



STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

NOTICE OF DECISION TO TAKE ACTION ON PROPOSED REGULATION

In accordance with section 4-168(d) of the Connecticut General Statutes, the Department of Social Services ("DSS") hereby provides notice that it will proceed with adopting DSS regulation #14-05 concerning coverage of gender dysphoria services. Notice of intent to amend certain Medicaid regulations was posted to the regulations webpage of the Secretary of the State on September 22, 2014. DSS received two public comments.

As required by the Freedom of Information Act and section 4-168(d) of the Connecticut General Statutes, the following items are available for copying at the address specified below, and if, applicable, by the alternate methods detailed below:

(A) The final wording of the proposed regulation

A copy of the proposed regulation is available for public inspection during regular business hours at the Department of Social Services, Office of Legal Counsel, Regulations and Administrative Hearings, 11th Floor, 25 Sigourney Street, Hartford, 06103. An electronic copy of the entire regulation making file including the Notice of Intent to Amend the Regulation, the proposed regulation, fiscal note, small business impact statement, comments received and this Notice of Decision to proceed are also available for public inspection on the Department of Social Services website at <http://www.ct.gov/dss>. Click on "Publications" then "Policies and Regulations."

(B) A statement of the principal reasons in support of this intended action

Both written comments received by the Department strongly supported the proposed amendment to the Department of Social Services Medicaid regulations. The comments expressed strong support for the purpose of the regulation -- removal of the coverage exclusions for gender identity services. The proposed amendments to existing regulations will allow Medicaid coverage of sex-reassignment surgery and related services and treatments. One comment noted that without medically necessary treatment individuals may experience clinical depression, loss of self-esteem, serious self-harm and suicide.

The two comments also express support for the regulation as it will bring Connecticut's Medicaid program in line with Connecticut General Statutes, § 46a-71(a) which prohibits discrimination based upon "gender identity or expression." These comments also endorsed the regulation as it will bring the Medicaid program in line with the Connecticut Department of Insurance Bulletin IC-34, which prohibits discrimination by based upon gender identity or expression. The fact that Connecticut removed exclusions for transgender-related health care for its state employees was also noted.

IMPORTANT: Use this form (REGS-1) to submit permanent regulations to the Legislative Regulation Review Committee.
For *emergency regulations*, use form REGS-1-E instead.
For *non-substantive technical amendments and repeals* proposed without prior notice or hearing as permitted by subsection (g) of CGS 4-168, as amended by PA 13-247 and PA 13-274, use form REGS-1-T instead.

Please read the additional instructions on the back of the last page (Certification Page) before completing this form. Failure to comply with the instructions may cause disapproval of proposed regulations.

State of Connecticut
REGULATION
of the

NAME OF AGENCY:

Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION:

Coverage of Services for the Treatment of Gender Dysphoria

Section 1. Section 17b-262-342 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 17b-262-342. Goods and services not covered

The department shall not pay for the following goods or services or goods or services related to the following:

[(1) Transsexual surgery or for a procedure that is performed as part of the process of preparing an individual for transsexual surgery, such as hormone therapy and electrolysis;]

[(2) immunizations,] (1) Immunizations, biological products and other products available to providers free of charge;

[(3) examinations] (2) Examinations and laboratory tests for preventable diseases that are furnished free of charge;

[(4) information] (3) Information or services provided to a client by a provider electronically or over the telephone;

[(5) cosmetic surgery] (4) Cosmetic surgery;

[(6) an] (5) An office visit for the sole purpose of the client obtaining a prescription where the provider previously determined the need for the prescription;

[(7) cancelled] (6) Cancelled services and appointments not kept;

[(8) services] (7) Services provided in a general hospital if the department determines the admission does not, or retrospectively did not, comply with the department's utilization review requirements in section 17-134d-80 of the Regulations of Connecticut State Agencies;

[(9) infertility] (8) Infertility treatment;

[(10) sterilizations] (9) Sterilizations performed on mentally incompetent individuals or institutionalized individuals;

[(11) more] (10) More than one visit per day to the same provider by a client;

[(12) services] (11) Services to treat obesity other than those described in section 17b-262-341(9) of the Regulations of Connecticut State Agencies; and

[(13) any] (12) Any procedures or services of an unproven, educational, social, research, experimental or cosmetic nature; any diagnostic, therapeutic or treatment services in excess of those deemed medically necessary by the department to treat the client's condition; or services not directly related to the client's diagnosis, symptoms or medical history.

Sec. 2. Subsection (c) of section 17b-262-456 of the Regulations of Connecticut State Agencies is amended to read as follows:

The department shall not pay for the following psychiatric services:

- (1) [information] Information or services furnished by the provider to the client over the telephone;
- (2) [concurrent] Concurrent services for the same client involving the same services or procedure;
- (3) [office] Office visits to obtain a prescription, the need for which has already been ascertained; and
- (4) [procedures performed in the process of preparing an individual for transsexual surgery; and
- (5) cancelled] Cancelled office visits or appointments not kept.

Sec. 3. Section 17b-262-612 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 17b-262-612. Services Not Covered

The department shall not pay for the following:

- (a) [any] Any procedures or services of an unproven, educational, social, research, experimental[,] or cosmetic nature; for any diagnostic, therapeutic[,] or treatment procedures in excess of those deemed medically necessary [and medically appropriate] by the department to treat the client's condition; or for services not directly related to the client's diagnosis, symptoms[,] or medical history;
- (b) [any] Any examinations, laboratory tests, biological products, immunizations[,] or other products which are furnished free of charge;

- (c) [~~information~~] Information or services provided to a client by a provider over the telephone;
- (d) [~~an~~] An office visit for the sole purpose of the client obtaining a prescription where the need for the prescription has already been determined;
- (e) [~~cancelled~~] Cancelled office visits and appointments not kept;
- (f) [~~cosmetic~~] Cosmetic surgery;
- (g) [~~services~~] Services provided in an acute care hospital if the department determines the admission does not, or retrospectively did not, fit the department's utilization review requirements pursuant to section 17-134d-80 of the Regulations of Connecticut State Agencies;
- (h) [~~services~~] Services provided by the admitting provider in an acute care hospital shall not be made or may be recouped if it is determined by the department's utilization review, either prospectively or retrospectively, that the admission did not fulfill the accepted professional criteria for medical necessity, [~~medical appropriateness,~~] appropriateness of setting[,] or quality of care;
- (i) [~~a~~] A laboratory charge for laboratory services performed by a laboratory outside of the nurse practitioner's office. [~~--the~~] The laboratory shall bill the department for services rendered when a nurse practitioner refers a client to a private laboratory; and
- (j) [~~the~~] The following routine laboratory tests which shall be included in the fee for an office visit and shall not be billed on the same date of service: urinalysis without microscopy, hemoglobin determination[,] and urine glucose. [; and
- (k) transsexual surgery or for a procedure which is performed as part of the process of preparing an individual for transsexual surgery, such as hormone treatment and electrolysis.]

Sec. 4. Section 150.1.E.II of the Department of Social Services' Medical Services Policy Manual is amended to read as follows:

- (a) Diagnostic, therapeutic or treatment procedures[,] and inpatient hospital stays for experimental, cosmetic, research, social or educational purposes;
- (b) Any services or items furnished for which the provider does not usually charge;
- (c) The day of discharge or transfer;
- (d) Leave of Absence (LOA) or Pass with Medical Permission.
- (e) Leave of Absence (LOA) or Pass with and without Medical permission when the Title XIX patient is out of the hospital at the time of the census count (12 midnight);
- (f) Emergency room services provided on the same day as inpatient admission;

- (g) Hospital inpatient stay is not covered when the following procedures or services are performed:
- (1) Tuboplasty and sterilization reversal;
 - (2) Implantation of nuclear-powered pacemaker;
 - (3) Nuclear-powered pacemakers;
 - (4) Inpatient charges related to autopsy;
 - (5) All services or procedures of a plastic or cosmetic nature performed for reconstructive purposes, including but not limited to the following: lipectomy, hair transplant, rhinoplasty, dermabrasion[,] or chemabrasion.
 - [(6) Transsexual surgical procedures for gender change or reassignment or treatment preparatory to transsexual procedures (e.g., hormone therapy and electrolysis).]
 - [(7)] (6) The [Department] department will not pay for a hospital stay, medical services or procedures in the treatment of obesity, including gastric stapling. Although obesity is not itself an illness it may be caused by illnesses such as hypothyroidism, Cushing's disease and hypothalamic lesions. In addition, obesity can aggravate a number of cardiac and respiratory diseases as well as diabetes and hypertension. Services in connection with the treatment of obesity could be covered services when such services are an integral and necessary part of course of treatment for one of these illnesses.
- (h) With the exception of a CT Scan no Title XIX reimbursement will be made to a hospital for medical services provided to an inpatient outside of the per diem daily rate.
- (i) The [Department] department will not pay for drugs included in the Drug Efficiency Study Implementation (DESI) Program that the Food and Drug Administration has proposed to withdraw from the market in a notice of opportunity for hearing. The Drug Efficiency Study Implementation (DESI) Program prohibition against payment includes all generically equivalent drug products and drugs that are less than effective. The [Department] department will notify providers regarding which drugs will not be reimbursed as a result of the DESI program.
- (j) New services in hospitals and services previously unauthorized for payment, [must] shall obtain approval or they are a non-covered service. (Refer to F.III.e. for prior authorization instructions.)
- (k) Admissions and day(s)-of-care that do not meet established requirements for medically necessary acute care inpatient hospital services.
- (l) Claims involving non-covered services:
- (1) Non-covered services only. If the hospital stay was for a non-covered service only, then no charges will be paid by Medicaid.
 - (2) Covered and non-covered services. If the hospital stay is a

combination of services, some of which are covered and some which are not covered by Medicaid, the Department will pay for the covered services only. The non-covered services will not be paid.

- (m) Weekend admittances (Friday[/] or Saturday) or discharges (Sunday[/] or Monday) unless they are medically necessary. Admissions and discharges on these restricted days must have medical necessity recorded by the attending or performing physician in the patient's medical record.

Sec. 5. Section 171.4E.III of the Department of Social Services' Medical Services Policy Manual is amended to read as follows:

[a. Transsexual surgery or a procedure which is performed as part of the process of preparing an individual for transsexual surgery, such as hormone therapy and electrolysis]

[b.] (a) Treatment of obesity;

[c.] (b) Any immunizations, biological products and other products available to the clinic free of charge from the Connecticut State Department of Public Health;

[d.] (c) Any examinations and laboratory tests for preventable diseases which are furnished free of charge by the Connecticut State Department of Public Health;

[e.] (d) Information provided to a patient over the telephone;

[f.] (e) Cosmetic surgery;

[g.] (f) A visit for the sole purpose of a patient obtaining a prescription where the need for the prescription has already been determined;

[h.] (g) Canceled visits or for appointments not kept; and

[i.] (h) Services which are provided in a skilled nursing facility, intermediate care facility or intermediate care facility for the [mentally retarded] intellectually disabled which are deemed routine services for patients in such facilities are not covered. These services include, but are not limited to, occupational therapy services, physical therapy services, audiological services, speech services, respiratory therapy services[,] and primary care services.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

A. The problems, issues or circumstances that the regulation proposes to address.

This regulation repeals current language in the Department of Social Service's regulations and Medical Services Policy Manual that excludes coverage for sexual reassignment surgery and related services and procedures. These coverage exclusions were originally based upon the view that such surgeries and related procedures and services were experimental or unproven in nature. The medical community now recognizes a variety of surgeries and treatments for the diagnoses of "gender identity disorder" or "gender dysphoria".

B. The main provisions of the regulation include:

The regulation repeals coverage exclusions in the Medicaid payment regulations for physician services, nurse practitioner services and psychiatrist services. The regulation also repeals the coverage exclusion in the hospital and clinic medical services policy manuals. The regulation also makes a number of technical changes to the existing regulation, including punctuation corrections and changes to conform to current statutory wording.

C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or laws.

No other laws or regulations will be affected.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

CERTIFICATION

This certification statement must be completed in full.

I hereby certify that the above Regulation(s)

- 1) is/are (check all that apply) adopted amended repealed by this agency pursuant to the following authority(ies): (complete all that apply)
- a. Connecticut General Statutes section(s) _____.
- b. Public Act Number(s) _____.
 (Provide public act number(s) if the authorizing act has not yet been codified in the Connecticut General Statutes.)

And I further certify

- 2) that Notice of Intent to adopt, amend or repeal said regulation(s) was electronically submitted to the Secretary of the State on _____, and posted to the Secretary's regulations website on _____; (Insert dates notice was (a) emailed to the Secretary of the State and (b) posted on the Secretary's website, if notice and posting were required by CGS 4-168, as amended by PA 13-247 and PA 13-274.)
- 3) and that a public hearing regarding the proposed regulation(s) was held on _____ or that no public hearing was held; (Insert date(s) of mandatory public hearing(s) held pursuant to CGS 4-168(a), as amended, or other applicable statute, and/or voluntary hearing, or if no hearing was held, check the box for that statement.)
- 4) and that notice of Decision to Take Action on said regulations was electronically submitted to the Secretary of the State on _____, and posted to the Secretary's regulations website on _____; (Insert dates notice was (a) emailed to the Secretary of the State and (b) posted on the Secretary's website, if notice and posting were required by CGS 4-168, as amended by PA 13-247 and PA 13-274.)
- 5) and that said regulation(s) is/are EFFECTIVE (check one, and complete as applicable)
- When posted online by the Secretary of the State.

OR on (insert date) _____.

6) SIGNED (Head of Board, Agency or Commission)	OFFICIAL TITLE, DULY AUTHORIZED	DATE
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APPROVED by the Attorney General as to legal sufficiency in accordance with CGS Section 4-169, as amended.

DATE	SIGNED (Attorney General or AG's designated representative)	OFFICIAL TITLE, DULY AUTHORIZED
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Proposed regulations are DEEMED APPROVED by the Attorney General in accordance with CGS Section 4-169, as amended, if the Attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.

(For Regulation Review Committee Use ONLY)

- APPROVED in WHOLE or WITH technical corrections deletions substitute pages
- DEEMED APPROVED, pursuant CGS 4-170(c), as amended.
- Rejected without Prejudice Disapproved, pursuant to CGS 4-170(c), as amended.

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED (Administrator, Legislative Regulation Review Committee)
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In accordance with CGS Section 4-172, as amended by PA 13-247 and PA 13-274, one certified paper copy and one electronic copy with agency head certification statement received on the date(s) specified below.

DATE	SIGNED (Secretary of the State)	BY
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(For Secretary of the State Use ONLY)

Date Posted to SOTS Regulations Website:

Date Electronic Copy Forwarded to the Commission on Official Legal Publications:

SOTS file stamp:

GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Section 4-168, as amended by PA 13-247, section 28, and PA 13-274, and CGS Section 4-170.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in [brackets]. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The *Certification Statement* portion of this form must be completed, including all applicable information regarding notice submission and website posting date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: <http://www.cga.ct.gov/rr/>.
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the Certification Statement page)

1. a) Indicate whether the regulation contains newly adopted sections, amendments to existing sections, and/or repeals of existing sections. **Check all cases that apply.**
b) Indicate the specific legal authority that permits or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.
2. An agency must electronically submit notice of its intent to adopt the regulation to the Secretary of the State at regulations.sots@ct.gov for posting on the Secretary's regulations website. Enter both the date notice of intent was submitted to the Secretary of the State *and* the date the notice was posted on the Secretary's website. For emergency regulations, use Form Regs-1-E instead of this form. For non-substantive technical amendments and repeals adopted without prior notice or hearing as permitted by subsection (g) of CGS 4-168, use Form REGS-1-T instead of this form.
3. CGS 4-168(a), as amended by PA 13-247 and PA 13-274, prescribes requirements for holding a public hearing on proposed regulations. Enter the date(s) of all hearing(s) held under that section, if any, also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law; and enter the date(s) of any public hearing(s) the agency elected to hold voluntarily. If no public hearing was held, mark (X) the check box.
4. **NEW REQUIREMENT:** CGS 4-168(d), as amended by PA 13-247 and PA 13-274, prescribes requirements electronically submitting notice of decision to take action (proceed with adoption) of a proposed regulation for posting to the Secretary's regulations webpage. Enter both the date notice of decision was submitted to the Secretary of the State *and* the date the notice was posted on the Secretary's website.
5. As applicable, enter the specific effective date of the regulation; or indicate that it is effective upon posting online by the Secretary of the State. **Please note the important information below.**
Permanent regulations adopted after July 1, 2013 are effective upon posting online by the Secretary of the State (SOTS), or at a *later* date specified by the agency, or at a *later* date if required by statute. See CGS 4-172(b). An effective date may not precede the date of posting online by SOTS, and it may not precede the effective date of the public act requiring or permitting the regulation.
6. Submit the original proposed regulation to your agency commissioner for signature.

**DEPARTMENT OF SOCIAL SERVICES
DIVISION OF FINANCIAL SERVICES
MEMORANDUM**

TO: Patricia McCooey

FROM: Mike Gilbert, Assistant Director, Division of Financial Services ^{MJG}

DATE: September 18, 2014

RE: Fiscal Note for Proposed Reg. #14-05 Treatment of Gender Dysphoria

Attached is a fiscal note to accompany the regulation cited above when it is submitted to the Governor's Office and to the Office of Policy and Management for approval. If you have any questions, please feel free to contact me at 424-5841.

Thank you.

Cc: Kathleen Brennan
Diane Benedetto
Kate McEvoy
Robert Zavoski
Mari Spallone
Nicholas Venditto
Matthew LaFayette

DSS ID # 14-05

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATIONS

AGENCY SUBMITTING REGULATION Department of Social Services DATE 9/17/2014

SUBJECT MATTER OF REGULATION Treatment of Gender Dysphoria

REGULATION SECTION NO. 17b-262-342, 17b-262-456, 17b-262-612

STATUTORY AUTHORITY 17b-99(d)(11)

OTHER AGENCIES AFFECTED _____

EFFECTIVE DATE USED IN COST ESTIMATE July 1, 2014

ESTIMATE PREPARED BY Matthew LaFayette

QUESTIONS SHOULD BE ADDRESSED TO Michael Gilbert TELEPHONE 860-424-5841

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency Department of Social Services Fund Affected General

	SFY 2015	SFY 2016
Number of Positions		
Personal Services		
Other Expenses		
Equipment		
Grants (Medicaid)		
Total Gross Costs (Savings)	See Below	See Below
Estimated Federal Share		
Estimated State Share		

STATE IMPACT OF REGULATION:

This regulation will bring the department's Medicaid coverage regulations into line with current medical practice. In particular, the regulation will eliminate the provision in various regulations and medical services policies that prohibits payment for sexual reassignment surgery and related services and procedures. These coverage exclusions were originally based upon the view that such surgeries and related procedures and

services were experimental or unproven in nature. The medical community now recognizes a variety of surgeries and treatments for "gender identity disorder" or "gender dysphoria". These diagnoses are recognized in the Diagnostic and Statistical Manual of Mental Disorders (DSM-4) and the forthcoming DSM-5.

(A) The problems, issues or circumstances that the regulation proposes to address: This regulation is necessary to enable the department to cover the full complement of services for clients with a diagnosis of gender dysphoria or gender identity disorder. The exclusion of such services is no longer reasonable. There now exists a body of scientific evidence that demonstrates: broad agreement that gender dysphoria is diagnosable; the safety and efficacy of the surgeries when medically necessary; and broad consensus that the services should longer be considered experimental. The regulation will also remove any potential conflict between the department's coverage policy and the state prohibition against discrimination based on "gender identity or expression" as enacted in Public Act 11-55.

(B) The main provisions of the regulation: Removes the coverage limitations in the following regulations and medical services policies: physician services, nurse practitioner services, psychiatrists, medical clinics, and inpatient hospital services.

(C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws: The proposed regulation will amend the existing regulations for various types of medical services to enable the department to provide a comprehensive scope of services to Medicaid clients with a diagnosis of gender dysphoria or gender identity disorder.

FINANCIAL IMPACT:

This proposed regulation removes the State of Connecticut's prohibition on paying for sexual reassignment surgery and the related services and procedures. The Department anticipates an increase in Medicaid expenditures as a result of increased utilization of gender confirming services. In order for sexual reassignment surgery to be considered clinically appropriate, clients must meet certain criteria, some of which can take over a year to satisfy. As a result, the Department does not expect to incur a significant amount of new expenditures in the immediate fiscal years related to sexual reassignment surgery and the related services and procedures. The estimated Medicaid expenditure impact of this change in SFY 2015 is an increase to the state share of \$107,744 and the federal share of \$161,617. In SFY 2016, the estimated Medicaid expenditure impact of this change is an increase to the State share of \$215,489 and the federal share of \$323,233. While this coverage change is effective July 1, 2014, a lag in claims activity of six months is anticipated, which is reflected in the estimated SFY 2015 expenditures.

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION:

None.

SMALL BUSINESS IMPACT :

While the Department does not anticipate that the proposed regulations will have a significant impact on small businesses, small businesses will have the opportunity to bring any unanticipated concerns to the Department's attention through notice and public comment.

Small Business Impact Statement

Prior to adopting a new section or amendment, Section 4-168a of the Connecticut General Statutes (C.G.S.) requires that each state agency consider the affect of such action on small businesses as defined in C.G.S. Section 4-168a. When such a regulatory action may have an adverse affect on small businesses, C.G.S. Section 4-168a directs the agency to consider regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency submitting proposed regulations: Department of Social Services

Subject matter of Regulation: Treatment of Gender Dysphoria

In accordance with C.G.S. Section 4-168a, staff analyzed the affect on small businesses of the proposed regulations and determined the following:

True False (Check all appropriate boxes):

- The regulatory action will not have an affect on small businesses.
- The regulatory action will have an affect on small businesses, but will not have an adverse affect on such small businesses.
- The regulatory action may have an adverse affect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially affected small business. Alternatives considered include the following:
- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
 - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
 - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
 - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse affect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare.

The State agency listed above notified the Department of Economic and Community Development of its intent to take the proposed action and completed the Agency Fiscal Estimate of Proposed Regulations.



October 21, 2014

VIA FIRST-CLASS MAIL AND EMAIL

Director Brenda Parrella
Department of Social Services
Office of Legal Counsel
Regulations and Administrative Hearings
55 Farmington Ave
Hartford, CT 06105
Brenda.parrella@ct.gov

Re: Regulation Number 14-05 – Services for Gender Dysphoria

Dear Director Parrella:

We write in support of the September 22, 2014 proposed amendments to Connecticut Administrative Regulations §§ 17b-262-342, 17b-262-456, 17b-262-612 and Medical Services Policy Manual §§ 171.4E.II and 150.1E.II, which would eliminate the current prohibition on Medicaid coverage for care related to gender dysphoria. We have been in contact with transgender individuals in Connecticut who will benefit significantly from these amendments, and we applaud the Department of Social Services (DSS) and the State of Connecticut for championing the health and well-being of all of its citizens. We offer the following comments in support of the amendments.

Lambda Legal is the oldest and largest nonprofit legal organization advocating for full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and people living with HIV, through impact litigation, education, and public policy work. Lambda Legal has particular expertise with regard to the coverage of transition-related health care for transgender individuals. In 2006, we filed a federal lawsuit challenging a Wisconsin law barring its Department of Corrections from providing medically necessary care to transgender inmates, which the court struck down as unconstitutional. *See Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011), *cert. denied*, 132 S. Ct. 1810 (2012) (holding that Wisconsin law preventing transgender prisoners from accessing transition-related care violated prohibition against cruel and unusual punishment). In 2011, we worked with the City of Seattle, Washington to ensure that its health insurance plan provided transgender employees with coverage for medically necessary transition-related health care. In 2013, the State of Oregon removed its exclusions for transition-related health care in its insurance plans for state employees as part of a

settlement in our lawsuit on behalf of a transgender state employee. *See Esquivel v. Oregon, et al.*, Case No. 11C17487 (Or. Cir. Ct. June 21, 2011). Lambda Legal has appeared as counsel or *amicus curiae* in dozens of cases in state and federal courts on behalf of transgender people who have suffered from discrimination, including other cases involving access to health care.

Connecticut has shown strong and consistent leadership in ensuring that transgender people are not discriminated against on the basis of gender identity or expression. Connecticut General Statutes § 46a-71(a) states: “All services of every state agency shall be performed without discrimination based upon . . . gender identity or expression. . . .” In December 2013, Connecticut became the fifth state to take a proactive step toward ending transgender health care discrimination when the Connecticut Department of Insurance issued Bulletin IC-34, explaining that all entities delivering or issuing individual and group health insurance policies in Connecticut are prohibited from discrimination against an individual because of his or her gender identity or expression.¹ Bulletin IC-34 explains that Connecticut’s prohibition extends to both the availability of health insurance coverage and the provision of specific health insurance benefits. Connecticut is also a leader in having removed its exclusions for transition-related health care in its state-funded insurance plans for state employees. Denying coverage for medically necessary transition-related treatment is discrimination on the basis of gender identity or expression – regardless of whether the provider of that treatment seeks payment from Medicaid, private insurance, or a state-funded employee insurance plan.

The proposed amendments will not only bring DSS in line with Connecticut anti-discrimination law and with Bulletin IC-34, but they make sense from both a medical and fiscal standpoint.

When transgender individuals have access to medically necessary transition-related care, their overall health and well-being improve, resulting in significant reductions in suicide attempts, depression, anxiety, substance abuse, and self-administration of hormone injections.² Transgender individuals living with HIV are also more likely to adhere to treatment regimens when they are receiving transition-related care.³ As recognized in Bulletin IC-34, there is no question that treatment related to gender dysphoria is accepted

¹ State of Connecticut, Insurance Department, *Gender Identity Nondiscrimination Requirements* (Dec. 19, 2013), available at [http://www.ct.gov/cid/lib/cid/Bulletin_IC-](http://www.ct.gov/cid/lib/cid/Bulletin_IC-37_Gender_Identity_Nondiscrimination_Requirements.pdf)

[37_Gender_Identity_Nondiscrimination_Requirements.pdf](http://www.ct.gov/cid/lib/cid/Bulletin_IC-37_Gender_Identity_Nondiscrimination_Requirements.pdf).

² See State of California, Department of Insurance, *Economic Impact Assessment: Gender Nondiscrimination in Health Insurance* (Apr. 13, 2012), available at <http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf> (hereinafter State of California, *Economic Impact Assessment*); Sylvia Rivera Law Project, *Eliminating the Medicaid Exclusion for Transition-Related Care in NYS: Good Public Health, the Right Thing to Do and Ultimately a Cost-Saving Measure*, 2, available at <http://srlp.org/files/Health%20Costs%20Final%20Memo.pdf> (hereinafter Sylvia Rivera Law Project, *Eliminating the Medicaid Exclusion*).

³ See Sylvia Rivera Law Project, *Eliminating the Medicaid Exclusion*, at 2.

within the medical community and is medically necessary for many transgender people. We are long past the point where it can be credibly claimed that these health services are “experimental,” which was the rationale developed for denying these services in the 1980s and 1990s. Indeed, on May 30, 2014, the U.S. Department of Health and Human Services’ Departmental Appeals Board ruled that Medicare’s categorical exclusion of coverage for transition-related care is inconsistent with contemporary science and medical standards of care.⁴ Accordingly, the provision of payment for these services should be handled no differently from other medically necessary services.

Connecticut’s expansion of Medicaid to include low-income non-parent, non-disabled individuals, as permitted under the Affordable Care Act, means that now, more than ever, Medicaid plays an essential role in ensuring that all individuals receive the medically necessary care that they need, and that Medicaid agencies have an interest in seeing that this cost-effective care is provided. For transgender individuals, it is particularly crucial that this coverage include medically necessary transition-related care because transgender individuals are four times as likely to have a household income under \$10,000 and twice as likely to be unemployed as the typical person in the U.S.⁵ Studies have shown that adding transition-related coverage is fiscally sound and actually saves money by reducing other health costs. Removing the prohibition on transition-related care would lead to savings through reduction in costs related to mental health treatment, suicide attempts, substance abuse, and medical conditions directly resulting from substance abuse.⁶ In addition, transgender individuals have higher rates of employment after their transition, which would reduce the overall number of individuals receiving Medicaid assistance.⁷ Studies analyzing both the impact on businesses and on government entities have shown that the benefits of providing transition-related care outweigh its costs.⁸

⁴ See Evan McMorris-Santoro, *Obama Administration Opens The Door To Medicare-Funded Sex Reassignment Surgery* (May 30, 2014), available at <http://www.buzzfeed.com/evanmcsan/obama-administration-opens-the-door-to-taxpayer-funded-sex-r>.

⁵ See Williams Institute, *Beyond Stereotypes: Poverty in the LGBT Community* (June 2012), available at <http://williamsinstitute.law.ucla.edu/headlines/beyond-stereotypes-poverty-in-the-lgbt-community/>; see also Andrew Cray and Kellan Baker, Center for American Progress, *FAQ: Health Insurance Needs for Transgender Americans*, 1 (Oct. 3, 2012), available at <http://www.americanprogress.org/wp-content/uploads/2012/10/TransgenderHealth.pdf> (hereinafter Center for American Progress FAQ); Jaime M. Grant, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), available at http://www.thetaskforce.org/reports_and_research/ntds.

⁶ See State of California, *Economic Impact Assessment*; Sylvia Rivera Law Project, *Eliminating the Medicaid Exclusion*, at 3.


⁷ Sylvia Rivera Law Project, *Eliminating the Medicaid Exclusion*, at 3.

⁸ *Id.* at 1; see also Williams Institute, *Costs and Benefits of Providing Transition-Related Health Coverage in Employee Health Plans* (Sept. 2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>; State of California, *Economic Impact Assessment*; Human Rights Campaign Foundation, *Transgender-Inclusive Health Care Coverage and the Corporate Equality Index* (2012), available at

Regulation Number 14-05
Services for Gender Dysphoria
October 21, 2014

As noted above, there are Medicaid-eligible Connecticut citizens who desperately need the treatment currently excluded under the regulations, and we hope that the amendments move forward without delay.

Very truly yours,



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October 9, 2014

Attention: Brenda Parrella, Director
Department of Social Services,
Office of Legal Counsel
Regulations and Administrative Hearings
55 Farmington Avenue
Hartford, CT, 06105

Submitted electronically to brenda.parrella@ct.gov

Re: Regulation Number 14-05 – Services for Gender Dysphoria

Dear Ms. Parrella:

Gay & Lesbian Advocates & Defenders (GLAD), Connecticut Trans Advocacy Coalition and True Colors appreciate the efforts of the Connecticut Department of Social Services to remove discriminatory exclusions from public health programs. GLAD is New England's leading legal organization dedicated to ending discrimination on the basis of sexual orientation, HIV status, and gender identity and expression. The Connecticut TransAdvocacy Coalition (CTAC) is a 501(c)(3) organization whose mission is to make Connecticut a safe and tolerant place for the trans and gender non-conforming individual through education and social advocacy. True Colors is a non-profit organization that works with other social service agencies, schools, organizations, and within communities to ensure that the needs of sexual and gender minority youth are both recognized and competently met. We appreciate the opportunity to comment on the proposed changes to 17b-262-342 (physicians services); 17b-262-456 (psychiatrists' services); and 17b-262-612 (nurse practitioner services) of the Regulations of Connecticut State Agencies and Sections 171.4E.II (medical clinics) and 150.1E.II (hospital inpatient services) of its Medical Services Policy Manual.

We strongly support the revised regulations that remove coverage exclusions for gender transition services. Gender transition-related care, including provision of sex-reassignment surgery 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

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>.



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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 the Department of Social Services for making regulatory changes that are in accordance with actions taken by the Connecticut Insurance Department on December 19, 2013. On that day, the Insurance Department issued Bulletin IC-37, which prohibits exclusions in individual and group insurance policies for treatment for gender dysphoria. The prohibition was based on Public Act 11-55, which prohibits discrimination on the basis of gender identity or expression in employment, public accommodations, housing, credit, public schools, state contracts, and numerous other areas, including health insurance practices. That Act applies to state agencies.

Removal of the exclusions is also needed because the prior exclusions violate the Affordable Care Act regulations under the Medicaid program. Section 1557 of the Affordable Care Act, the antidiscrimination provision, applies to “any program or activity that is administered by an Executive Agency,” which includes the Connecticut Medicaid plan. This provision prohibits discrimination on bases addressed by federal civil rights laws, including Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964. Through this nondiscrimination law, §1557 incorporates nondiscrimination protections on the basis of sex which includes protections based on gender identity or, stated otherwise, prohibitions against discrimination on the basis of transgender status. The Office of Health and Human Services Office of Civil Rights has clarified that Section 1557 prohibits discrimination based on gender identity or sex stereotyping.²

A regulation that would permit coverage of a procedure, for example, a hysterectomy, when medically necessary for a non-transgender woman but that would deny coverage of this same procedure to a transgender man for whom it is also medically necessary for gender transition treatment discriminates based on sex, gender identity, and sex stereotyping. Regulations

² Office for Civil Rights, *Questions and Answers on Section 1557 of the Affordable Care Act*, http://www.hhs.gov/ocr/civilrights/resources/laws/section1557_questions_answers.html (last accessed July 17, 2013); Letter from Leon Rodriguez, Director of the Office for Civil Rights, U.S. Department of Health and Human Services. July 12, 2012. Available at: <http://hrc.org/files/assets/resources/HHSResponse8612.pdf>. Not only has the Office for Civil Rights clarified that discrimination on the basis of gender identity is sex discrimination; both federal courts and executive agencies have repeatedly indicated that sex-based protections cover transgender people through a definition of the term “sex” that includes gender identity and nonconformity with sex stereotypes. The U.S. Equal Employment Opportunity Commission recently issued a formal ruling that gender identity discrimination is *per se* sex discrimination, *Macy v. Eric Holder, Atty. General, U.S. Dept. of Justice*, EEOC Appeal No. 0120120821 (April 24, 2012). *See, e.g.*, *Glenn v. Brumby*, 665 F.3d 1312 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000); and *Schroer v. Billington*, 577 F. Supp. 2d 293 653 (D.D.C. 2008).



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implementing the Affordable Care Act that are applicable to Medicaid programs provide that these programs must provide essential health benefits coverage and that “[e]ssential health benefits cannot be based on a benefit design or implementation of a benefit design that discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life or other health conditions.” 42 C.F.R. 440.347(e). The EHB standard requires that the benefits established as essential not be subject to denial based on present or predicted disability, degree of medical dependency, or quality of life.³

To remain consistent with this policy change, we offer as a suggestion that in a later rulemaking that gender identity and expression be included in the Medical Assistance Program's provider non-discrimination policy at 17b-262-526. This is also in keeping with Connecticut's antidiscrimination law.

We appreciate the Department of Social Services' 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 the Department 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,

Zack Paakkonen
Gay & Lesbian Advocates & Defenders

Diana Lombardi
Connecticut TransAdvocacy Coalition

Robin McHaelen
True Colors

³ 42 U.S.C. 18022(b)(4).