State of California—Health and Human Services Agency
Department of Health Care Services

JENNIFER KENT
DIRECTOR

EDMUND G. BROWN JR.
GOVERNOR

DATE: October 6, 2016

ALL PLAN LETTER 16-013
SUPERSEDES ALL PLAN LETTER 13-011

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: ENSURING ACCESS TO MEDI-CAL SERVICES FOR TRANSGENDER BENEFICIARIES

PURPOSE:
The purpose of this All Plan Letter (APL) is to remind Medi-Cal managed care health plans (MCPs) that they must provide covered services to all Medi-Cal beneficiaries, including transgender beneficiaries.

BACKGROUND:
The Insurance Gender Nondiscrimination Act (IGNA) prohibits MCPs from discriminating against individuals based on gender, including gender identity or gender expression (Health and Safety Code Section (§)1365.5). The IGNA requires that MCPs provide transgender beneficiaries with the same level of health care benefits that are available to non-transgender beneficiaries.

In addition, the Affordable Care Act (ACA) and the implementing regulations prohibit discrimination against transgender beneficiaries and require MCPs to treat beneficiaries consistent with their gender identity (Title 42 United States Code § 18116; 45 Code of Federal Regulations (CFR) §§ 92.206, 92.207; see also 45 CFR § 156.125 (b)).[1] Specifically, federal regulations prohibit MCPs from denying or limiting coverage of any health care services that are ordinarily or exclusively available to beneficiaries of one gender, to a transgender beneficiary based on the fact that a beneficiary's gender assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such services are ordinarily or exclusively available (45 CFR §§ 92.206, 92.207(b)(3)). Federal regulations further prohibit MCPs from categorically excluding or limiting coverage for health care services related to gender transition (45 CFR § 92.207(b)(4)).

[1] The ACA requires that MCPs provide all beneficiaries with a common core set of benefits, known as Essential Health Benefits (EHB). Health insurers covering EHBs are prohibited from discriminating on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. (45 CFR § 156.125 (b).)

MCPs must provide medically necessary covered services to all Medi-Cal beneficiaries, including transgender beneficiaries. Medically necessary covered services are those services "which 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" (Title 22 California Code of Regulations § 51303).

MCPs must also provide reconstructive surgery to all Medi-Cal beneficiaries, including transgender beneficiaries. Reconstructive surgery is "surgery performed to correct or repair abnormal structures of the body . . . to create a normal appearance to the extent possible" (Health and Safety Code § 1367.63(c)(1)(B)). In the case of transgender beneficiaries, normal appearance is to be determined by referencing the gender with which the beneficiary identifies.

MCPs are not required to cover cosmetic surgery. Cosmetic surgery is "surgery that is performed to alter or reshape normal structures of the body in order to improve appearance" (Health and Safety Code § 1367.63(d)).

POLICY:
MCPs shall use nationally recognized medical/clinical guidelines in reviewing requested services from transgender beneficiaries and shall apply those standards consistently across the population. One source of clinical guidance for the treatment of gender dysphoria[2] is found in the most current "Standards of Care (SOC) for the Health of Transsexual, Transgender, and Gender Nonconforming People," published by the World Professional Association for Transgender Health (WPATH).[3] The WPATH SOC includes a comprehensive discussion of the clinical management and treatment of transgender individuals by physicians and health care professionals.

Nationally recognized medical experts in the field of transgender health care have identified the following core services in treating gender dysphoria: behavioral health services; psychotherapy; hormone therapy; and a variety of surgical procedures that bring primary and secondary gender characteristics into conformity with the individual's identified gender.[4]

<u>Medically Necessary and/or Reconstructive Surgery</u>
MCPs are required to provide beneficiaries who have been diagnosed with gender dysphoria with all Medi-Cal covered services that are provided to non-transgender beneficiaries, so long as the services are medically necessary, or meet the definition of reconstructive surgery. The determination of whether a service requested by a transgender 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.

---

[2] See "Gender Dysphoria" in the *Diagnostic and Statistical Manual of Mental Disorders (5th Edition)* (DSM-5).
[3] See http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926
[4] See Kellen Baker & Andrew Cray, *Ensuring Benefits Parity and Gender Identify Nondiscrimination in Essential Health Benefits,* Center for American Progression (Nov. 15, 2012).

Utilization Controls

MCPs must not categorically limit a service or the frequency of services available to a transgender beneficiary. Rather, MCPs must timely provide all medically necessary services and/or reconstructive surgery that are otherwise available to non-transgender beneficiaries. Medical necessity and/or reconstructive surgery determinations must be made on a case-by-case basis. MCPs may apply non-discriminatory limitations and exclusions, conduct medical necessity and reconstructive surgery determinations, and/or apply appropriate utilization management criteria that are non-discriminatory.

Review of an MCP's Denial of Services

If an MCP denies a Medi-Cal beneficiary's request for services covered by Medi-Cal, including a transgender beneficiary's request, on the basis that the services are not medically necessary, not considered reconstructive surgery, or that the services do not meet the MCP's utilization management criteria, the MCP's decision is subject to review through the MCP's appeal and grievance process, the State Fair Hearing process, and/or the Department of Managed Health Care's Independent Medical Review process.

Ensuring Compliance by Subcontractors and Network Providers

MCPs are responsible for ensuring that subcontractors and network providers comply with all applicable state and federal laws and regulations and other contract requirements, as well as Department of Health Care Services' guidance, including applicable APLs and Dual Plan Letters.

If you have any questions regarding this APL, please contact your Managed Care Operations Division Contract Manager.

Sincerely,

Original Signed by Nathan Nau

Nathan Nau, Chief
Managed Care Quality and Monitoring Division