



Joint Administrative Bulletin 2023-1

Date: November 1, 2023

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

Subject: The Availability of Health Insurance Coverage and the Provision of Health Insurance Benefits for Medically Necessary Gender Affirming Health Care Services

This Bulletin will supersede Administrative Bulletin 2021-3, issued jointly by the Minnesota Department of Health (“MDH”) and the Minnesota Department of Commerce (“Commerce”).

The purpose of this Bulletin is to advise health plan companies delivering or issuing individual and group health insurance policies in Minnesota that discriminating against an individual because of the individual’s gender identity or gender expression is prohibited. This prohibition extends to the availability of health insurance coverage and the provision of health insurance benefits. For purposes of this bulletin, gender affirming health care services means all medical, surgical, counseling, or referral services, including telehealth services that an individual may receive to support and affirm that individual’s gender identity or gender expression and that are legal under the laws of the State of Minnesota.

Nothing in this bulletin should be construed to change Minnesota law or to require coverage of services that are not considered medically necessary. Instead, this bulletin seeks to emphasize already existing laws to ensure that people in Minnesota do not face discrimination in accessing medically necessary gender affirming health care services.

The Minnesota Department of Human Rights (MDHR), Minnesota Department of Human Services (DHS), the Minnesota Department of Health (MDH), and the Minnesota Department of Commerce (Commerce) (jointly, the Departments) are committed to protecting access to gender affirming care in Minnesota.

MDHR

The Minnesota Human Rights Act prohibits discrimination based on sex and gender identity. This prohibition extends to the availability of health insurance coverage and the provision of health insurance benefits. MDHR will use its powers, authorities, and duties to the fullest extent possible to take all appropriate actions to protect Minnesotans’ access to gender affirming health care services. Importantly, MDHR will investigate charges, file complaints or civil actions, and/or seek injunctive relief

when MDHR receives a charge of discrimination or has reason to believe that discrimination is occurring on the basis of a person's sex and/or gender identity.

This bulletin reminds insurance companies and health care providers that Minnesota Statutes Section 363A.17 prohibits discrimination in any business practice, such as providing insurance and/or health care services, based on certain protected classes, including but not limited to sex and gender identity. For example, insurance companies may not lawfully administer plans that exclude medically necessary care based on sex and/or gender identity under the MHRA. Employers and educational institutions that provide health insurance benefits that exclude coverage for gender affirming health care services may also be engaging in discrimination pursuant to Minnesota Statutes Sections 363A.08 and/or 363A.13.

DHS

Minnesota Statutes section 256B.0625, subdivision 3a (2023), states that Medical Assistance covers gender affirming services. In September 2023, DHS advised contracted health plans that the gender-affirming surgery services indicated by the DHS fee-for-service program should be used as the minimum benefit for Medical Assistance and MinnesotaCare enrollees. Health plans may cover additional services determined to be medically necessary.

MDH

MDH is committed to ensuring that Minnesotans receive comprehensive health maintenance services from licensed health maintenance organizations. MDH will use its powers, authorities, and duties to the fullest extent possible to take all appropriate actions to ensure licensed health maintenance organizations provide coverage to Minnesotans for medically necessary gender affirming health care services.

As authorized by its authority under Minnesota Statutes, section 62D.04, 62D.07, and 62D.15, MDH will not allow any health maintenance organization contract or evidence of coverage that discriminates against individuals on the basis of sex or gender identity in violation of Minnesota Statutes, section 363A.17. Pursuant to its authority under Minnesota Statutes, section 62D.11, MDH will investigate and take administrative action on any complaints of unfair or deceptive acts or practices by a health maintenance organization related to the denial of medically necessary gender affirming health care services in violation of Minnesota Statutes, sections 62D.12 and section 72A.19.

Pursuant to its authority under Minnesota Statutes, section 62D.04, MDH requires health maintenance organizations to file an attestation confirming that they do not discriminate on the basis of sex, gender identity or gender expression, that they cannot exclude medically necessary gender affirming care, and that they have processes in place for determinations of medical necessity and prior authorization protocols related to gender affirming care. In the attestation the health maintenance organizations must also specify which published medical standards they apply to determine medical necessity and prior authorizations for gender affirming care and explain how their contracted health providers are informed about how to bill for medically necessary gender affirming health care services for enrollees.

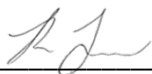
Commerce

Commerce will use its powers, authorities, and duties to the fullest extent possible to ensure that individuals receive support and affirmation of their gender identity or gender expression under the laws of the State of Minnesota. Minnesota Statutes, section 62A.02 authorizes the Commissioner of Commerce to disapprove any policy or insurance contract if it contains a provision that is unjust, unfair, inequitable, misleading, or deceptive. As stated above, 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 gender identity. Commerce currently disapproves policy forms filed by insurers if there are blanket or targeted exclusions of coverage for gender affirming care with no consideration of medical necessity.

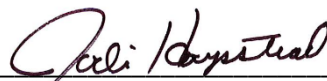
Pursuant to Minnesota Statutes, section 62Q.53, determinations of medical necessity and prior authorization protocols for gender affirming care must be based on generally accepted medical standards set forth by medical experts in the health field of gender affirming care. Pursuant to Commerce's authority under Minnesota Statutes, section 62A.02, health carriers must file an attestation confirming that they have processes in place to ensure that determinations of medical necessity and prior authorization protocols, among their other processes and procedures, ensure access to medically necessary gender affirming health care services and that their contracted health providers are informed about how to bill for medically necessary gender affirming health care services for enrollees.

In response to Executive Order 23-03, Commerce will investigate complaints of unfair or deceptive practices in the business of insurance related to the denial of medically necessary gender affirming healthcare services and pursue violations by any health carrier or agent acting on behalf of a health carrier. Commerce will, to the greatest extent permissible under current law, refuse approval of any health or other insurance plan or policy that discriminates against individuals on the basis of sex, gender identity, or gender expression, in accordance with Minnesota Statutes § 62A.02 and 72A.21.

Signed:



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