

MICHIGAN HOSPITALS AND EMPLOYERS MAY NOW FACE DISCRIMINATION COMPLAINTS BASED ON GENDER IDENTITY AND SEXUAL ORIENTATION

The Michigan Civil Rights Commission says it will now act on complaints made by patients, employees and others in Michigan who believe they were discriminated against on the basis of gender identity or sexual orientation. The Commission voted on Monday to consider such discrimination as a form of discrimination prohibited by the Elliott Larsen Civil Rights Act ("Elliott Larsen"). In its official Twitter feed, the Commission said, "In an historic vote, tonight the Michigan Civil Rights Commission @MiCivilRights says 'sex' in state civil rights law includes protection against discrimination on the basis of gender identity & sexual orientation."

Although Elliott Larsen does not expressly identify sexual orientation or gender identity as a form of discrimination prohibited by law, the Commission's vote recognizes such discrimination as a form of discrimination "because of sex." Under the Michigan Constitution and state law, the Commission, through the Department of Civil Rights, is charged with enforcing prohibitions against discrimination, including that based on sex under Elliott Larsen. Under that law, hospitals are places of public accommodation over which the Michigan Department of Civil Rights has enforcement authority.

PRACTICAL TAKEAWAYS

Many health care organizations and employers have been wrestling for some time with legal issues over usage of gender-specific restrooms, patient room assignments and with what gender to identify patients in medical records. Likewise, employers have increasingly faced questions about restroom access, benefits for LGBT employees and dress codes. As a result of the Commission's recent vote, hospitals and employers may see increased patient and employee complaints and enforcement activity.

This is also not the last word on the subject. Legal challenges are likely on the horizon. In addition, the Commission's vote could prompt legislators to address the issue.

If you have questions about this vote or issue, please contact **Jon Rabin** at jrabin@hallrender.com or (248) 457-7835 or your regular Hall Render attorney.