

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 14-362)**

Overview and Legal and Fiscal Impact

The proposed regulation repeals the exclusion from Medicaid coverage for gender change or sex reassignment procedures.

The regulation presents no legal issue of concern.

Medicaid expenditures increase beginning in fiscal 2015 due to coverage of gender reassignment surgery (GRS). The amount of the increase cannot be reliably estimated at this time. Federal matching funds will range from 50% to 100% depending on the eligibility category of the individuals who seek such surgery.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Physicians' Services: COMAR 10.09.02.05

Legal Analysis

Background

State policy with respect to transgender individuals and, more specifically, treatment for sex change, is evolving. Chapter 474 of 2014, Fairness for All Marylanders Act, prohibited discrimination based on gender identity in public accommodations, labor and employment, and housing and discrimination by persons licensed or regulated by a unit of the Department of Labor, Licensing, and Regulation. The measure further prohibited discrimination based on gender identity and sexual orientation in State personnel actions and in the leasing of property for commercial use. The Act did not directly address health care services or insurance coverage for health care services.

In January 2014, the Maryland Insurance Administration issued a bulletin to health insurance carriers clarifying the scope of the exclusion for “treatment leading to or in connection with transsexualism, or sex changes or modifications, including but not limited to surgery,” in the benchmark plan selected by the State to define essential health benefits required in all health insurance plans in the individual and small group markets. The bulletin stated that “the exclusion should be narrowly applied to items and services that are directly related to the gender reassignment process” and should “not exclude coverage for medically necessary items or services, including medically necessary preventive services, solely on the grounds that the person receiving the services is a transgender individual.”

In July 2014, the Department of Budget and Management began to provide coverage to State employees, retirees, and dependents for sex reassignment procedures through the State Employee and Retiree Health and Welfare Benefits Program. The proposed regulation is intended to align Medicaid coverage with the coverage for State employees.

Summary of Regulation

The proposed regulation repeals the exclusion from Medicaid coverage for gender change or sex reassignment procedures.

Legal Issue

The regulation presents no legal issue of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-103, and 15-105 as authority for the regulation. Section 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 15-103 requires the Secretary to administer the Maryland Medical Assistance Program. Subject to the limitations of the State budget, the program is required to provide medical and other health care services for eligible individuals. This section also authorizes the Secretary to contract for the provision of care under the program to eligible program recipients. Section 15-105 requires the department to adopt rules and regulations for the reimbursement of providers under the program.

This statutory authority is correct and complete. The regulation is consistent with legislative intent.

Fiscal Analysis

Medicaid expenditures increase beginning in fiscal 2015 due to coverage of GRS. The amount of the increase cannot be reliably estimated at this time. Federal matching funds will range from 50% to 100% depending on the eligibility category of the individuals who seek such surgery.

Agency Estimate of Projected Fiscal Impact

The regulation removes the current exclusion on Medicaid coverage of GRS. The department estimates that approximately 400 transgendered individuals are enrolled in the Medicaid program and projects that approximately 2.5% of this population (10 individuals) could request and meet the prior authorization criteria for GRS. At an estimated cost of \$65,000 per surgery, Medicaid expenditures could increase by a total of \$650,000 over the remainder of fiscal 2015 through fiscal 2019. As not all individuals eligible would have the surgery in the first year coverage is available, the department estimates that Medicaid expenditures could increase by approximately \$130,000 (two surgeries) during the remainder of fiscal 2015 and \$260,000 (four surgeries) in fiscal 2016. The department advises that no hospital in Maryland currently

performs GRS. While Medicaid would cover the cost of GRS performed in another state, the cost of transportation and accommodations is not covered, which may reduce the number of Medicaid enrollees who seek GRS.

The Department of Legislative Services concurs that Medicaid expenditures likely increase beginning in the second half of fiscal 2015 to provide coverage of GRS; however, the amount of this increase cannot be reliably estimated. While available data on the number of transgendered individuals and utilization of this benefit by individuals with private insurance is limited, utilization and costs appear to be lower than expected. Applying private insurance estimates to the population of 629,256 adults enrolled in Medicaid in October 2014, utilization could be as high as between 34 and 63 individuals (between 0.054 and 0.1 per 1,000 covered lives). At this level of utilization, Medicaid expenditures could increase by as much as \$4,095,000 in total funds to cover GRS for all eligible individuals. However, utilization is likely to be much lower. Federal matching funds will range from 50% to 100% depending on the eligibility category of the individuals who seek GRS.

Impact on Budget

Medicaid expenditures increase beginning in fiscal 2015 due to coverage of GRS. Federal matching funds will range from 50% to 100% depending on the eligibility category of the individuals who seek such surgery.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Additional Comments

In recent years, the American Medical Association, the American Psychiatric Association, the American Psychological Association, and the American Congress of Obstetricians and Gynecologists have each issued policy statements affirming the medical necessity of GRS. In May 2014, the federal Medicare program removed the longstanding exclusion of coverage for GRS. In July 2014, the State Employee and Retiree Health and Welfare Benefits Program began providing coverage for GRS.

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