



Administrative Bulletin 2021-3

Date: December 30, 2021

To: All insurance companies, fraternal benefit societies, hospital service corporations, non-ERISA employer group plans, managed care organizations, medical service corporations and health care centers that deliver or issue individual and group health insurance policies in Minnesota

Subject: Gender Identity Nondiscrimination Requirements

This Bulletin will supersede the Administrative Bulletin 2015-5, issued jointly by the Minnesota Department of Health (“MDH”) and the Minnesota Department of Commerce (“Commerce”) (jointly, the “Departments”).

The purpose of this Bulletin is to advise entities delivering or issuing individual and group health insurance policies in Minnesota that discrimination against an individual because of the individual’s gender identity or expression is prohibited. This prohibition extends to the availability of health insurance coverage and the provision of health insurance benefits.

The prohibition on discrimination against an individual based on sex, and/or gender identity are found in the following state and federal laws:

- Section 1557(a) under the Affordable Care Act (ACA) prohibits discrimination on the basis of gender identity and sex stereotyping in any health program receiving federal funds or by an entity established under the ACA, including exchanges.
- Minnesota Statutes sections 62A.02 and 62D.07 authorize the Commissioners of Commerce and Health to disapprove any policy of insurance or health maintenance organization contract if it contains a provision that is unjust, unfair, inequitable, misleading or deceptive.
- Minnesota Statutes section 363A.17 prohibits discrimination in any business practice, including insurance, based on certain protected classes, including sex and sexual orientation.
- “Conversion therapy” is defined at paragraph 2.a. of Executive Order 21-25 and refers to any practice by a mental health practitioner or mental health professional that seeks to

change a person's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward people regardless of gender. Conversion therapy does not include counseling that provides assistance to a person undergoing gender transition. It also does not include counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change the person's sexual orientation or gender identity.

The Departments are committed to ensuring that Minnesotans do not face discrimination in accessing medically necessary health care benefits, including gender affirming care. The Departments would disapprove policy forms filed by insurers if there are exclusions on coverage for medically necessary treatment for gender dysphoria and related health conditions, including gender confirmation surgery—including medically necessary procedures to conform secondary sex characteristics to a person's gender identity or expression. Likewise, to prevent Minnesotans from facing discrimination with respect to their insurance, the Departments, in response to Executive Order 21-25, have requested that carriers provide attestations that they do not cover conversion therapy.

In order to provide consistent and appropriate care in this field, it is recommended that carriers identify, in their Policy, Certificate or Schedule of Benefits (SCH), a standard of care established by recognized experts in the field, e.g. The World Professional Association for Transgender Health (WPATH) Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.

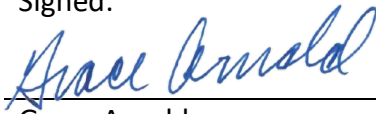
The Departments will also continue to conduct independent reviews for denials of coverage on the basis that services are not medically necessary via the Departments' external review programs. Determination of medical necessity and prior authorization protocols for gender dysphoria-related treatment must be based on the most recent, published medical standards set forth by nationally recognized medical experts in the transgender health field.

Questions on this bulletin may be directed to:

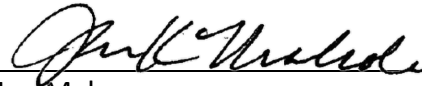
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