



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

**Insurance Circular Letter No. 7 (2014)
December 11, 2014**

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, and Health Maintenance Organizations (“HMOs”) (collectively, “issuers”)

RE: Health Insurance Coverage for the Treatment of Gender Dysphoria

STATUTORY AND REGULATORY REFERENCES: Mental Health Parity and Addiction Equity Act of 2008; N.Y. Civ. Serv. Law Article 11; N.Y. Ins. Law §§ 3221 and 4303 and Article 49; N.Y. Pub. Health Law Article 49; Chapter 748 of the Laws of 2006, as amended by Chapter 502 of the Laws of 2007; 45 C.F.R. § 146.136; 11 NYCRR 52 (Insurance Regulation 62)

Introduction

The purpose of this circular letter is to provide guidance to issuers regarding health insurance coverage for the treatment of gender dysphoria.¹ An issuer may not deny medically necessary treatment otherwise covered by a health insurance policy or contract (“policy”) solely on the basis that the treatment is for gender dysphoria. Further, an issuer is required to provide an insured with the full range of utilization review appeal rights as described in Article 49 of both the Insurance Law and the Public Health Law (collectively, “Article 49”) for any gender dysphoria treatment that is denied based on medical necessity.

Analysis

An issuer may not deny medically necessary treatment otherwise covered by a health insurance policy solely on the basis that the treatment is for gender dysphoria. 11 NYCRR 52 (Insurance Regulation 62) prohibits an insurer from limiting coverage by type of illness, treatment, or medical condition. See 11 NYCRR § 52.16(c).

Furthermore, Sections 3221(1)(5) and 4303(g) and (h) of the Insurance Law (“Timothy’s Law”) require an issuer delivering or issuing a group or school blanket policy in New York that provides coverage for inpatient hospital care or for physician services to provide coverage for the diagnosis and treatment of mental, nervous, or emotional disorders or ailments. Pursuant to Section 6 of

¹ “Gender dysphoria” is the term currently used for the condition of people whose gender at birth is contrary to the one with which they identify.

Chapter 748 of the Laws of 2006, as amended by Chapter 502 of the Laws of 2007, which enacted Timothy's Law, the Superintendent is to take such action as necessary to ensure that a policy's definition of "mental, nervous or emotional disorders or ailments" is not "unreasonable." As provided in Section 6, in determining whether a definition is reasonable, the Superintendent is to ensure that any exclusions from or limitations on covered benefits are consistent with the benefits provided to public officers and employees pursuant to Civil Service Law Article 11 (i.e., the Empire Plan). The Empire Plan defines mental health care to include medically necessary care for a condition that has been classified as a mental disorder in the current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders ("DSM").

The current, fifth edition of the DSM recognizes a diagnosis of gender dysphoria² for people whose gender at birth is contrary to the one with which they identify. Since the DSM classifies gender dysphoria as a mental disorder, and it is thus covered under the Empire Plan, Timothy's Law requires an issuer delivering or issuing a group or school blanket policy in New York that provides coverage for inpatient hospital care or for physician services to provide coverage for the diagnosis and treatment of gender dysphoria.

Additionally, the federal rule (45 C.F.R. § 146.136) interpreting the federal Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") provides that no issuer providing both medical/surgical benefits and mental health or substance use disorder benefits may apply any treatment limitation to mental health or substance use disorder benefits that it does not apply to substantially all medical/surgical benefits in the same classification. Under the federal rule, any condition defined by the plan or coverage as being or not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice.

Issuers in New York should use the DSM as the recognized independent standard of current medical practice in determining what constitutes a mental health condition. Therefore, since the DSM recognizes a diagnosis of gender dysphoria, an issuer's definition of mental health condition is also required to include gender dysphoria, entitling persons with gender dysphoria to MHPAEA's protections.

An issuer retains the right to review gender dysphoria treatment for medical necessity purposes, as it may do with any benefit covered under a health insurance policy. But, as with any covered benefit, any such review in a gender dysphoria treatment case must be performed with the full range of appeal rights set forth in Article 49.

Conclusion

An issuer of a policy that includes coverage for mental health conditions may not exclude coverage for the diagnosis and treatment of gender dysphoria. Although an issuer may subject gender dysphoria treatment to a medical necessity review, any such review must be performed consistently with the provisions of Article 49.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, by mail at Health Bureau, New York State Department of Financial Services,

² The previous version of the DSM, the DSM-IV, recognized a diagnosis of gender identity disorder for the same condition.

Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202, or by e-mail at thomas.fusco@dfs.ny.gov.

Very truly yours,

Lisette Johnson
Bureau Chief, Health Bureau