



**Department of Health and Human Services
Office of the Commissioner
Policy and Procedure Statement**

Policy # DHHS-02-04

Issue Date: 07/01/04

Revised Date:

I. SUBJECT

BFOQ Gender-Based Hiring and Overtime Staffing Policy Statement

II. POLICY STATEMENT

The Maine Department of Health and Human Services (DHHS) shall follow both the spirit and the letter of the law as it continues to pursue a policy of hiring and staffing without regard to gender except where based on a bona fide occupational qualification (BFOQ).

III. RATIONALE

In the Department's residential programs, there are areas where a need to protect the recipient's right to privacy exists, i.e., intimate care. Gender-based hiring and gender-based considerations for reassignment and assignment of overtime to maintain an appropriate staffing pattern for this reason is considered a BFOQ.

IV. PROCEURE STATEMENT

It is the intent of DHHS to provide a same gender care giver for intimate personal care, whenever possible, to all patients (in residential facilities) who have expressed a preference for same gender personnel for intimate personal care or for those patients who have not had an opportunity to express a preference. At intake or at a reasonable time thereafter, new patients will be informed of this policy and given the opportunity to express a preference relating to the gender of such personnel. If the patient indicates no preference, the gender of personnel providing intimate personal care to that patient will not be considered for privacy reasons. The preference of the patient, if any, will be documented in the patient's file. Until there is an opportunity for the patient to express a preference relating to the gender of the personnel providing intimate care to the patient, it is the intent of DHHS to provide a caregiver of the same gender whenever possible in order to protect the patient's rights to privacy while treating them with dignity and respect.

BFOQ's used for privacy reasons must be approved by a physician, psychiatrist or psychologist. Within our institutions a core group of clinical professionals other than physicians, psychiatrists and psychologists who work directly with residents are more appropriate to approve such hiring requests by virtue of their intensive daily involvement

with staffing and residents. Therefore, while accountability still remains with the Clinical Director, this responsibility will be delegated to the following authorized individuals:

Riverview Psychiatric Center	Program Service Director
Bangor Mental Health Institute	Clinical Director

In hiring situations, it is the intention of the Department to apply BFOQ's when needed to entry-level positions only. If the staffing of a promotional position (MHW II and above) results in an imbalance of appropriate gender (male or female) for the provision of intimate care on a given ward, the least senior person in the entry level classification of the opposite gender (male, if a female is needed for intimate care) will be reassigned so that privacy needs of patients are met.

To initiate gender-based hiring considerations to provide for privacy needs of patients, a Request for Gender-Based Hiring form must be completed. All requests for Gender-Based Hiring must be approved by one of the Departmental EEO Coordinators.

Gender-based hiring requests for clinical reasons will require the written justification of attending physician or psychiatrist. The Department does not consider preferences of co-workers, clients or stereotyped characterizations such as physical strength legitimate, and requests based on these considerations will be denied as being in violation of this policy.

With regard to overtime assignment gender considerations because of a documented intimate personal care need or clinical reason, if an employee is skipped over on the overtime list, that employee will be considered for overtime at the next opportunity.

This policy relates to new hires and overtime staffing decisions and will not require DHHS to readjust staffing levels or reassign staff each time there may be a change in patient preference or clinical need.

V. DISTRIBUTION

All Staff

February 22, 2007

Review Date

Brenda M. Harvey
Commissioner