



Administrative Bulletin 2015-5

Date: November 24, 2015

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

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.

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. Proposed guidance on this topic has recently been released by the U.S. Department of Health and Human Services and the Centers for Medicare and Medicaid Services.

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, if it allows discrimination based on certain protected classes, including sex and sexual orientation.

The Minnesota Departments of Commerce and Health are committed to ensuring that Minnesotans do not face discrimination in accessing medically necessary health care benefits, including those based on transsexualism, gender identity disorder, and gender dysphoria. Commerce and Health currently 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 (previously known as sex reassignment surgery). Commerce and Health 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

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