

GENDER-AFFIRMING CARE IN MEDICAID

Medicaid is a vital program providing health coverage for millions of people with low incomes, including LGBTQ individuals.¹ Medicaid covers a broad range of health services, including medically necessary gender-affirming treatments for transgender, nonbinary, and gender nonconforming individuals. Unfortunately, a few states are not following the law and do not provide the full range of gender-affirming care in their Medicaid programs.

WHAT IS GENDER-AFFIRMING CARE?

Some transgender, nonbinary, and gender nonconforming people experience gender dysphoria, and there are various medical options available to help alleviate that distress.

- Under the standards of care for treating gender dysphoria, the appropriate treatment depends on the needs and desires of the person seeking treatment.²
- The World Professional Association for Transgender Health (WPATH) Standards of Care are the most widely recognized clinical guidelines for treating gender dysphoria.³
- Together, the health care services included in the guidelines are known as gender-affirming care and are medically necessary to treat gender dysphoria.
- Notably, not all people with gender dysphoria seek all health care services, and some may seek none.

Gender dysphoria is the clinically significant distress caused by a conflict between a person's assigned gender and the person's gender identity.⁶

WHAT SERVICES ARE INCLUDED IN GENDER-AFFIRMING CARE?

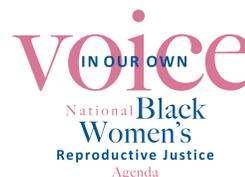
Gender-affirming health care interventions include mental health services, surgical procedures, and a range of other services. These can include some or none of the following:

- Gender-affirming hormone therapy, hair removal (electrolysis), voice therapy, and surgeries like chest augmentation or reduction, vaginoplasty, phalloplasty, hysterectomy, and more.

DOES MEDICAID COVER GENDER-AFFIRMING TREATMENTS?

Under federal law, state Medicaid programs must cover a broad range of gender-affirming services when medical professionals attest that they are medically necessary. However, not all states are following the law.⁴

- As of May 2019, 19 states and the District of Columbia have laws or policies explicitly requiring Medicaid coverage of gender-affirming care, and courts have recently ordered two other states (Iowa and Wisconsin) to cover medically necessary gender-affirming care.⁵
- California was the first to cover gender-affirming services by court order in cases seeking individual relief in the 1970s.



- In 2001, a California judge struck down the state’s policy of categorically denying Medicaid coverage for gender-affirming surgeries.⁷
- The state’s Medicaid agency then issued guidance in 2013 (and again in 2016) to providers and managed care plans clarifying the scope of coverage for treatment related to gender dysphoria.⁸
- In the last decade, several other states have added Medicaid coverage of gender-affirming care.⁹

Unfortunately, nine states explicitly exclude coverage of certain gender-affirming services.¹⁰

- Despite current widespread medical consensus supporting gender-affirming services as medically necessary, many of these exclusions date back to the early 1980s when transition-related care was considered a “cosmetic” or “experimental” service.
- Since the early 2000s, these discriminatory policies in Medicaid and in private insurance have started to erode.

The remaining states have no explicit Medicaid policy related to gender-affirming care and therefore may not provide coverage at all, may not cover the full range of medically necessary gender-affirming services, or may not cover services consistently.

FAST FACTS

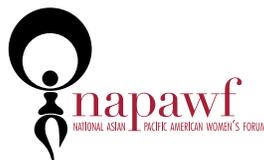
Medicaid is a vital health program for low-income LGBTQ communities. According to the 2015 U.S. Transgender Discrimination Survey, transgender, nonbinary, and gender nonconforming people are three times as likely to have a household income under \$10,000 and three times as likely to be unemployed as the typical person in the U.S.¹¹

- 19% of Black respondents reported a household income of less than \$10,000 per year.¹² This is 7% higher than the rate for respondents of all races (12%), roughly twice the rate for the overall Black population rate (9%), and 4.75 times the general U.S. population rate (4%).¹³
- 43% of Latinx respondents reported living in poverty compared to 12% of the overall U.S. population.¹⁴
- 41% of Native American respondents reported living in poverty.¹⁵
- 40% of multiracial respondents reported living in poverty.¹⁶
- 32% of Asian and Native Hawaiian/Pacific Islander respondents reported living in poverty.¹⁷

ARE THERE OTHER BARRIERS TO SEEKING GENDER-AFFIRMING CARE?

- Even with Medicaid coverage, many transgender, nonbinary, and gender nonconforming people face barriers to care.
- Transgender, nonbinary, and gender nonconforming individuals often experience stigma, discrimination, or mistreatment from their health providers when seeking health care.¹⁸
- These disparities are compounded for transgender, nonbinary, and gender nonconforming people of color and immigrants, who are more likely to live in poverty, be unemployed, and experience mistreatment from a health provider than white transgender, nonbinary, and gender nonconforming individuals.¹⁹

Transgender, nonbinary, and gender nonconforming people on Medicaid may struggle to secure needed care.



- Some surgeons and insurers will not provide or cover certain gender-affirming surgical procedures without letters of referral from two or more mental health professionals. This can create a barrier to care, as getting the letters may be a long-term process requiring many appointments with mental health professionals.
- Relatively few providers offer gender-affirming care, particularly in more rural areas.
- Additionally, health care providers and the facilities they practice in may not use inclusive language in their verbal and/or written communications, which can create negative experiences and deter people from seeking care.
- Some providers and health care institutions, like Catholic hospitals, openly discriminate against transgender, nonbinary, and gender nonconforming people by refusing to provide or to allow gender-affirming services to be provided in their facilities.

WHAT NONDISCRIMINATION PROTECTIONS EXIST UNDER MEDICAID?

All state Medicaid programs are bound by federal nondiscrimination laws.

- These include Section 1557 of the Affordable Care Act, which prohibits health programs and activities receiving federal financial assistance (including state Medicaid agencies, Medicaid managed care plans, and Medicaid providers) from discrimination on the basis of race, ethnicity, national origin, age, disability, and sex.²³
- Section 1557 is the first-ever federal ban on sex discrimination in health care.
- Regulations promulgated in 2016 make clear that Section 1557 prohibits discrimination on the basis of gender identity and sex stereotypes.²⁴ However, a federal court issued an injunction prohibiting the Department of Health and Human Services (HHS) from enforcing the portion of the regulations that protects against discrimination on the basis of gender identity or termination of pregnancy.²⁵
- In response, HHS' Office of Civil Rights proposed new regulations on June 14, 2019 that seek to reverse parts of the agency's existing interpretation of Section 1557.
 - The proposed regulation includes the elimination of nondiscrimination protections based on sex and gender identity.

WHAT CAN I DO TO PROMOTE GENDER-AFFIRMING CARE IN MEDICAID?

1. Submit a public comment opposing the June 24, 2019 proposed changes to the ACA Section 1557 final rule. Visit [regulations.gov](https://www.regulations.gov) to review the proposed rule and submit your comment letter.
2. If your state has an exclusion on gender-affirming care or does not explicitly provide Medicaid coverage of gender-affirming treatments, advocate with your state Medicaid agency to remove those exclusions and issue a policy to affirmatively cover these services.²⁰
3. Work with your state Medicaid agency and Medicaid providers to ensure services are delivered in the most inclusive and culturally sensitive ways.
 - For example, the New York State Department of Health hosts a webpage with a list of resources to help providers deliver LGBTQ appropriate care²¹ and includes suggestions and recommendations for staff sensitivity trainings, creating a welcoming environment, addressing confidentiality concerns, and guidelines for creating inclusive intake forms.²²

ENDNOTES

- 1 Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, including nonbinary (NB), gender non-conforming (GNC), and/or genderqueer individuals. LGBT is used where the data being cited refers only to Lesbian, Gay, Bisexual, and Transgender individuals.
- 2 World Prof. Org. Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People [WPATH SOC] (2012), <https://www.wpath.org/publications/soc>
- 3 Transgender Services, Medi-Cal Provider Manual http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/transgender_m00o03.doc; World Prof. Org. Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (2012), <https://www.wpath.org/publications/soc>.
- 4 What Is Gender Dysphoria?, Am. Psychiatric Ass'n (Feb. 2016), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.
- 5 For a list of Medicaid coverage policies for transition-related care by state, see Movement Advancement Project, Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care (Apr. 2019), <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>.
- 6 These states are California, Colorado, Connecticut, District of Columbia, Hawaii, Iowa, Illinois, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Movement Advancement Project, Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care, <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>.
- 7 Doe v. Bonta, Sacramento Superior Court of the State of California (case no. 00CS00954, January 29, 2001).
- 8 See Abigail Coursolle, Nat'l Health Law Prog., California Pride: Medi-Cal Coverage of Gender-Affirming Care Has Come a Long Way (June 2018), <http://www.healthlaw.org/blog/732-california-pride-medi-cal-coverage-of-gender-affirming-care-has-come-a-long-way>.
- 9 See Cruz v. Zucker, 218 F.Supp.3d 246 (S.D. New York Jul. 29, 2016), Good v. Iowa, 924 N.W.2d 853 (Ia. S. Ct. 2019).
- 10 States that explicitly exclude coverage are Alaska, Georgia, Maine, Missouri, Nebraska, Ohio, Tennessee, Wisconsin, and Wyoming. Movement Advancement Project, Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care, <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>. However, on April 23, 2019, a District Court in Wisconsin issued a preliminary injunction invalidating the state's categorical exclusion of coverage for medically necessary gender-affirming care and treatments for transgender Medicaid beneficiaries. Flack v. Wis. Dep't Health Servs, No. 3:18-cv-00309 (W.D. Wis. Apr. 23, 2019).
- 11 Nat'l Ctr. for Transgender Equal., 2015 U.S. Transgender Survey 140-43 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.
- 12 Nat'l Ctr. for Transgender Equal., 2015 U.S. Transgender Survey 140-43 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.
- 13 Id. at 143-44.
- 14 Id. at 144
- 15 Id.
- 16 Id
- 17 Id. at 145.
- 18 Nat'l Ctr. for Transgender Equity, The Report of the 2015 Transgender Survey 98 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>. See also Jaime M. Grant et al., Nat'l Ctr.



for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey (2011)*, http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

19 Nat'l Center for Transgender Equality, 2015 U.S. Transgender Survey, <http://www.ustranssurvey.org/reports>.

20 42 U.S.C. § 18116 (ACA § 1557). See also HHS OCR, Section 1557: Frequently Asked Questions, <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html>.

21 See 45 C.F.R. part 92. See also Jennifer Lav, Nat'l Health Law Prog., Q&A on Section 1557 of the Affordable Care Act: Protections for Transgender Individuals, <https://healthlaw.org/resource/q-a-section-1557-of-the-affordable-care-act-protections-for-transgender-individuals/>.

22 However, individuals still can challenge discrimination on the basis of gender identity in the courts.

23 Please contact the National Health Law Program if your state continues to refuse Medicaid coverage of gender affirming care.

24 New York State Dep't of Health, Lesbian, Gay, Bisexual and Transgender Health webpage, <https://www.health.ny.gov/diseases/aids/consumers/lgbt/>.

25 For example, bisexual men and women often face the stigma that they are “promiscuous, high-risk, dangerous” because they may have sex with people of different genders but that providers should still make sure that they have the knowledge to make safe sexual decisions.

