

Gender-Affirming Care 101

A primer for California Advocates

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About the National Health Law Program (NHeLP)

- Mission: NHeLP protects and advances the health rights of low-income and marginalized people to access high quality health care, particularly in publicly funded health programs.
- State and local partners
(50 states)
- Offices: CA, DC, NC



Graphic of 50 states with stars indicating the locations of NHeLP's LA, DC, and NC offices

What we'll cover today

- What is Gender-Affirming Care?
- How to establish medical necessity for Gender-Affirming Care
- Steps to appealing Gender-Affirming Care denials
- Resources & tips
- Q & A

Roadmap: Gender-Affirming Services

- Useful Terms
- Overview
- Categories of covered benefits:
 - Mental Health Services
 - Hormone Therapy
 - Surgical Care
- Practice Tips
- Resources

Useful Terms

- Gender Dysphoria: the distress a person experiences as a result of the sex and gender they were assigned at birth.
 - DSM-5, “Gender Identity Disorder”
 - Diagnosis Code: F64.9
- Gender Identity: One's inner sense of self as male, female, both or neither – how individuals perceive themselves and what they call themselves. Gender identity can be the same or different from a person's sex assigned at birth.
- Cisgender: denoting or relating to a person whose sense of personal identity and gender corresponds with their sex assigned at birth.
- Transgender: denoting or relating to a person whose sense of personal identity and gender does not correspond with their sex assigned at birth.
- Non-Binary: includes various gender identities that are not exclusively masculine or feminine—identities which are outside the gender binary and cisnormativity.
- Gender Diverse: umbrella term to refer to people whose gender identity, including their gender expression, is at odds with what is perceived as being the gender norm in a particular context at a particular point in time, including people who identify as Gender Fluid, Gender Expansive, or Genderqueer.

General Overview to Approve Gender-Affirming Care

- Documented gender dysphoria
- Informed Consent
- Relevant health concerns are reasonably well-controlled
- Medical Necessity and/or Reconstructive Procedure
- Based on “nationally recognized medical/clinical guidelines”
 - World Professional Association for Transgender Health (WPATH), [Standards of Care](#), 7th Version
 - Opined by “specialists experienced in providing care to transgender individuals.”

Covered Gender-Affirming Services

Mental Health Services

- Sometimes, but not always, a part of gender-affirming care.
 - [Core component](#) for treatment of gender dysphoria
 - Trauma or other challenges
 - Exploration, options (See also [Ch. 3, Mental Health Services](#))
- Required for gender-affirming surgery
 - Qualified, licensed mental health professional, treating surgeon, in collaboration with PCP. [[All Plan Letter 16-013](#)]
- Role of mental health providers
 - Gatekeeping – not a requirement for cisgender beneficiaries

Hormone Therapy

- Medically necessary to treat gender dysphoria
 - [WPATH SOC](#)
 - Children and adolescent criteria differs
- Criteria:
 - Capacity
 - Other conditions are reasonably well controlled
 - Persistent gender dysphoria
 - Psychosocial assessment by qualified, licensed health professional
- Fee-for-Service
- Managed Care
 - Obligations and protections extend to subcontractors and network providers.

Surgical Care

- Not every beneficiary wants, needs or qualifies for gender affirming surgery
- [Case-by-case basis](#)
- Criteria:
 - Capacity
 - Other significant health concerns are reasonably well-controlled
 - Documented gender dysphoria (1-2 letters from qualified, licensed mental health provider)
 - May require continuous HRT for a certain period of time
 - Medically Necessary or Reconstructive

Specific Services

- Chest reconstruction surgery
- Genital surgery
- Facial gender confirmation surgery
- Body contouring
- Voice modification surgery
- Hair transplantation
- Reduction of thyroid chondroplasty

There are many many [more!](#)

Establishing Medical Necessity

Medical Necessity Analysis

- Does the individual experience symptoms of gender dysphoria?
- Are there less-restrictive, less-invasive treatments to adequately alleviate the symptoms experienced due to gender dysphoria?
- For Medi-Cal, use "reconstructive surgery" analysis, if applicable:
 - “performed to correct or repair abnormal structures of the body...to create a normal appearance to the extent possible.”
 - “Normal” appearance is determined by the gender with which the beneficiary identifies.
 - Determined by (1) Qualified, licensed mental health professional and the (2) Treating surgeon (3) in collaboration with the Primary care provider.
 - Not “[cosmetic](#)”

What does this mean for Californians?

- It is hard to legally justify gender affirming care denials with state-based insurance
- NO categorical exclusions
- MUST evaluate on a case-by-case basis
- IMRs must be evaluated by an independent provider specialized in the area of treatment
- If services are covered for cisgender patients, they are covered for transgender patients

Other interventions and considerations

- Name and gender marker differs on identity documents and records
- Barriers when care is deemed “cosmetic”
- Religious or moral exclusions
 - For Managed Care Plans, see the Department of Managed Health Care, [Letter No. 12-K Order: Gender Nondiscrimination Requirements \[H&S Code section 1365.5\]](#)

Steps to take when confronting a GAC denial

Steps to Take When Experiencing Barriers to Gender Affirming Care

Step 1 - Gather important documents and take notes.

Step 2 – Determine the regulating authority.

Step 3 - File grievance/appeal with your health plan for EACH violation or barrier.

Step 4 - File a DMHC Complaint/IMR.

Step 5 – Request a State Fair Hearing.

Step 1 - Gather important documents and take notes

- Evidence of Coverage
- Explanation of Benefits / Summary of Benefits
- Written Notices / Correspondence (including email)
 - Notice of Action
 - Notice of Adverse Benefit Determination
 - Denial
 - Appeal/grievance resolution letter
 - Acknowledgement letters
- Member Handbook
- PCP & Mental Health Support Letters



Step 1 - Gather important documents and take notes.

- Keep notes of:
 - All communications with your health care providers and health plan.
 - Date and time of the communication.
 - Name and job title of person you spoke with, and the phone number.
 - Summary of the communication. Include important facts.

Step 2 - Determine the regulating authority.



- Federal v. State
 - Federal law (ERISA) has less protections for gender-affirming services.
 - If federally regulated plan, you may want to consider switching to a state regulated alternative such as Medi-Cal or Covered California.
 - State law is much more protective of gender-affirming services
- For employer-based plans, you should be able to ask your H.R. Department.
 - Generally, if it is a "self-insured" plan, then it is a federally regulated plan.

Step 2 - Determine the regulating authority.

- State:

- Department of Health Care Services (DHCS)
 - Medi-Cal Fee-for Service and Medi-Cal Managed Care Plans



- Department of Managed Health Care (DMHC)
 - Medi-Cal Managed Care plans*, Covered California plans, Commercial HMOs, Blue Cross of CA PPO, Blue Shield PPOs



- California Department of Insurance (CDI)
 - All other PPOs



Step 3 - File grievance/appeal with your health plan for EACH violation or barrier.

- Right to have grievance adequately considered
 - H&S Code § 1368(a)(1) and 28 C.C.R. § 1300.68(a)
- Right to written notice
 - H&S Code § 1368(a)(5) - requires written responses to grievances with a clear and concise explanation for the reasons for the plan's response.
- Right to second opinion
- Right to Medical Necessity review/analysis (for gender-affirming services)

Step 3 - File grievance/appeal with your health plan for EACH violation or barrier.

- Right to list of in-network providers
 - H&S Code § 1367.27(d)(1) - must produce printed copy of provider directory within 5 days of requesting it over the phone.
 - Note: If the plan refers you to a provider that is *NOT* in-network, file a grievance.

Step 3 - File grievance/appeal with your health plan for EACH violation or barrier.

- Right to out-of-network services (if cannot be provided in-network)
 - Note: this does not mean you have a right to choose any provider; rather, just a right to receives the services when not provided in-network
 - H&S Code § 1367(g), 42 C.F.R. § 438.206(b)(4) - must adequately and timely provide covered necessary services out of network if plan's provider network is unable to provide the services



Step 4 - File DMHC or CDI Complaint/IMR

If unsatisfied with grievance/appeal resolution OR if the health plan fails to resolve the barrier **within 30 days**, then file a DMHC or CDI Complaint/IMR

- Independent Medical Review (IMR) - if the denial involves medical necessity
 - EX: Your health plan denied facial feminization surgery as cosmetic.
- Complaint – everything other than denial involving medical necessity
 - EX: Your health plan does not have any bottom surgeons in network and denies your request to see a bottom surgeon out of network.
- Make sure you list EACH violation or barrier in Complaint/IMR

Step 5 - Request a State Fair Hearing

IMPORTANT! – you cannot go to DMHC IMR/Complaint *after* a state fair hearing

- Must file within 120* days of Notice of Appeal Resolution from the health plan.

*During the COVID-19 Public Health Emergency, it has been extended to 210 days.

Hypo



Scenario: Consumer identifies as female, uses she/her pronouns, and is in a Medi-Cal Managed Care Plan. Her health plan denied electrolysis hair removal request as the plan considered it cosmetic and not medically necessary.

She filed a grievance with her plan, but they upheld their decision as not medically necessary despite a diagnosis of gender dysphoria.

What is the next step?



File with the DMHC.

Hypo Cont. - DMHC Success Story

In this case:

- HCA helped this person file a DMHC complaint that explained the need for hair removal due to the diagnosis of gender dysphoria and pointed to the health plan's own policy was contradictory to their denial.
- Later had to change the complaint to an IMR request for laser hair removal (a technical designation that could later be negotiated with the plan), that request was also denied.
- DMHC overturned the health plans decision to deny the laser hair removal.
- There were some issues after the DMHC overturned the decision, where the person was not able to get an appointment because the approval was not showing. After contacting the DMHC again, this person was able to finally schedule and get the gender-affirming care she needed.

Resources and Tips

Related Policies

- Federal Protections & Policies

- Affordable Care Act
 - Section 1557
 - HHS, Office of Civil Rights
- HIPAA
- Medicare, NCD 140.3
- TRICARE

- California Protections & Policies

- Insurance Gender Non-Discrimination Act
- Dep't of Managed Health Care, Director's Letter 12-K, APL 20-026
- Dep't of Health Care Srvs, All Plan Letter 20-018, 20-015, 22-008
- CA Dep't of Insurance, CDI General Counsel Letter 12/20/20

Policy Developments

- Federal
 - NPRM, Section 1557
 - [NHeLP Section 1557 landing page](#)
 - Make your voice heard! Submit comments through [NHeLP's comment portal](#)
 - Executive Orders – combatting discrimination, SOGI data collection
- California
 - Interim guidance related to eligibility and gender identity
 - Updates to the SSApp – pending SPA submitted in March 2022
 - SOGI Data Collection
 - Trans Health Equity Fund
 - Improvements to managed care

Advocacy Tips

- Beware of blanket exclusions
 - Ex. Facial gender confirmation surgery deemed “cosmetic”
- Health care available to cisgender beneficiaries must be available to transgender and non-binary beneficiaries
- Research medical literature
 - Inquire about medical sources cited by health plans
 - Medical reviewers without gender-affirming health experience
- Challenge offensive language in denial letters – consider an OCR complaint
- Get comfortable with pronouns, offer yours when agreeing to representation

Trans Health Resources

- NHeLP's [Advocate's Guide to Medi-Cal Services](#)
- Transgender Legal Defense & Education Fund, Trans Health Project, <https://transgenderlegal.org/our-work/trans-health-project/>
- Trans Health Consulting, transhealthconsulting.com
- National Center for Transgender Equality, transequality.org
- Transgender Law Center, transgenderlawcenter.org

Thank you!

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