



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary
February 28, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East Senate Office Building
Annapolis, MD 21401-1991

Re: SB 460 – Maryland Medical Assistance Program – Gender–Affirming Treatment (Trans Health Equity Act) – Letter of Support with Amendments

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support with amendments for Senate Bill (SB) 283 – Maryland Medical Assistance Program – Gender–Affirming Treatment (Trans Health Equity Act). The Moore-Miller Administration is committed to the wellbeing of Maryland’s LGBTQ+ population. In Maryland and across the nation, LGBTQ+ individuals face adversity at higher levels than many other communities. This adversity is felt in all intersections of life, including health care. MDH supports this bill’s efforts to improve access to health care for our LGBTQ+ community by expanding gender–affirming treatments for transgender, nonbinary, intersex, two spirit, and other gender diverse individuals that are enrolled in Medicaid.

MDH appreciated the opportunity to discuss SB 460 with the bill sponsor and stakeholders prior to the bill hearing. MDH notes that in this discussion we shared that, pursuant to 42 CFR § 440.230, MDH can establish utilization control procedures, such as prior authorization, to ensure services are rendered in compliance with medical necessity criteria.¹ Medical necessity criteria are established based on evidentiary standards related to recognized treatment guidelines.² Review of requests for coverage and appeals for compliance with these standards are conducted by clinicians.

SB 460 will incorporate medical necessity criteria into state statute. Medical necessity criteria are important to the day-to-day administration of benefits covered by the Medical Assistance Program. These criteria are not static. Instead, medical necessity criteria evolve constantly to reflect changes in best evidence-based practices and the latest research. The flexibility to make changes to these criteria through sub regulatory guidance is critical for the operations of MDH.

¹<https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-C/part-440/subpart-B/section-440.230>

² Guidelines include Interqual, UpToDate, Hayes, or Milliman Criteria, and may also be informed by opinions from governing Medical Specialty Boards from each of the subspecialties, as well as other MDH agencies. With respect to off-label drugs, COMAR 10.09.03.06B requires that the off-label use must be documented in and supported by the latest edition of the American Hospital Formulary Service Drug Information, the Thompson Micromedex Drugdex, or the United States Pharmacopeia

Including these criteria in statute will necessitate new legislation each time a change is needed. Specifically, the bill will prohibit MDH from issuing an adverse benefit determination denying or limiting access to gender-affirming treatment unless a health care provider with experience prescribing or delivering gender-affirming treatment has reviewed and confirmed the appropriateness of the adverse benefit determination. It is also unclear whether a sufficient network of providers will exist to permit independent, unbiased reviews, while ensuring inter-rater reliability and consistency of decision making.

To address this item, MDH proposes the attached amendment which will allow the Medical Assistance Program to continue to have flexibility to make any necessary updates through sub regulatory guidance. This will ensure that updates are timely and are based on current health care research and best practices.

If you would like to discuss this further, please do not hesitate to contact Megan Peters, Acting Director of Governmental Affairs at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,



Laura Herrera Scott, M.D., M.P.H.
Secretary

(First Reading File Bill)

On page 1, in line 8, strike beginning with “prohibiting” down through “determination;” in line 11, inclusive.

On page 4, strike in their entirety the lines beginning with line 30 down through line 2 on page 5.