

Best Practices Guide for LGBTQ+ Inclusion in Recovery Residences

Michigan Association of Recovery Residences

The Michigan Association of Recovery Residence's (MARR) Best Practices Guide for LGBTQ+ Inclusion in the recovery residence (RR) setting was developed by a statewide committee including Michigan PIHP representatives, MARR Certified RR Operators, the Michigan office of ACLU, and MARR staff. (See note 1). This Best Practices Guide is intended to provide RR operators an explanation of their duties under recent changes to the law and to suggest "how-to" information in order to provide safe, sober environments and recovery supports for people in the LGBTQ+ community.

Please recognize that the Best Practices Guide is not legal advice. If you are concerned about any operator's or resident's legal matters or rights concerning this Best Practices Guide, please contact your own attorney. Further, any failure of a MARR Certified RR Operator to follow the Best Practices Guide principles may result in the termination of any RR provider contracts with a contracting PIHP. If you are concerned about the effect on your contractual relationship by reason of a failure or refusal to follow any of the Best Practices Guide principles, please contact your PIHP directly.

Evidence of need and health disparities related to substance misuse within the LGBTQ+ community.

Adults who identify as lesbian, gay, and bisexual are over twice as likely to have used illicit drugs in the past year, compared to heterosexual respondents. See: Substance Use and SUD's in LGBTQ+ Populations (<https://nida.nih.gov/research-topics/substance-use-suds-in-lgbtq-populations>). The study noted that prescription drug misuse for the LGBTQ+ population was approximately 10%, compared to only 5% of the heterosexual respondents.

In relation to the transgender community, data from the 2015 U.S. Transgender Survey noted that 29% of respondents used illicit drugs and/or nonmedical prescription drugs in the past month, which was nearly 3 times the rate of the general U.S. population. See: <https://www.ustranssurvey.org/reports>. Moreover, 70% of transgender people have reported experiencing some form of mistreatment in housing shelters and more than half (52%) of those who stayed at a shelter in the past year were verbally harassed, physically attacked, and/or sexually assaulted because of being transgender. (Supra.)

In March 2023, the Michigan legislature formally codified that "sexual orientation and gender identity" is a protected class under the antidiscrimination laws embedded within the Michigan legislation. See: *Elliott-Larson Civil Rights Act*. See: *MCLA 37.2101 et. seq.* This amendment added the explicit categories of sexual orientation, gender identity and gender expression. So, without a doubt, transgender people of Michigan are

protected under Michigan's civil rights laws against housing discrimination. (See note 2 by Jay Kaplin, ESQ. ACLU)

In addition, Michigan House Bill 4474, which passed the Michigan House on June 29th, 2023, provides for criminal felony charges possible against anyone who maliciously and intentionally intimidates another individual based on various factual predicates, including gender identity or expression and sexual orientation.

More than 50 local Michigan municipalities have local human rights ordinances which prohibit discrimination based on sexual orientation and/or gender identity. Ann Arbor and East Lansing were the first of these in the United States to pass LGBTQ+ discrimination protections, doing so in 1972. Pride parades have been held in Detroit since 1986.

It is the duty of every MARR Certified Operator, as a leader in the recovery community, to ensure that LGBTQ+ individuals can access recovery housing without harassment or discrimination. MARR is committed to fostering quality recovery housing for anyone seeking peer supported recovery.

Best Practices for LGBTQ+ Community in the Recovery Residence Setting

1. Affirming gender identities. Transpersons in gender-segregated housing.

Residents entering gender-segregated recovery housing are allowed to use the facilities that correspond to their gender identity. For instance, a transgender woman has the same right to access to women's housing, and a transgender man is allowed access to men's housing. In the event housing is not gender-segregated, a prospective resident should be asked what would be most comfortable and accommodating for their needs, the same as any individual. Variables for supporting a resident in a gender-segregated RR should be based on the individual's gender identity, expression, and preference and not their anatomy, the sex noted on a driver's license or birth certificate, or their perceived gender. Non-binary individuals should be supported where they feel most safe and welcome. Operators should work collaboratively with the resident to make reasonable adjustments.

2. Bathrooms, showers, and toxicology screens.

All residents, irrespective of their gender, of a MARR certified RR have the right to express privacy or safety concerns for everyone in the home. It is the intent of this Guide to recommend that LGBTQ+ residents be treated the same as any other RR resident. This may involve providing privacy screens for changing in all bedrooms, the use of "knock before entering" signs on all bedroom doors, use of toxicology urine screens observed by prior-approved staff or done at a nearby clinic or community supervision office, or the use of saliva-based toxicology screens for all RR residents.

3. Notice.

All gender-segregated RR Operators should clearly indicate on their website, advertisements, and other communications with the public their policy of including trans and non-binary persons within their gender-segregated facilities.

4. Prospective resident interviews.

Applicant screening interviews should only consist of inquiries relevant to assessing the prospective resident's needs and goals. Asking personally invasive questions regarding someone's anatomy or sexual behavior is unacceptable. Transgender and non-binary individuals should be supported according to their gender identity and/or safety concerns, regardless of anatomy. Provider screener questions may ask about gender identity if there is a direct service need for this information to place the applicant in appropriate housing or with a roommate. This information should be used for placement purposes only.

5. Resident's privacy.

MARR Certified RR Operators are required under NARR Standards to maintain certain resident information as confidential. These policies should include practices for keeping disclosure of gender identity and/or sexual orientation (e.g., "coming out") confidential. Providers who fail to protect identity information or disregard resident's privacy by "outing them" to visitors, friends, family, or other residents should be addressed with immediacy and care. The resident should be informed of the breach at once; their safety and privacy being the top priority.

6. Pronouns.

Operators and staff should address a resident by the pronouns and name with which they identify. As noted, gender identity is a person's internal belief of their own gender that is not visible to others. As such, individuals may choose to identify by a particular set of pronouns corresponding to their gender identity. It is recommended that each resident be given an opportunity to provide both their full legal name, their chosen name (i.e., the name the person uses) and the chosen pronouns the person identifies with.

7. LGBTQ+ oriented recovery supports.

Some LGBTQ+ RR residents may want to engage in LGBTQ+ focused recovery support activities such as LGBTQ+ meetings or having an LGBTQ+ peer recovery coach. It is best to have these conversations and work with your local networks to find out what LGBTQ+ resources exist in your area and make this information available to all staff and residents.

8. LGBTQ+ conversion therapy banned in Michigan.

Efforts to change an LGBTQ+ person's gender identity or sexual orientation are commonly referred to as conversion therapy. The American Psychological Association,

the American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, and the National Association of Social Workers have widely condemned and oppose conversion therapy. In June 2023, both houses of the Michigan legislature passed a bill to formally implement a ban on conversion therapy practices permanently.

Summary and Conclusion

The goal of all MARR Certified RR Operators is to provide a safe and inclusive facility operating according to the Social Model of Recovery embodied in the NARR Standards. Irrespective of the background and/or personal experiences of the Operator and each resident in their RR, each Operator should do their best to create a culture of inclusion and acceptance of people. The RR staff should take the lead in having conversations about accepting people for who they are, regardless of their gender identity, sexuality, race, natural origin, ability, or other classes protected under either federal or state antidiscrimination statutes, local ordinances, or policies.

Any questions concerning the application of the LGBTQ+ Best Practices Guide as applied to a specific set of facts can be addressed directly to MARR, which will respond to all inquiries from Operators. Depending upon the nature of the question presented, MARR may also engage the services of the NARR Standards Review Board to provide the NARR answers and input to the question presented, if needed.

Adopted this 14 day of August 2023.

~~Michigan Association of Recovery Residences, Inc.~~

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Note 1

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Note 2

Background on civil rights laws protecting transgender people in Michigan

Michigan is part of the Sixth Circuit Court of Appeals (which is the second highest level of federal courts after the U.S. Supreme Court). The states covered by the Sixth Circuit include Michigan, Ohio, Kentucky, and Tennessee. In 2004 the 6th Circuit held that discrimination against a transgender woman in employment, constituted sex discrimination in violation of Title VII. *Smith v Salem* (2004); A similar decision regarding transgender employment discrimination was issued in *Barnes v Cincinnati* (2005). In 2018 the Sixth Circuit held in the case of *EEOC v Harris Funeral Home* that firing a transgender person because of her transgender status was sex discrimination in violation of Title VII. This decision was appealed to the United States Supreme Court, which issued a decision in *Bostock v. Clayton County Georgia* (2020) that discrimination against an employee because they are gay, or transgender constitutes sex discrimination.

In response to the *EEOC v. Harris* decision, in May 2018 the Michigan Civil Rights Commission issued an interpretative statement stating that LGBTQ people were protected under Michigan civil rights laws that prohibit sex discrimination in employment, housing, education and public accommodations. Since then, the Michigan Department of Civil Rights has been taking and investigating complaints of LGBTQ discrimination in all those areas.

After the *Bostock* decision, state courts began using the Court's legal analysis that discrimination because of homosexual and or transgender status was discrimination because of sex (sex assigned at birth and failure to conform to society's stereotypes

regarding this) to see what this decision meant to their civil rights laws. In 2022 the Michigan Supreme Court held in *Rouch World v MDCR*, that the *Bostock* decision meant that Michigan's civil rights laws protected LGBTQ people under the category of sex. In March 2023, the Michigan legislature passed, and Governor Whitmer signed into law (to take effect in 2024) an amendment to our civil rights laws that added the explicit categories of sexual orientation, gender identity and gender expression. So, without a doubt transgender people in Michigan are protected under Michigan's civil rights laws against housing discrimination.