

October 29, 2014

Kristin Thorn
Director, Office of Medicaid
Executive Office of Health and Human Services
One Ashburton Place, Room 1109
Boston, MA 02108

Submitted electronically to masshealthpublicnotice@state.ma.us

Re: Proposed Changes to 130 CMR 415.000, 130 CMR 410.000, 130 CMR 405.000, 130 CMR 423.000, 130 CMR 406.000, 130 CMR 433.000, and 130 CMR 424.000

Dear Director Thorn:

The Massachusetts Transgender Health Care Coalition seeks to end health coverage exclusions for gender transition services for Massachusetts residents. The coalition includes AIDS Action Committee of Massachusetts, Community Catalyst, Gay & Lesbian Advocates & Defenders, Health Care For All, Health Law Advocates, MassEquality and the Massachusetts Transgender Political Coalition. We appreciate the opportunity to comment on the proposed changes to MassHealth regulations related to coverage of services for transgender individuals.

We strongly support the revised MassHealth regulations that remove coverage exclusions for gender transition services. Gender transition-related care, including provision of gender-affirming surgeries and other related surgeries and treatments such as hormone therapy, is recognized as medically necessary for the treatment of gender dysphoria.¹ Gender dysphoria is a real and serious medical condition experienced by many transgender people. The condition is marked by a profound and disorienting misalignment of a person's gender identity and his or her assigned birth sex. The misalignment is debilitating and, without treatment, predictably leads to clinical depression, loss of self-esteem, serious self-harm including genital self-mutilation and suicide.

We applaud MassHealth for making regulatory changes to align with the Patrick Administration's policy decisions announced this summer. On June 20, 2014, Governor Patrick issued a statement indicating that MassHealth would issue new regulations that removed all exclusions for treatment of gender dysphoria. On the same day, the Division of Insurance issued Insurance Bulletin 2014-03, prohibiting exclusions for gender dysphoria treatment in private health insurance plans. That bulletin, although applying only to private insurance, points out the strong prohibitions in Massachusetts against sex discrimination and federally, including those in Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

¹ See American Psychiatric Association, *Diagnostic and statistical manual of mental disorders*, 5th ed., (American Psychiatric Publishing, 2013); American Medical Association House of Delegates (hereinafter "AMA"), "Removing Financial Barriers to Care for Transgender Patients" (2008), available at http://www.tgender.net/taw/ama_resolutions.pdf; and The World Health Organization's International Statistical Classification of Diseases and Related Health Problems, version 10 (ICD-10) includes "gender identity disorder," available at <http://apps.who.int/classifications/icd10/browse/2010/en#/F64>.

The Affordable Care Act (ACA) extends the protections of these other anti-discrimination statutes to federal health programs or health programs receiving federal funds (such as MassHealth), including the prohibition on sex discrimination.² The Insurance Bulletin clarified that the prohibition on discrimination in health coverage due to gender identity or gender dysphoria is encompassed under these state and federal laws barring sex discrimination. It stated that, “denial of coverage for medically necessary treatment based on an individual’s gender identity or gender dysphoria by any carrier is sex discrimination that is prohibited under Massachusetts law.”³

To achieve consistency with the proposed rules for transgender health coverage, we request that the regulations also update the non-discrimination policy for providers, pursuant to 130 C.M.R. 450.202. We propose that MassHealth add the following language to 130 C.M.R. 450.202(B) (proposed changes in *italics*):

(B) No provider may engage in any practice, with respect to any member, that constitutes unlawful discrimination under any other state or federal law or regulation, including, but not limited to, practices that violate the provisions of 45 CFR Part 80 (relative to discrimination on account of race, color, or national origin), 45 CFR Part 84 (relative to discrimination against disabled persons), 45 CFR Part 90 (relative to age discrimination). *A provider must not discriminate on the basis of race, color, national origin, citizenship, alienage, religion, creed, sex, sexual orientation, gender identity, age, or disability in its policies or in its application of policies, concerning the acquisition and verification of financial information, preadmission or pretreatment deposits, payment plans, deferred or rejected admissions, or Low Income Patient status.*

This proposed language parallels the provider non-discrimination policy delineated under the regulations for Health Safety Net Eligible Services at 101 C.M.R. 613.08(1)(a). Revising the MassHealth All Provider regulations to include “gender identity” in the list of categories about which providers must not discriminate would also bring them in line with other state laws pertaining to non-discrimination in housing, employment and credit.⁴

In implementing the revised MassHealth regulations that remove coverage exclusions for gender transition services, we anticipate that MassHealth will issue guidelines for MassHealth providers in the form of sub-regulatory guidance and Provider Manuals. We propose that MassHealth rely on the Standards of Care, Version 7, issued by the World Professional Association for Transgender Health (WPATH) to develop this guidance and any medical necessity criteria that MassHealth may use in making coverage determinations.⁵ The WPATH Standards of Care are comprehensive clinical guidance for health professionals engaging in treatment of transgender

² See 42 U.S.C. 18116.

³ Massachusetts Division of Insurance Bulletin 2014-03, June 20, 2014, <http://www.mass.gov/ocabr/docs/doi/legal-hearings/bulletin-201403.pdf>.

⁴ See M.G.L. 151B § 4.

⁵ World Professional Association for Transgender Health Standards of Care, Version 7, available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655.

individuals and we urge MassHealth to adopt these standards when developing provider guidance and medical necessity criteria.

We appreciate MassHealth's consideration of these comments and would be happy to provide additional information or feedback. We strongly support the removal of exclusions for gender transition treatment and thank MassHealth for taking these steps to ensure that critical and medically necessary services are available to those who need them most. Should you have any questions, please contact Zack Paakkonen at (617) 426-1350 ext. 6953 or ZPaakkonen@glad.org.

Sincerely,

AIDS Action Committee of Massachusetts
Gay & Lesbian Advocates & Defenders
Health Care For All
Health Law Advocates
MassEquality
Massachusetts Transgender Political Coalition