employee. . The speaking supervisor must:
  - a. Emphasize the transitioning employee's importance at VA and management's complete support of the employee's transition.
  - b. Review VA's relevant nondiscrimination policies.
  - c. Indicate that the transitioning employee will present himself/herself in accordance with his/her gender identity and this should be respected. The manager should also advise co-workers about the transitioning employee's new name and preferred pronoun.
  - d. Become a behavioral role model by using the transitioning employee's new name and pronoun in all communication – written and oral, formal and informal.
  - e. Make a point that the transition will not change the workplace and that everything should go on as it did previously.
  - f. Solicit any questions. Refer questions the manager cannot answer to HR. (For example, questions involving benefit or personnel issues, e.g., what to do when health insurance enrollment forms ask for sex and not gender).
  - g. Offer training to facilitate this process. (If training will occur, the date should be announced at this meeting. If possible, the training should occur before the date of the employee's official transition.)

### **(3) Post-Transition Phase:**

- (a) Advise the support team to check in with the employee throughout the transition process (i.e., before, during, and after transition). While it is not necessary, VA encourages such an employee to minimally engage his/her supervisor and human resources about the intentions to transition. The supervisor and HR representative should be able to direct each employee to resources related to the transition and for ensuring the workplace is safe, supportive, and free of discrimination and retaliation. The guidance provided by the Transgender Law Center and other listed sources in the Appendix provides additional information on transitioning at work.
- (b) Follow-through on all administrative items (see Section 9, below), in accordance with support group roles and responsibilities (activity #1, above).

## 9. VA BEST PRACTICE MODEL FOR WORKPLACE TRANSITION

THE FOLLOWING VA GUIDANCE IS CONSISTENT WITH THE POLICY OBJECTIVES OUTLINED IN THE OFFICE OF PERSONNEL MANAGEMENT'S (OPM'S) "GUIDANCE REGARDING THE EMPLOYMENT OF TRANSGENDER INDIVIDUALS IN THE FEDERAL WORKPLACE"

**a. Confidentiality and Privacy:** A VA employee's transition should be treated with as much sensitivity and confidentiality as any other employee's significant life experiences, such as: job changes, marriage/divorce, retirement, medical care, or hospitalization, etc. Employees in transition often want as little publicity about their transition as possible. They may be concerned about safety and employment issues if other people or employers become aware that they have transitioned. Moreover, medical information received about individual employees is protected under the Privacy Act (5 U.S.C. 552a).

(1) VA managers and supervisors should be sensitive to these special concerns and advise employees not to spread information concerning the employee who is in transition: gossip and rumor-spreading in the workplace about gender identity may create a hostile work environment. Other employees may be given only general information about the employee's transition; personal information about the employee should be considered confidential and should not be released without the employee's prior agreement.

(2) Questions regarding the employee should be referred to the employee directly. It should be noted; however, that questions regarding a coworker's medical treatment, body, and sexuality are inappropriate. If it would be helpful and appropriate, employing agencies may have a trainer or presenter meet with employees to answer general questions regarding gender identity. Issues that may arise should be discussed as soon as possible confidentially between the employee and his or her managers and supervisors.

**b. Dress and Appearance:** Once an employee has informed management that he or she is transitioning, VA guidelines concerning dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. Dress codes should not be used to prevent a transgender employee from living full-time in the role consistent with his or her gender identity.

**c. Names and Pronouns:** VA managers, supervisors, and coworkers should use the name and pronouns appropriate to the gender the employee is now asserting at work. Further, managers, supervisors, and coworkers should take care to use the



correct name and pronouns in employee records and in communications with others regarding the employee. Continued intentional misuse of the employee's new name and pronouns, and reference to the employee's former sex by managers, supervisors, or coworkers is contrary to the goal of treating transitioning employees with dignity and respect. Such misuse may also breach the employee's privacy and create a hostile work environment where repeat offenders could face sanctions under Title VII.

**d. Sanitary and Related Facilities:** The guidelines of the Department of Labor's Occupational Safety and Health Administration (DOL/OSHA) require Federal agencies, of which VA is a part, to provide relatively free access to adequate sanitary facilities for all employees in order to avoid serious health consequences. For a transitioning employee, this means that, once the employee has begun working in their new gender, agencies should allow access to restrooms and (if provided to other employees) locker room facilities consistent with the employee's gender identity. Transitioning employees should not be required to undergo or to provide proof of any particular medical procedure (including gender confirmation surgery) in order to have access to facilities designated for use by a particular gender. Under no circumstances may an agency require an employee to use facilities that are unsanitary, potentially unsafe, located at an unreasonable distance from the employee's work station, or that are inconsistent with the employee's gender identity. Consistent with the practices of other Federal agencies, VA is encouraged to provide unisex, single-use restrooms when feasible to maximize comfort and access for everyone, including individuals with disabilities and those with young children; however transgender employees should not be limited to using these facilities. Because every workplace is configured differently, managers may contact OPM for further guidance regarding employee access to its facilities within the agency. (There are additional resources concerning restroom and bathroom policies in Appendix A).

**e. Workplace assignments and duties:** In some workplaces, specific assignments or duties are differentiated by gender. For a transitioning employee, once he or she has begun working full time in their new gender, VA should treat the employee as that gender for purposes of all job assignments and duties. VA should not require a transitioning employee to undergo or provide proof of any particular medical procedure (including gender confirmation surgery) in order to be eligible for gender-specific assignments or duties. Under no circumstances may VA require an employee to accept an assignment or duty contrary to the gender the employee otherwise works as, or limit assignments or duties for an employee once the employee's Official Personnel Folder (OPF) has been reconstructed to reflect the new gender identity. As mentioned on Page 8, under Section A, "Pre- Transition Activities" paragraph 3, VA is aware that some patients or Veterans receiving healthcare may not be comfortable with treatment by a transitioning employee and should have an opportunity to change providers.

**f. Recordkeeping:** Consistent with the Privacy Act, the records in VA employee's OPF and other employee records (pay accounts, training records, benefits documents, and so on) should be changed to show the employee's new name and gender, once

the employee has begun working regularly in the role consistent with the employee's gender identity and has requested to update his or her OPF.  
See 5 U.S.C. 552 a(d).

**g. Sick and medical leave:** Employees receiving medical treatment as part of their transition may use sick leave under applicable regulations. An employee may invoke his or her entitlement to unpaid leave under the Family and Medical Leave Act of 1993 (FMLA) in appropriate circumstances. Under the FMLA, an employee is entitled to a total of up to 12 workweeks of leave without pay for a serious health condition that prevents an employee from performing his or her duties or to care for a spouse, son or daughter, or parent with a serious health condition. An employee may substitute his or her accrued annual and/or sick leave for unpaid leave in accordance with current laws and regulations governing the use of annual and sick leave. An employee or family member receiving medical treatment for gender transition may have a qualifying serious health condition; defined in FMLA regulation under 5 CFR 630.1202. VA employees should refer to [VA Handbook 5011](#), Hours of Duty and Leave for additional guidance.

**h. Hiring process:** During the hiring process, VA managers and supervisors should be sensitive to the possibility that applicants have transitioned. The name and sex on the application may correspond with the person's current usage; however, background or suitability checks may disclose a previous name that indicates a sex different from the one the applicant is currently presenting. In such cases, VA hiring managers should respectfully ask whether the applicant was previously known by a different name, and confirm with the applicant the name and sex that should be used throughout the hiring process. Qualifications, certifications, transcripts and trainings that were attained with a prior name can be accepted under the applicant's new name. Lastly, in accordance with the Selective Service System, the following provisions (based on sex at birth) apply:

(1) As a part of the hiring process, HR offices are required to ensure that covered individuals are registered with the Selective Service System (SSS) since this statutory requirement is a condition of employment. The Military Selective Service Act requires that all male U.S. citizens and other males residing in the U.S. born after December 31, 1959, register with the SSS between the ages of 18 and 26, unless they are exempt from registration.

(2) Transgender men are not required to register with the [SSS](#), and thus transgender men (born female, but identify as male), are [exempt](#) from the registration requirement (VA Handbook 5005, Part II, Appendix R1, [Selective Service System](#)). Though exempt, these individuals will be required to submit a copy of their birth certificate to SSS to show proof of their birth assigned sex. In turn SSS issue will provide a Status Information Letter as permanent proof of status.

(3) Transgender women, (born male, but identify as female) who are [required to register](#), but failed to do so are also required to inform the Selective Service of any legal name change or change in other record information such as address up until your twenty-sixth birthday. This does not include change of gender as the Selective Service policy is entirely based on birth-assigned sex. For transwomen and others who were assigned male at birth and have

registered with the Selective Service, notification of a name change is legally required within ten days.

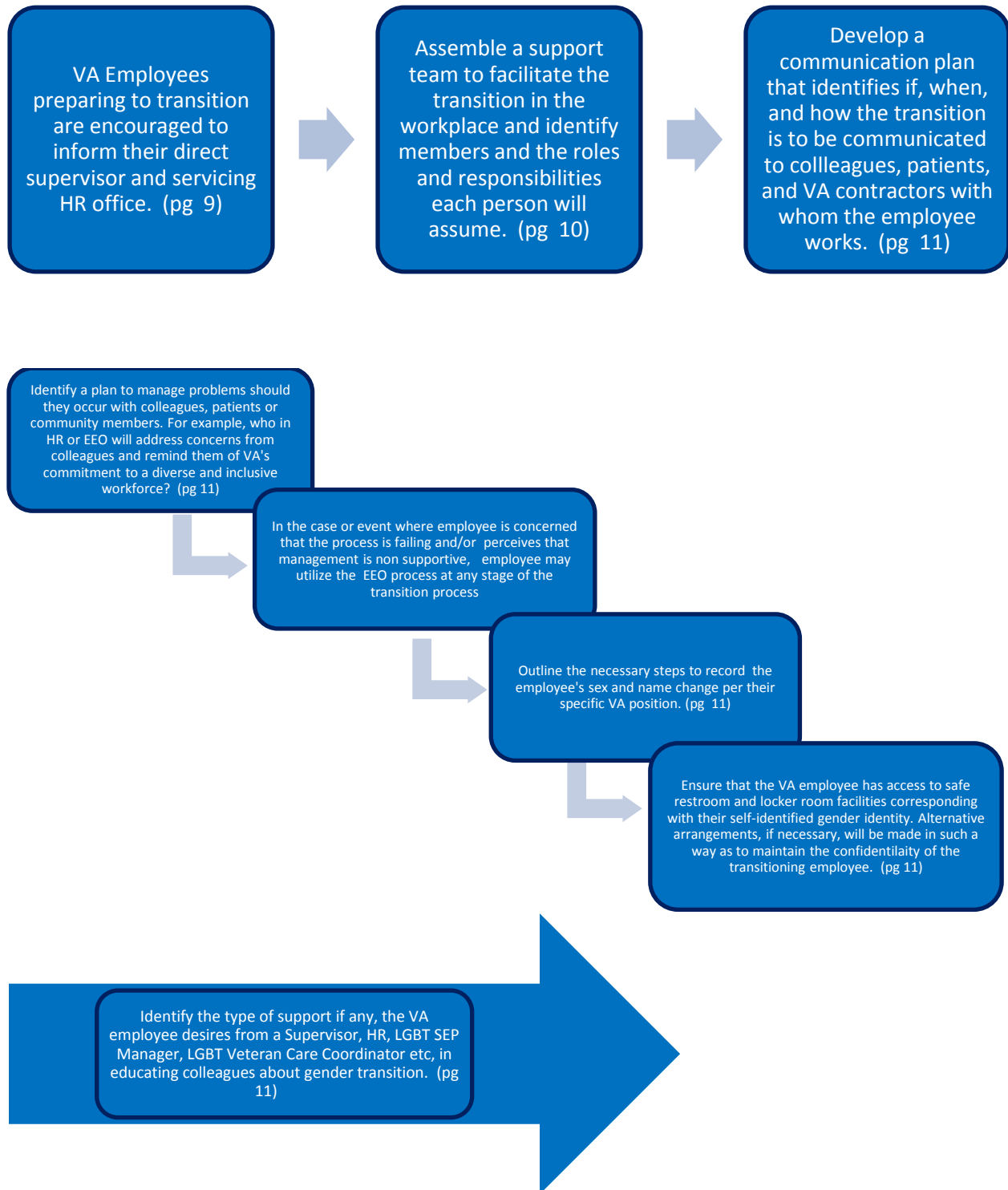
**i. Insurance Benefits:** VA employees in transition who already have Federal Employees Health Benefits must be allowed to continue their participation, and new employees must be allowed to elect participation, based on their updated name and sex. If employees in transition are legally married at the time of the transition, the transition does not affect the validity of those marriages, and spousal coverage should be extended or continued even though the employee in transition has a new name and sex. Further information about insurance coverage issues can be found on at: **OPM's Insure website**, or by **contacting the servicing VA human resources office**, which would be the proper entity responsible for answering questions about benefits to VA employees.

**j. Specific Questions:** For further guidance on these issues, contact Sterling Akins, LGBT Program Manager, ODI, Department of Veterans Affairs, 810 Vermont Ave, NW, Washington, DC 20420, at (202) 461-4145.

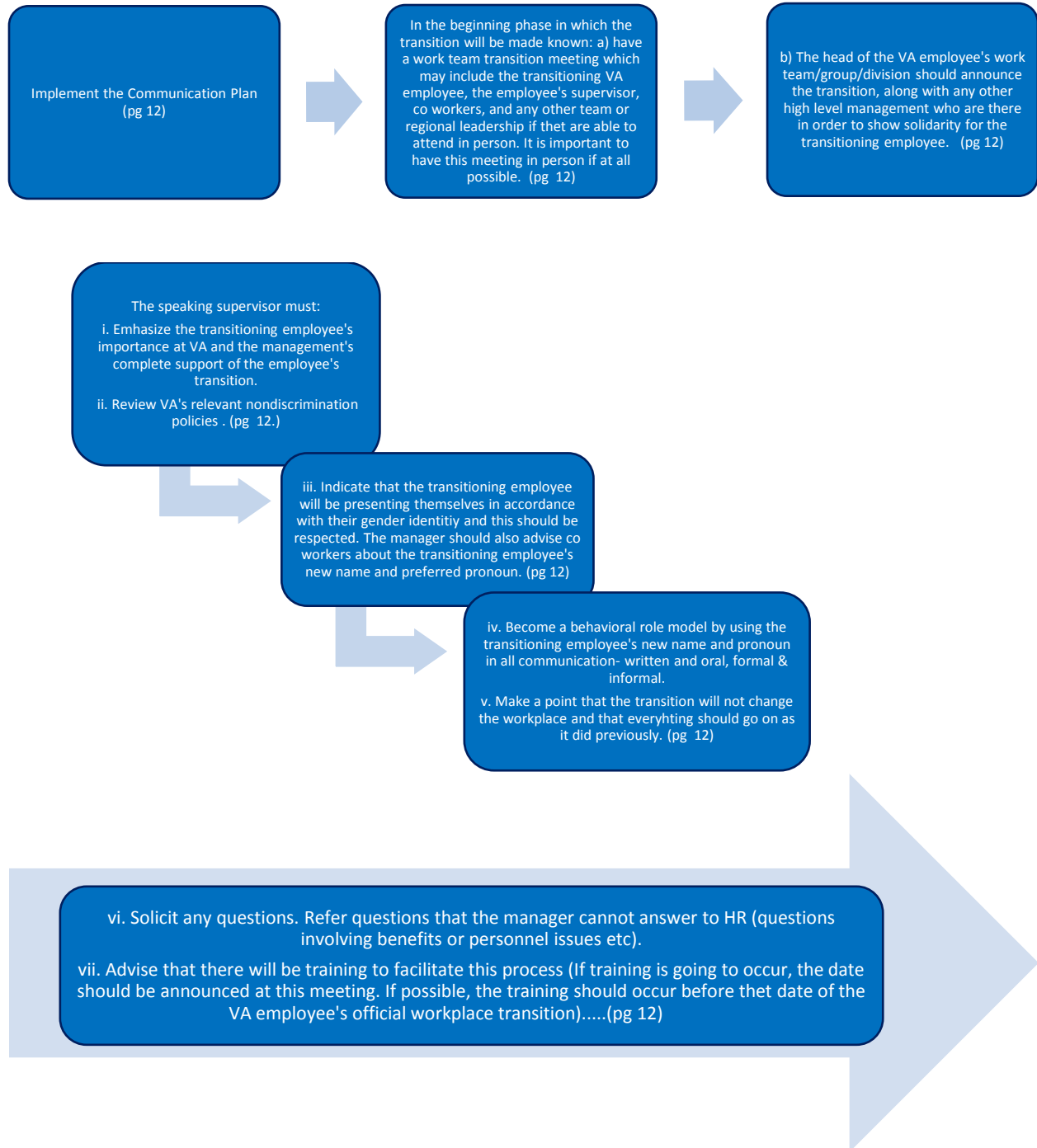


## 10. TRANSGENDER EMPLOYEE TRANSITION FLOW CHART

### A. Pre- Transition Activities



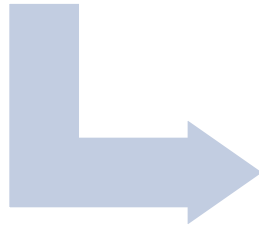
## B. Initiating the Transition



C. Post- Transition Activities

Advise the support team to check in with the employee throughout the transition process (i.e., before, during, and after transition occurs at work).

While it is not necessary, VA employees are encouraged to minimally engage their supervisor and human resources about their intentions to transition. Your supervisor and human resources representative should be able to direct the employee to resources related to their transition and for ensuring the workplace is safe, supportive, and free of discrimination and retaliation. (pg 13)



Follow-through on all administrative items (see Section 8, pg 11) in accordance with support group roles and responsibilities (see Section C. Post-Transition Activities #1 on pg 13.)





## TRANSGENDER EMPLOYEE TRANSITION GUIDANCE

### RESOURCES AND REFERENCES

For a listing of all references and legal authorities associated with this Handbook, please refer to Directive 5975, "Diversity and Inclusion".

*Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment A Guide to Employment Rights, Protections, and Responsibilities (What You Should Know About EEOC and the Enforcement Protections for LGBT Workers )*  
([http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement\\_protections\\_lgbt\\_workers.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm))

The Complete Guide to Transgender in the Workplace (Vanessa Sheridan, 2009)  
(<http://english.360elib.com/datu/L/EM304892.pdf>)

Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964  
<https://www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm>

GSA Bulletin 2016-B1 - Nondiscrimination Clarification in the Federal Workplace  
(<http://dataserver.lrp.com/DATA/servlet/DataServlet?fname=2016-19450+GSA.pdf>)

*A Guide to Restroom Access for Transgender Workers*  
([http://www.transequality.org/sites/default/files/docs/OSHA\\_Trans\\_Bathroom\\_Access.pdf](http://www.transequality.org/sites/default/files/docs/OSHA_Trans_Bathroom_Access.pdf)).

The National Transgender Discrimination Survey Executive Summary  
([http://www.transequality.org/sites/default/files/docs/resources/NTDS\\_Exec\\_Summary.pdf](http://www.transequality.org/sites/default/files/docs/resources/NTDS_Exec_Summary.pdf)).

Out & Equal Workplace Gender Identity and Transition Guidelines (Out & Equal Workplace Advocates, 2015).

Tips for Working with Transgender Coworkers  
(<http://transgenderlawcenter.org/wp-content/uploads/2012/09/forcoworkers.pdf>)