HUMAN RIGHTS CAMPAIGN

Ms. Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower, Empire State Plaza, Rm. 2438
Albany, New York 12237-0031

February 2, 2015

Re: **SUPPORT for HLT-50-14-00001-P – Proposed Inclusion of Transgender Related Care and Services**

Dear Ms. Ceroalo:

The Human Rights Campaign (HRC), on behalf of its more than 130,000 members in New York State, would like to express its support for the proposed policy change regarding Medicaid coverage of transition-related care for transgender individuals in New York. HRC is America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental fairness and equality for all. As an advocate of equal rights for all members of the LGBT community, HRC believes that no transgender person should be without medically necessary healthcare.

We applaud the NYS Department of Health for taking this crucial step. The previous exclusions were detrimental to the health of transgender New Yorkers. Sources such as the Institute of Medicine,[1] Healthy People 2020,[2] the Substance Abuse and Mental Health Services Administration,[3] and the National Healthcare Disparities Report[4] indicate that LGBT individuals and their families are disproportionately likely to live in poverty, to be uninsured, and to face substantial barriers to quality healthcare, including refusals of care, substandard care, inequitable policies and practices, and exclusion from health outreach or education efforts.[5] The proposed changes are a critical step toward ending this disparity and improving the care available for transgender individuals.

Transgender individuals, in particular, depend on access to transition-related healthcare. Professional medical and mental health organizations such as the American Medical Association[6] and the American Psychological Association[7] have long supported access to appropriate and affirming care for transgender people. Without such care, transgender people are at heightened risk for depression, anxiety, and suicide. According to the National Transgender Discrimination Survey, 19% of transgender people have been refused healthcare by medical providers due to their status, making coverage and non-discrimination protections especially vital for this population.[8]

While we support this change and view it as a necessary and positive step towards supporting the bodily autonomy and health of transgender New Yorkers, we recommend a number of specific changes to the proposed rule that will make the policy more inclusive.

First, we are concerned with the age restrictions identified in the policy proposal. The proposal to limit coverage for hormone therapy only to individuals 18 or older, for example, would deprive many younger individuals of the care they desperately need. The relevant standards of care are guidelines from the Endocrine Society,[9] which recommend that hormone therapy can be safely started before the age of 18. We urge the Department to remove the age restriction and instead substitute language that reflects the Endocrine Society standards of care. In addition, we are concerned with the exclusion of surgical procedures that can result in sterilization for those between the ages of 18 and 21. We believe that healthcare decisions for legal adults should be determined by the individual, with guidance from trained medical professionals.

We are also concerned by the number of procedures listed as excluded from coverage. Many of these procedures can be considered treatment for gender dysphoria.[10] We feel that clinically appropriate treatments must be determined on an individualized basis with the patient's physician. The medical procedures attendant to sex reassignment which have been listed as excluded are not "cosmetic" or "elective" or for the mere convenience of the patient. These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for treatment of the diagnosed condition. We urge you to amend the regulation so that it does not spell out specific procedures that would or would not be covered, leaving those determinations to be made by individuals and their doctors.

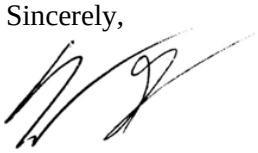
In addition, we are concerned that some of the conditions deemed necessary to access care under the proposed regulation will act as barriers to care, especially for those transgender people who are most disadvantaged. For example, not all individuals have access to ongoing hormone therapy, yet there is a requirement that individuals must go through a full year of hormone therapy in order to access gender confirmation surgery. This requirement is also discriminatory towards those individuals who may choose not to undergo hormone therapy, as their gender dysphoria would not be addressed by that treatment. Hormone treatment is not always medically necessary in order for some individuals to secure satisfactory health outcomes for various surgical procedures. We recognize that the standards included in the proposed regulation are mirrored in many ways by those of World Professional Association of Transgender Health (WPATH). However, other organizations, including the American Psychiatric Association, have rejected the WPATH standards as unnecessarily burdensome.[11] In addition, the WPATH standards are likely to be under review this year and are expected to change in order to bring them more into alignment with current, less burdensome guidelines. We strongly recommend that section (3) of the proposed regulation be amended to remove subsections (ii) and (iii) entirely in order to remove undue burdens to transgender New Yorkers in accessing healthcare.

Lastly, we feel the proposal does not adequately address non-transition related healthcare issues. When a person corrects their gender marker on insurance and legal documents, it often interferes with their insurance coverage. For example, if a person who was assigned male at birth corrects their gender marker to reflect their identity as female; their insurance may not cover prostate exams, despite the fact that this remains an important part of their routine and preventive care. The lack of coverage is related to coding discrepancies that cause problems with insurance billing, which leaves transgender individuals lacking in basic medical screenings. Not only would covering these services save lives, but to do so would save Medicaid money in the long run because it would allow transgender people to address health problems at early rather than late stages. We strongly recommend that the policy address insurance coding so that it is no longer gender-specific. Making the codes gender-neutral will solve the problem of insurance providers refusing to cover normal, everyday healthcare and critical preventive screening exams. This change will

require a certain amount of education on inclusivity for insurance providers, which can be administered in part by various Network organizations.

We thank you for taking important steps forward to give transgender New Yorkers enrolled in Medicaid access to medically necessary healthcare, and we're hopeful that you will take into consideration the suggestions we have outlined above. If you should have any questions regarding these comments, please contact me at 202-572-8960 or by email at Alison.Gill@hrc.org.

Sincerely,



Alison Gill, Esq.
Senior Legislative Counsel
Human Rights Campaign

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