ISSUE BRIEF

Health insurance coverage for gender-affirming care of transgender patients

Background

Gender identity refers to an individual's concept of self as male, female, a blend of both or neither. Approximately 1.4 million adults and 150,000 youth ages 13 to 17 in the United States identify as transgender, meaning those individuals' gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth.[1] Individuals may also identify as gender expansive, meaning they identify with neither traditional binary gender role nor a single gender narrative or experience.[2] In this document, the term transgender is used inclusive of patients with transgender or gender expansive identities.

Many but not all transgender people experience gender dysphoria, a medical condition defined by the American Psychiatric Association as a "conflict between a person's physical or assigned gender and the gender with which he/she/they identify."[3] Standards of care and accepted medically necessary services that affirm gender or treat gender dysphoria may include but are not limited to mental health counseling, non-medical social transition, gender-affirming hormone therapy, and/or gender-affirming surgeries.[4] Every major medical association in the United States recognizes the medical necessity of transition-related care for improving the physical and mental health of transgender people and has called for health insurance coverage for treatment of gender dysphoria.[5]

Barriers to care

As a population, transgender individuals are frequently subject to bias and discrimination in many aspects of their lives, including the provision of health care. The transgender population is less likely to be insured than both the lesbian, gay and bisexual (LGB) and general populations and often faces challenges in accessing needed healthcare services.[6] A national survey of transgender individuals found:

- 25 percent of respondents experienced a problem with their insurance in the past year related to being transgender, such as being denied coverage for care related to gender transition;
- 25 percent of those who sought coverage for hormones in the past year were denied;
- 55 percent of those who sought coverage for transition-related surgery in the past year were denied;

1. Andrew Flores et al., Williams Inst., UCLA Sch. of Law, How Many Adults Identify as Transgender in the United States? (2016).
2. Joel Baum, et al., Human Rights Campaign & Gend. Spectrum, Supporting and Caring for our Gender Expansive Youth (2013).
3. *What Is Gender Dysphoria?*, Am. Psychiatric Ass'n, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria
4. World Professional Ass'n for Transgender Health, Standards of Care Version 7 (2018), *available at* https://www.wpath.org/publications/soc; Wylie Hembree, et al., Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An *Endocrine Society Clinical Practice Guideline*, 102 J Clinical Endocrinology & Metabolism 11, 3869-903 (Sep. 2017); Eli Coleman, et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 13 Int'l J Transgenderism 4, 165-232 (Aug. 2012).
5. Kellan Baker, *The Future of Transgender Coverage*, 376 New Eng. J. Med. 19, 1801-04 (May 2017).
6. Jen Kates, et al., Henry J. Kaiser Family Found., Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the US, issue brief, May 2018; Sandy James, et al., Nat'l Ctr. Transgender Equality, The Report of the 2015 US Transgender Survey (2016); U.S. Census Bureau, 2015 American Community Survey 1-Year Estimates (2015), *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S2701&prodType=table.

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- 78 percent of respondents wanted hormone therapy related to gender transition, but only 49 percent had ever received it;
- 42 percent reported that insurance covered only some of the surgical care needed for transition; and
- 21 percent reported that insurance covered transition-related surgery, but had no in-network providers.[7]

Federal and state policies

Section 1557 of the Affordable Care Act (ACA) created specific protections barring insurance discrimination based on sexual orientation and gender identity.[8] Prior to enactment, medically necessary gender-affirming hormones and surgeries were often excluded from insurance coverage. Addressing this disparity, the US Department of Health and Human Services (HHS) promulgated final regulations in 2016 implementing section 1557 of the ACA to extend protections against sex discrimination to health coverage and care for the first time and including gender identity discrimination within the definition of sex discrimination.[9] However, a federal court stayed a legal challenge to the rule after the current Administration announced it would reconsider the rule's prohibition on discrimination based on gender identity. The timeline for HHS reconsideration is unknown and the current Administration has, to date, declined to defend the regulation.[10] Rulings by the Equal Employment Opportunity Commission remain intact, however, which found that employer-sponsored plans that exclude gender-affirming care violate Title VII. [11] Title VII of the Civil Rights Act prohibits employment discrimination based on race, color, religion, sex and national origin.

In addition to the ACA, the federal government has taken steps to bar discrimination against transgender individuals in federal health programs. In 2014, HHS invalidated a prior prohibition on Medicare coverage of gender-affirming surgery, citing evidence supporting its effectiveness in treating gender dysphoria and potential for improved health outcomes.[12] In 2016, the federal Office of Personnel Management barred exclusions for gender transition services from the Federal Employees Health Benefits Program. In 2018, the US Department of Veterans Affairs (VA) proposed to amend its medical regulations by removing a provision that excludes "gender alterations" from its medical benefits package, which would effectively authorize transition-related surgery as part of VA care when medically necessary. Final regulations, however, have not yet been issued by the VA.

State-wise, twenty states (CA, CT, CO, DE, HI, IL, MA, MD, MI, MN, NJ, NM, NV, NY, OR, PA, RI, VT and WA) and District of Columbia prohibit health insurers from excluding coverage for transgender health services.[13] California, for example, prohibits health plans from denying coverage or limiting coverage on the basis of sex, which is defined to include gender, gender identity and gender expression. In regulation, California specifies four prohibited practices:

- Denying or cancelling an insurance policy on the basis of gender identity;
- Using gender identity as a basis for determining premium;
- Considering gender identity as a pre-existing condition; and
- Denying coverage or claims for health care services to transgender people when coverage is provided to non-transgender people for the same services.[14]

7. Nat'l Ctr. Transgender Equality, The Report of the 2015 US Transgender Survey (2016)
8. 42 U.S.C. § 18116.
9. Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31375 (May 18, 2016) (to be codified in 45 C.F.R. pt. 92).
10. *Franciscan Alliance, Inc. et al. v. Burwell et al.*, No. 7:16–cv-00108-o (N.D. Texas Dec. 31, 2016).
11. *Macy v. Holder,* No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012); *EEOC v. Deluxe Financial Services Corp.*, (D. Minn., Civ. No. 0:15-cv-02646-ADM-SER, filed June 4, 2015, settled January 20, 2016).
12. U.S. Dep't Health & Human Servs., Departmental Appeals Bd., Appellate Div. NCD 140.3, Transsexual Surgery, Docket No. A-13–87, Decision No. 2576 (May 30, 2014).
13. Baker, *supra* note 5.
14. Cal. Ins. Code § 10140; Cal. Code Regs. Tit. 10 § 2561.2.

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Cost savings

In promulgating the regulations, the California Department of Insurance issued an Economic Impact Assessment that determined that aggregate costs of the antidiscrimination rules would be "insignificant and immaterial" while yielding significant benefits to transgender individuals including suicide reduction, improvements in mental health, reduction in substance use rates, higher rates of adherence to HIV care and reduction in self-medication.[15] The Economic Impact Assessment also identified potential cost savings in the medium to long term due to lower costs associated with suicide, attempts at suicide, overall improvements in mental health and lower rates of substance abuse.[16] The assessment noted that the Centers for Disease Control and Prevention estimate the average acute medical costs of a single suicide completion or attempt in the United States is $2,596 and $7,234 respectively.[17]

Other studies have similarly demonstrated that transgender inclusive health coverage is cost-effective compared to the costs associated with untreated gender dysphoria.[18] A cost analysis of the City and County of San Francisco's coverage of transition-related surgeries found that costs in the first five years to both insurers and employers were low, averaging between $0.77 and $0.96 per year per enrollee, and resulted in no surcharge or premium increases.[19] The analysis also found no evidence of a "magnet effect" wherein transgender individuals would have deliberately sought employment in order to access services.

Health implications for transgender individuals

Transgender individuals in the US are up to three times more likely than the general population to report or be diagnosed with mental health disorders, with as many as 41.5 percent reporting at least one diagnosis of a mental health or substance use disorder:

- Over a third of transgender individuals suffer a major depressive episode in their lifetimes;
- 20.2 percent have been diagnosed with suicidality in the past 30 days;
- 7.9 percent have been diagnosed with an anxiety disorder in the past six months;
- 9.8 percent have been diagnosed with post-traumatic stress disorder in the past six months; and
- 15.2 percent have been diagnosed with a substance use disorder in the past year.[20]

The increased prevalence of these mental health conditions is widely thought to be a consequence of minority stress, the chronic stress from coping with societal stigma and discrimination because of one's gender identity and expression.[21] Indeed, gender based discrimination affecting access to services is a strong predictor of suicide risk among transgender persons.[22] Lack of access to gender-affirming care may directly contribute to poor mental

15. State of Cal., Dep't Ins., Economic Impact Assessment, Gender Nondiscrimination in Health Insurance, Reg-2011-00023 (Apr. 13, 2012).
16. *Id*.
17. *Id*, citing Ctrs. Disease Control & Prevention, Nat'l Ctr. Injury Prevention & Control, Fact Sheet: The Medical Cost Associated with Suicide in the United States, 2010.
18. State of Cal., supra note 15; William Padula, et al., *Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, 31 J Gen. Internal Med. 4, 394-401 (Apr. 2016).
19. Human Rights Campaign, San Francisco Transgender Benefit, available at http://www.hrc.org/resources/san-francisco-transgender-benefit
20. Sari Reisner, et al., *Psychiatric Diagnoses and Comorbidities in a Diverse, Multicity Cohort of Young Transgender Women: Baseline Findings from Project LifeSkills*, 170 J. Am. Med. Ass'n Pediatrics 5, 481–86 (May 2016).
21. Stephen Russell & Jessica Fish, *Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth*, 12 Ann. Rev. Clinical Psychology 1, 465-87 (Mar. 2016).
22. Kristin Clements-Nolle, et al., *Attempted Suicide among Transgender Persons: The Influence of Gender-Based Discrimination and Victimization*, 53 J Homosexuality 3, 53-69 (Oct. 2008).

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health: individuals with gender dysphoria who have undergone no gender confirmation treatment are twice as likely to experience moderate to severe depression and four times more likely to experience anxiety than their surgically-affirmed peers.[23]

Improving access to gender-affirming care is an important means of improving health outcomes for the transgender population. Studies demonstrate dramatic reductions in rate of suicide attempts, with one meta-analysis finding that suicidality rates dropped from 30 percent pre-treatment to 8 percent post-treatment.[24] Studies have also demonstrated a decrease in depression and anxiety and that a majority of patients report improved mental health and function after receipt of gender-affirming care.[25] In addition, receipt of appropriate care is associated with decreased substance use and improved HIV medication adherence among the transgender population, reducing long term negative health outcomes and potential transmission rates. [26] Medically supervised care can also reduce rates of harmful self-prescribed hormones, use of construction grade silicone injections and other interventions that have potential to cause adverse events.[27]

Patients who receive gender-affirming care, including surgical care, feel more congruent in their bodies and report improved mental health. Specifically, one study found that facial feminization surgery improved mental health-related quality of life scores among transgender women to levels seen in the general female population.[28] Studies suggest that improved body satisfaction and self-esteem following medical and surgical therapies is protective against poorer mental health and also supports healthy relationships with parents and peers.[29]

Positive health effects from gender-affirming care extend to children and adolescents as well.[30] Recent research demonstrates that integrated affirmative models of care for youths, which include access to medications and surgeries, result in fewer mental health concerns than has been historically seen among transgender populations.[31] Importantly, rates of self-reported feelings of regret among adolescents following receipt of gender-affirming care are extremely low.[32]

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23. Ashli Owen-Smith, et al., *Association Between Gender Confirmation Treatments and Perceived Gender Congruence, Body Image Satisfaction, and Mental Health in a Cohort of Transgender Individuals*, 15 J Sexual Med 4, 591-600 (Apr. 2018).
24. M. Hassan Murad, et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 Clinical Endocrinology 2, 214-331 (Feb. 2010).
25. Yolanda Smith, et al., *Sex Reassignment: Outcomes and Predictors of Treatment for Adult and Adolescent Transsexuals*, 35 Psychological Med. 1, 89-99 (Jan. 2005); Tiffany Ainsworth & Jeffrey Spiegel, *Quality of life of individuals with and without facial feminization surgery or gender reassignment surgery*, 19 Quality Life Res. 7, 1019-24 (Sep. 2010).
26. Jamil Rehman, et al., *The Reported Sex and Surgery Satisfactions of 28 Postoperative Male to-Female Transsexual Patients*, 28 Archives Sexual Behav. 1, 71-89; Jae Sevelius, Adam Carrico & Mallory Johnson, *Antiretroviral Therapy Adherence Among Transgender Women Living with HIV*, 21 J Ass'n Nurses AIDS Care 3, 256-64 (May 2010).
27. Jessica Xavier, Admin. HIV and AIDS, D.C. Gov't, The Washington Transgender Needs Assessment Survey (2000); Wendy Bostwick & Gretchen Kenagy, *Health and Social Service Needs of Transgendered People in Chicago*, 8 Int'l J Transgenderism 2-3, 57-66 (Oct. 2008); Cathy Reback, et al., Los Angeles Transgender Health Study: Community Report (2001).
28. Ainsworth & Spiegel, *supra* note 25.
29. Ashli Owen-Smith, et al., *Association Between Gender Confirmation Treatments and Perceived Gender Congruence, Body Image Satisfaction, and Mental Health in a Cohort of Transgender Individuals*, 15 J Sexual Med 4, 591-600 (Apr. 2018); Michelle Marie Johns, et al., *Protective Factors Among Transgender and Gender Variant Youth: A Systematic Review by Socioecological Level*, 39 J Primary Prevention 3, 263-301 (Jun. 2018).
30. Lily Durwood, Katie Mclaughlin & Kristina Olson, *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J Am Acad. Child Adolescent Psychiatry 2, 116-23 (Nov. 2016).
31. Laura Edwards-Leeper & Norman Spack, *Psychological evaluation and medical treatment of transgender youth in an interdisciplinary "Gender Management Service" (GeMS) in a major pediatric center*, 59 J Homosexuality 3, 321-36 (Mar. 2012). Edgardo Menvielle, *A comprehensive program for children with gender variant behaviors and gender identity disorders*, 59 J Homosexuality 3, 357-68 (Mar. 2012); Darryl Hill, et al., *An affirmative intervention for families with gender variant children: parental ratings of child mental health and gender*, 36 J Sex & Marital Therapy 1, 6–23 (2010)
32. Johanna Olson-Kennedy, et al., *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons of Nonsurgical and Postsurgical Cohorts*, 172 JAMA Pediatrics 5, 431-436 (May 2018).

Medical society opinions

The AMA opposes any discrimination based on an individual's sex, sexual orientation or gender identity, opposes the denial of health insurance on the basis of sexual orientation or gender identity, and supports public and private health insurance coverage for treatment of gender dysphoria as recommended by the patient's physician. GLMA: Health Professionals Advancing LGBTQ Equality recognizes that mental healthcare, hormone replacement therapy, and/or gender-affirming surgery are medically necessary for the treatment of transgender people who meet the criteria for gender dysphoria and advocates that these services not be excluded from any public or private insurance programs. In addition, other medical associations, including the American Academy of Family Physicians, American College of Obstetricians and Gynecologists and American Psychiatric Association have stated that medically necessary transition-related care should be covered by insurance.[33]

AMA policy

Removing Financial Barriers to Care for Transgender Patients H-185.950
Our AMA supports public and private health insurance coverage for treatment of gender dysphoria as recommended by the patient's physician. (Res. 122 A-08; Modified: Res. 05, A-16)

Sexual Orientation and/or Gender Identity as Health Insurance Criteria H-180.980
The AMA opposes the denial of health insurance on the basis of sexual orientation or gender identity. (Res. 178, A-88; Reaffirmed: Sub. Res. 101, I-97; Reaffirmed: CMS Rep. 9, A-07; Modified: BOT Rep. 11, A-07; Reaffirmed: CMS Rep. 01, A-17)

Military Medical Policies Affecting Transgender Individuals H-40.966
Our American Medical Association affirms that there is no medically valid reason to exclude transgender individuals from service in the US military and affirms transgender service members be provided care as determined by patient and physician according to the same medical standards that apply to non-transgender personnel. (Res. 11, A-15)

Reducing Suicide Risk Among Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Through Collaboration with Allied Organizations H-60.927
Our AMA will partner with public and private organizations dedicated to public health and public policy to reduce lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth suicide and improve health among LGBTQ youth. (Res. 402, A-12)

GLMA policy

GLMA 127-18-101: Transgender Healthcare
Therapeutic treatment, including hormone therapy, mental health therapy and gender affirming surgeries, are medically necessary for the treatment of gender dysphoria. These gender-affirming medical and surgical treatments should be covered by all public and private insurance plans. (Approved 2018)

For additional information or assistance with advocacy to protect transgender individuals' access to medically necessary services, please visit the www.ama-assn.org/go/arc or contact Annalia Michelman, JD, Senior Legislative Attorney, AMA Advocacy Resource Center at annalia.michelman@ama-assn.org or (312) 464-4788.

33. See Am. Acad. Fam. Physicians, Coverage Equity for Drugs, Testing, Procedure, Preventive Services, and Reproductive Technologies (2017); Am. College Obstetricians & Gynecologists, Health Care for Transgender Individuals (2011); Am. Psychiatric Ass'n, Position Statement on Access to Care for Transgender and Gender Variant Individuals (2012).

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