



An Advocate's Guide to Medi-Cal Services

January 2020

**Chapter V:
Gender-Affirming Services**

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Outline of Medi-Cal Gender Affirming Services*

- Mental Health Services (in addition to other Mental Health services, see *Chapter 3*)
 - Gender dysphoria assessments
 - Counseling regarding gender expression and transition options
 - Diagnosis and treatment of co-occurring mental health conditions
 - Referrals
- Hormone Therapy
 - Covered when medically necessary under Fee-For-Service Medi-Cal and Medi-Cal Managed Care
- Surgical Care
 - Variety of medically necessary procedures that bring primary and secondary gender characteristics in conformity with the individual's identified, including gender:
 - Chest reconstruction surgery
 - Genital reconstruction surgeries
 - Other surgeries to feminize/masculinize the body

*This is a non-exhaustive list of services. It may not include all available services.

Transgender and non-binary people may be diagnosed with gender dysphoria, a condition that manifests as significant distress when people experience conflict between their assigned gender and the gender with which they identify.¹ Some transgender and non-binary people experience a conflict between their assigned gender and gender identity without distress. But when people do experience clinically significant distress, they may require treatment to alleviate the distress. The standards of care for treating gender dysphoria involve a range of options depending on the needs and desires of the person seeking treatment.² Together, these interventions are known as gender-affirming care.

Gender-affirming health care interventions may include hormone therapy, surgical interventions, speech and language interventions, and behavioral health services. Not all transgender or non-binary people seek all health care interventions, and some seek none. When people seek these interventions to treat gender dysphoria, they are considered medically necessary when treatment is consistent with the standard of care. Treatment of gender dysphoria, including gender-affirming care, is a covered Medi-Cal benefit when medically necessary. Medi-Cal requires requests for such care to be made by “specialists experienced in providing care to transgender individuals.”³ Care must be provided according to nationally recognized clinical guidelines; the most commonly used source for the standards of care is the “Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People,” published by the World Professional Association for Transgender Health, or the WPATH Standards of Care.⁴

ADVOCACY TIP:

- ✓ The standards of care for transgender and non-binary individuals in health care settings generally reflect the standards of care recommended for non-transgender and binary individuals, however transgender and non-binary individuals may face barriers in accessing care, insurance coverage, and discrimination.⁵ Advocates should ensure that their local provider communities receive training about how they can be culturally sensitive and provide appropriate care to transgender and non-binary people, and address specific problems of cultural competence when they arise.

A. Mental health services for transgender and non-binary beneficiaries

Transgender and non-binary people may seek mental health services for a wide variety of reasons. For many transgender and non-binary individuals, but not all, mental health services may be a component of their gender-affirming care.⁶ Medi-Cal coverage of many gender-affirming procedures requires a person to present with a diagnosis of gender dysphoria.⁷ Gender dysphoria is a mental health condition defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5).⁸ As defined in the DSM-5, gender dysphoria is the distress a person experiences as a result of the sex and gender they were assigned at birth, such as when a person’s assigned sex and gender do not match that person’s gender identity.⁹

Medi-Cal considers behavioral health services a “core component” of treatment for gender dysphoria.¹⁰ For transgender and non-binary beneficiaries seeking surgical interventions, “[t]he determination of whether a service requested by a transgender [or non-binary] beneficiary is medically necessary and/or

constitutes reconstructive surgery must be made by a qualified and licensed mental health professional and the treating surgeon, in collaboration with the beneficiary's primary care provider."¹¹ In pursuing gender-affirming services, transgender and non-binary Medi-Cal beneficiaries may seek mental health services such as gender dysphoria assessments, counseling regarding gender expression and transition options, diagnosis and treatment of co-occurring mental health conditions, and referrals to other treatments.¹²

B. Hormone Therapy

Hormone therapy is a covered benefit under Medi-Cal when medically necessary to treat gender dysphoria, and should be available regardless of whether the beneficiary has Fee-for-Service (FFS) or is enrolled in a Medi-Cal Managed Care Plan (MCP).

Medi-Cal generally follows the WPATH Standard of Care, which sets forth criteria for initiation of hormone therapy. For adults seeking hormone therapy, the criteria are:¹³

- The patient has the capacity to make fully informed decisions and to consent for treatment;
- If the patient has other significant medical or mental health concerns, they are reasonably well controlled;
- The patient has persistent gender dysphoria as documented by a qualified health professional; and
- The patient has received a psychosocial assessment.

There are separate criteria for initiation of hormone therapy if the individual is a child or adolescent. The criteria for children and adolescents seeking puberty-suppressing hormones are:¹⁴

- The patient has begun puberty. It is recommended that the adolescent experience the onset of puberty to at least the second stage on the Tanner scale (this usually occurs around 12 years old, but can occur earlier);¹⁵
- The patient has a long-lasting and intense pattern of gender nonconformity or gender dysphoria;
- Any coexisting medical, social, or psychological problems that may interfere with treatment have been addressed to the extent that the adolescent's situation and functioning are stable; and
- The patient has given informed consent for treatment, and particularly when the adolescent has not reached the age of medical consent, the parents or guardians have consented to treatment and are involved in supporting the patient's treatment.

1. Fee-for-Service Medi-Cal

Hormone therapy is covered for treatment of gender dysphoria under FFS Medi-Cal when medically necessary. Requests for hormone therapy should be made

by “specialists experienced in providing care to transgender individuals.”¹⁶ Medical necessity should be determined by “treating licensed mental health professionals and physicians and surgeons experienced in treating gender dysphoria.”¹⁷ The frequency of hormone therapy services to treat gender dysphoria cannot be categorically limited and must be provided timely as needed for treatment of gender dysphoria. Any limitations or exclusions, medical necessity determinations, and utilization management criteria must be applied in a non-discriminatory fashion (i.e. cannot be applied to transgender or non-binary beneficiaries if not applied to all beneficiaries in need of hormone therapy).¹⁸

The most common categories of hormone medications used to treat gender dysphoria are testosterone, estrogen, and anti-androgens.¹⁹ Medi-Cal covers at least some preparations of each of these categories of hormone drugs.²⁰

2. Medi-Cal Managed Care

Hormone therapy is also a covered benefit for treating gender dysphoria for beneficiaries enrolled in MCPs. MCPs and their subcontractors and network providers cannot discriminate against transgender or non-binary individuals. MCPs are responsible for ensuring that their subcontractors and network providers are complying with the law, state guidance, and their contractual obligations, including protections for transgender and non-binary individuals.²¹

Transgender and non-binary individuals must be provided with the “same level of health care benefits that are available to non-transgender beneficiaries.”²² Further, MCPs must “treat beneficiaries consistent with their gender identity” and are prohibited from “categorically excluding or limiting coverage for health care services related to gender transition.”²³ This prevents MCPs from limiting either the type or frequency of hormone therapy when medically necessary to treat gender dysphoria, as it is a core service in bringing “primary and secondary gender characteristics into conformity with the individual’s identified gender” for those with gender dysphoria.²⁴ MCPs may impose non-discriminatory limitations and exclusions, medical necessity determinations, and apply appropriate utilization management criteria so long as they are applied to all beneficiaries and not specific to transgender and non-binary beneficiaries.²⁵ The determination of whether hormone therapy is medically necessary for the treatment of gender dysphoria “must be made by a qualified and licensed mental health professional and the treating surgeon, in collaboration with the beneficiary’s primary care provider.”²⁶

ADVOCACY TIP:

- ✓ Look out for situations where MCPs deny medically necessary treatments for gender dysphoria as cosmetic, and appeal such denials as appropriate, including through Independent Medical Review where available.

C. Surgical Care

Some transgender and non-binary Medi-Cal beneficiaries will seek surgical procedures to align their primary and/or secondary sex characteristics with their gender identity.²⁷ Surgery is often the last and most considered of the treatment options for gender dysphoria in transgender and non-binary individuals. Not every transgender or non-binary person wants, requires, or qualifies for every available surgical procedure. Rather, the number, type, and sequence of surgical interventions often varies widely from one person to another, depending on their particular clinical needs.²⁸ Medi-Cal typically follows the WPATH Standard of Care criteria for initiation of surgical treatment. For adults seeking chest and/or genital reconstruction procedures, the criteria are:²⁹

- The person has the capacity to make fully informed decisions and to consent for treatment;
- If the person has other significant medical or mental health concerns, they are reasonably well-controlled prior to surgery;
- The person has persistent gender dysphoria as documented by at least one mental health professional for chest reconstruction surgeries and two such professionals for genital reconstruction surgeries;
- Prior to genital reconstruction surgery, the person has undergone 12 continuous months of hormone therapy, unless hormone therapy is not clinically indicated for that patient.³⁰ The purpose of the prerequisite is to introduce a period of estrogen or testosterone suppression before the patient undergoes a surgical intervention; and
- Prior to certain genital reconstruction procedures – metoidioplasty, phalloplasty, or vaginoplasty – the person has lived for 12 continuous months in a gender role that is congruent with their gender identity. The prerequisite ensures that the patient has ample opportunity to experience and socially adjust in their desired gender role, before undergoing this surgery.³¹

1. Surgical Treatments for Gender Dysphoria

Medi-Cal policy does not identify specific surgical procedures that will be covered as part of gender-affirming treatment for beneficiaries with gender dysphoria. It merely provides that a “variety of surgical procedures that bring primary and secondary gender characteristics into conformity with the individual’s identified gender [will be covered when they] ‘are reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain through the diagnosis and treatment of disease, illness or injury.’”³²

In its letter to MCPs, DHCS differentiates between “reconstructive surgery,” which is covered by Medi-Cal, and “cosmetic surgery,” which is not.³³ DHCS notes that under state law, reconstructive surgery is defined as surgery “performed to correct or repair abnormal structures of the body . . . to create a normal appearance to the extent possible.”³⁴ DHCS then states that: “In the case of

transgender beneficiaries, normal appearance is to be determined by referencing the gender with which the beneficiary identifies.”³⁵ DHCS does not explicitly delineate when a particular procedure will be considered reconstructive versus cosmetic for a transgender or non-binary beneficiary, instead noting that such determinations should be made on a case-by-case basis using “nationally recognized medical/clinical guidelines” such as the WPATH Standards of Care.³⁶ DHCS further explains that any “determination of whether a service requested by a transgender [or non-binary] beneficiary is medically necessary and/or constitutes reconstructive surgery must be made by a qualified and licensed mental health professional and the treating surgeon, in collaboration with the beneficiary’s primary care provider.”³⁷

Although DHCS does not spell out the specific gender-affirming surgical procedures that are covered in Medi-Cal, the WPATH Standards of Care does provide some guidance as to procedures that are likely to be covered. For transgender women (women who were assigned male at birth and have a female gender identity), surgical treatment options that are generally accepted in the medical community and are consistent with the WPATH Standards of Care include, but are not limited to:³⁸

- Chest reconstruction surgery: augmentation mammoplasty (breast implants);
- Genital reconstruction surgeries: penectomy (removal of the penis), orchiectomy (removal of the testes), vaginoplasty, clitoroplasty, and/or vulvoplasty (creation of female genitalia including the labia minora and majora); and
- Other surgeries to feminize the body, such as: reduction thyroid chondroplasty (reduction of the Adam’s apple), voice modification surgery, suction-assisted lipoplasty and/or lipofilling (contour modeling) of the waist, hair transplantation, and facial feminization procedures.

For transgender men (men who were assigned female at birth and have a male gender identity), surgical treatment options that are generally accepted in the medical community and are consistent with the WPATH Standards of Care include, but are not limited to:³⁹

- Chest reconstruction surgery: subcutaneous mastectomy, creation of a male chest;
- Genital reconstruction surgeries: hysterectomy/salpingo-oophorectomy (removal of the uterus and ovaries), reconstruction of the fixed part of the urethra, which can be combined with a metoidioplasty or a phalloplasty (creation of a penis), vaginectomy (removal of the vagina), scrotoplasty (creation of the scrotum), and implantation of erection and/or testicular prostheses; and
- Other surgeries to masculinize the body, such as: liposuction, lipofilling, pectoral implants, and body contouring procedures.

D. Other interventions and considerations for transgender and non-binary beneficiaries

There are a number of barriers to accessing services that transgender and non-binary beneficiaries may experience. These include issues accessing care when the individual's gender marker does not match their presupposed anatomy, issues accessing care when plans deem transition-related care as "cosmetic," issues receiving the standard of care due to religious or moral provider refusals, issues receiving culturally sensitive and appropriate care, and a lack of providers with experience and expertise in providing certain types of gender-affirming care, especially surgical procedures. These barriers can have either a direct impact on a beneficiary's ability to access care, or an indirect impact through discouraging transgender beneficiaries from seeking needed care.

1. Issues accessing services when gender marker does not match presupposed anatomy

Sometimes transgender individuals can experience issues accessing medically necessary care because their gender marker does not match their presupposed anatomy. However, this should not be happening and Medi-Cal provides information on what steps providers should take to avoid issues in accessing care in these situations. If the gender on a Medi-Cal claim conflicts with a billed procedure code, the gender limitation can be overridden either by the provider attaching an approved Treatment Authorization Request (TAR) or Service Authorization Request (SAR) or adding the modifier "KX" to the billed procedure code; the "KX" modifier is used to indicate that the provider is attesting that the service request conforms to Medi-Cal coverage criteria.⁴⁰ The beneficiary's medical record must support that the treatment is medically necessary. Under FFS Medi-Cal, there also used to be a drug-gender screening system that provided a barrier to accessing care when the gender marker and presupposed anatomy were mismatched. However, this screening system is currently inactive.⁴¹

2. Issues accessing services when plan deems care "cosmetic"

While the law and guidance clearly indicates that all procedures that are medically necessary to treat gender dysphoria are covered, sometimes MCPs will still try to deny coverage of certain treatments, deeming them "cosmetic." This is most prevalent with gender-affirming surgical treatments, including but not limited to tracheal shaves, breast or chest construction, liposuction, lipofilling, pectoral implants, other body contouring procedures, and electrolysis.⁴² However, California Courts of Appeal held in 1978 that gender-affirming surgeries are not "cosmetic" when medically necessary to treat gender dysphoria.⁴³ In practice, MCPs sometimes push back on where the line between medically necessary and cosmetic lies and there are not clear guidelines on this distinction in the law, regulations, and guidance governing Medi-Cal. The

WPATH Standards of Care provide that gender-affirming interventions—including hormone therapy, body modification surgery, facial hair removal, speech and communication modification, behavioral adaptations like genital tucking or packing, and chest binding—when sought by transgender and non-binary individuals are medically necessary.⁴⁴ Thus, any denial of services as “cosmetic” should be appealed through the proper channels.

ADVOCACY TIP:

- ✓ Providers may refuse to provide covered services to transgender and non-binary beneficiaries due to their religious or moral beliefs about gender identity. These refusals can cause delays and obstacles to transgender patients receiving the standard of care. They can also be traumatic experiences that exacerbate a transgender patient’s gender dysphoria and/or other mental health concerns. Encourage clients to report instances of discrimination at All Care Everywhere, www.allcareeverywhere.com, which is a project of the National Health Law Program and the ACLU to collect stories of religious refusals to use in broad advocacy in California.

Endnotes

- ¹ *What Is Gender Dysphoria?*, Am. Psychiatric Ass’n (Feb. 2016), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> (last visited Nov. 13, 2019).
- ² World Prof’l Ass’n Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (2012) [hereinafter WPATH, Standards of Care], <https://www.wpath.org/publications/soc>.
- ³ Cal. Dep’t Health Care Servs., *Medi-Cal Provider Manual, Transgender Services*, at 1 (2017), http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/transgender_m00o03.doc.
- ⁴ *Id.* See WPATH, *Standards of Care*, *supra* note 2.
- ⁵ See, e.g., Jamie Feldman & Madeline B. Deutsch, *Primary Care of Transgender Individuals*, UpToDate (Nov. 1, 2016), <https://www.uptodate.com/contents/primary-care-of-transgender-individuals>.
- ⁶ WPATH Standards of Care, *supra* note 2, at 24.

- ⁷ See Cal. Dep't Health Care Servs., All Plan Letter 16-013, at 2 (Oct. 6, 2016) [hereinafter All Plan Letter 16-013], <https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2016/APL16-013.pdf>.
- ⁸ See “Gender Dysphoria” in Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) (DSM-5).
- ⁹ *Id.*
- ¹⁰ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Transgender Services*, *supra* note 3, at 2.
- ¹¹ See All Plan Letter 16-013, *supra* note 7, at 2 (clarifying that “core services in treating gender dysphoria [include] behavioral health services [and] psychotherapy.”).
- ¹² WPATH, *Standards of Care*, *supra* note 2, at 23–26. For more information about the scope and accessibility of mental health services in Medi-Cal, see Chapter III of the National Health Law Program’s Medi-Cal Services Guide on Mental Health Services.
- ¹³ WPATH, *Standards of Care*, *supra* note 2, at 34.
- ¹⁴ WPATH, *Standards of Care*, *supra* note 2, at 18–19.
- ¹⁵ For more details on the Tanner Scale, see generally Lawrence S. Neinstein, *Adolescent Health Care: A Practical Guide* (5th ed. 2008).
- ¹⁶ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Transgender Services*, *supra* note 3.
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *What are commonly used medications for transition?*, Transline, <https://transline.zendesk.com/hc/en-us/articles/229373208-What-are-commonly-used-medications-for-transition-> (last visited Nov. 16, 2019).
- ²⁰ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Drugs: Contract Drugs List Part 1 - Prescription Drugs (S through Z)* (2017) (drugs cdl p1d), https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/drugscdlp1d_p00.doc; Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Drugs: Contract Drugs List Part 1 - Prescription Drugs (E through M)* (2018) (drugs cdl p1b), https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/drugscdlp1b_p00.doc.
- ²¹ All Plan Letter 16-013, *supra* note 7.
- ²² *Id.*
- ²³ *Id.*
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ WPATH, *Standards of Care*, *supra* note 2, at 9–10.

- ²⁸ *Id.* at 58.
- ²⁹ *Id.* at 60; see also Wylie C Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLIN. ENDOCRINOLOGY & METABOLISM 3869 (2017).
- ³⁰ While not an explicit criterion, the WPATH *Standards of Care* recommends that individuals undergo 12 months of continuous hormone therapy prior to breast augmentation surgery to obtain the best possible outcome. WPATH, *Standards of Care*, *supra* note 2, at 59.
- ³¹ While not an explicit criterion, the WPATH *Standards of Care* also recommend that these individuals see a mental health or other medical professional during this 12-month period. WPATH, *Standards of Care*, *supra* note 2, at 60.
- ³² Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Transgender Services*, *supra* note 3, at 2 (citing CAL. CODE REGS., tit. 22, § 51303); see also All Plan Letter 16-013, *supra* note 7, at 2.
- ³³ All Plan Letter 16-013, *supra* note 7, at 2.
- ³⁴ *Id.* (quoting CAL. HEALTH & SAFETY CODE § 1367.63(c)(1)(B)).
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ WPATH, *Standards of Care*, *supra* note 2, at 57.
- ³⁹ *Id.*
- ⁴⁰ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Transgender Services*, *supra* note 3.
- ⁴¹ "The drug-gender screening system, which is currently inactive, warns of inappropriate drug use based on the patient's sex." Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, DUR: Prospective Drug Use Review* (2007), https://files.medi-cal.ca.gov/pubsdoco/publications/masters-other/dur/20_d00.doc.
- ⁴² *Medi-Cal and Gender Reassignment Procedures*, Transgender L. Ctr. (May 2002), <https://transgenderlawcenter.org/wp-content/uploads/2012/07/Medical-Fact-Sheet.pdf>.
- ⁴³ *GB v. Lackner*, 80 Cal. App. 3d (1978); *JD v. Lackner*, 80 Cal. App. 3d 90 (1978).
- ⁴⁴ Prescribing hormones for gender affirmation is within the scope of practice of a range of providers, including primary care physicians, obstetricians-gynecologists, endocrinologists, advanced practice nurses, physician assistants, and other providers with prescriptive rights (such as, in some jurisdictions, naturopathic providers and nurse midwives). Madeline B. Deutsch, *Initiating Hormone Therapy*, UCSF Ctr. Excellence for Transgender Health (June 17, 2016), <http://transhealth.ucsf.edu/trans?page=guidelines-initiating-hormone-therapy> (last visited Nov. 16, 2019); WPATH *Standards of Care*, *supra* note 2.