



**Department of
Social Services**

Human Resources
Administration

Department of
Homeless Services

Steven Banks
Commissioner

150 Greenwich Street
New York, NY 10007

929 221 7315

W-1
Rev. 12/16

April 2, 2019

Michael P. Hein, Acting Commissioner
Barbara Guinn, Executive Deputy Commissioner
New York State Office of Temporary Disability Assistance
40 North Pearl Street
Albany, NY 12243-0001

Howard Zucker, M.D., Commissioner
New York State Department of Health
Corning Tower Bldg, Room 2531
Empire State Plaza Albany, New York 12237

Re: Recognition of Non-binary Gender

Dear Acting Commissioner, Executive Deputy Commissioner, and
Commissioner:

Following up on prior discussions, we write to request again that the State update its computer systems to recognize a non-binary "X" gender designation and provide an interim manual workaround recognizing a non-binary "X" gender designation until such a system update can be implemented. Specifically, we ask that the State make the following immediate changes, or provide a manual workaround:

1. Recognize 'X' as a valid option when placed in the "Sex" field in the State's Welfare Management System (WMS).
2. Remove gender-based edits in WMS and other State information systems, such as eMedNY, that may result in unjust restrictions on services, coverage or disbursement of entitlements for non-binary and transgender New Yorkers due solely to their sex designation in WMS.

These changes are necessary to ensure compliance with the recently enacted Gender Expression Non-Discrimination Act ("GENDA"), which explicitly prohibits discrimination based on gender identity or expression, and amends section 40-c of the civil rights law to prohibit discrimination by the State or any agency or subdivision of the State, and to enable meaningful implementation of the New York City Local Law.

As you know, the New York City Council enacted Local Law 163 of 2018, signed by Mayor de Blasio on October 9, 2018, which permits individuals born in New York City to choose a sex designation of "X" on their City-issued birth certificates, and which removes the requirement for a doctor's letter in order

to make changes to sex designation on a City-issued birth certificate.¹ As defined in this Local Law, “X” means a designation used to indicate a sex that is not exclusively male or female. In support of the Local Law and our Administration’s commitment to transgender and gender non-conforming community members, the City has also implemented parallel changes to our IDNYC municipal ID cards, making the “X” designation available to all cardholders as of January 15, 2019².

Following unsuccessful staff-level efforts after the enactment of the Local Law, I have reached out over the past three months to request the incorporation of a new value of “X” into the State WMS and related State systems. As set forth more fully below, the recognition of Gender X in WMS and other State systems is crucial in order to accurately and timely process applications for benefits and services. It is our understanding, however, that the State has made a determination that an “X” designation will not be recognized as a value in WMS or related State systems and that “F” will be used as a default for individuals who would otherwise identify as X. The State’s determination not to allow Social Services clients to register a case with an “X” value renders a birth certificate with an X value, obtained pursuant to the Local Law, essentially meaningless in direct conflict with our commitment to serving all New Yorkers in need with dignity and respect, and infringes upon the right of non-binary clients to gender self-determination in accordance with GENDA.

My staff and I have learned a lot about the needs of non-binary community members through our work with Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex (LGBTQI) community advocates. Non-binary gender means a gender outside of the typical definition of male or female. There is no one specific definition of a non-binary gender, but it is a term that may be used by a number of people of different identities and expressions. This includes some, but not all, intersex people – that is, people who have physical reproductive or sexual anatomy that is not what we might consider typical for men and women. The term non-binary may also include people who simply identify in a way other than male or female. It is important to note that gender identities and expressions other than male and female have existed throughout human history across the globe, even though non-binary people have not always had legal recognition³.

Today, legal recognition of non-binary gender is a practical necessity. As acceptance of LGBTQI people grows, more and more people are able to live their truth. New York City is at least the fourth jurisdiction to begin issuing

¹ See Local Law 163 of 2018 (amending § 17-167.1 of the NYC Administrative Code).

² <https://www.metro.us/news/local-news/new-york/idnyc-third-gender-x-2019-benefits>

³ <https://www.teenvogue.com/story/gender-variance-around-the-world>

birth certificates with “X” designations, with more certainly to come^{4 5}. Some jurisdictions, such as Maine and Oregon, will also issue a state ID card with an “X” designation. As more and more people present with non-binary or “X” designations on government-issued ID cards, we must create capacity to accept non-binary documentation and ensure full and meaningful service provision for non-binary clients.

Ample law supports the right to gender affirmation for non-binary New Yorkers. New York State Law prohibits discrimination on the basis of sex, which has long been understood to include gender identity and expression⁶, and which the State re-affirmed through the Governor’s 2015 Executive Order and regulations⁷. New York City law additionally prohibits discrimination on the basis of gender, including gender identity and expression⁸. Furthermore, the New York State Legislature has now passed and the Governor has signed GENDA, which explicitly prohibits discrimination based on gender identity or expression, and amends section 40-c of the civil rights law to prohibit discrimination by the State or any agency or subdivision of the State.^{9 10}

The New York City Department of Social Services (DSS) is tasked with ensuring that New Yorkers in need are able to access critical benefits such as Cash Assistance, the Supplemental Nutritional Assistance Program (SNAP)/food stamps, and Medicaid. As you know, applications for these benefits cannot be registered in the State WMS without the designation of a gender. Since the State WMS does not currently allow the registration of an application with Gender X, an individual who presents a birth certificate with Gender X is essentially blocked from applying for public benefits as Gender X. Apart from the serious issue of gender discrimination this raises, it impedes DSS’s ability to comply with federal and state requirements to promptly process applications within required timeframes. For example, a household is entitled to apply for SNAP benefits on the first day the household contacts a SNAP office during

⁴ <https://www.miamiherald.com/news/nation-world/national/article219731440.html>

⁵ <https://www.thedailybeast.com/how-the-non-binary-revolution-hit-the-west-coast>

⁶ See N.Y. Exec. Law § 296. See e.g. *Richards v. U.S. Tennis Association*, 93 Misc.2d 713, 400 N.Y.S.2d 267 (1977).

⁷ 9 NYCRR § 466.13, available online at:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/466.13_NYCRR_Discrimination_GenderIdentity.pdf

⁸ New York City Human Rights Law, Legal Enforcement Guidelines, available online at:

<https://www1.nyc.gov/site/cchr/law/legal-guidances-gender-identity-expression.page>

⁹ See e.g. New York State Assembly bill A00747, available online at:

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A00747&term=2019&Summary=Y&Text=Y

¹⁰ <https://www.thedailybeast.com/new-york-passes-historic-transgender-anti-discrimination-law>

business hours and these applicants must be screened for expedited benefits.¹¹ Similarly, where applicants for cash assistance indicate an emergency need, an interview must be held on the same day.¹² DSS is required to promptly process applications and the application filing date has important ramifications for the timeframes for determining eligibility.¹³ Any delay in processing an application impedes DSS's ability to meet these timeframes, and denies meaningful access to Gender X individuals to benefits and services. As such, the determination by the State not to incorporate the "X" designation places our Agency in the difficult and untenable position of forcing New Yorkers to put aside their right to express their gender in accordance with New York City and State law in order to access critical intervention services and entitlements.

Accordingly, we ask again that the State make the specific changes as requested above. We also ask that all State policies, procedures, and information systems tied to programs overseen by the State be updated to fully accommodate an 'X' designation and meet the needs of non-binary New Yorkers.

Given the significant impact that this matter has on New Yorkers who seek our services, and the requirements of the new State law, we anticipate that there may be legal actions taken to address the issue. We therefore look forward to an expeditious response to our request and the opportunity to discuss a quick resolution at your earliest convenience. Thank you for considering this urgent request.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Banks', written over a horizontal line.

Steven Banks, Commissioner
New York City Department of
Social Services

¹¹ 7 USC §§ 2020(e)(8)(iii) and (e)(9); 42 USC § 1396a(a)(8); 7 C.F.R. § 273.2(i)(2). See also *Reynolds v Giuliani*, 2005 US Dist LEXIS 2742 (SDNY Feb. 14, 2005)

¹² 18 NYCRR § 351.8(c)(4), SSL§ 133. *Reynolds v Giuliani*, 2005 US Dist LEXIS 2742 (SDNY Feb. 14, 2005).

¹³ 18 NYCRR §§ 350.3, 351.8(c)(2) and 387.17(b).