

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

CODY FLACK, *et al.*,
*individually and on behalf of all others similarly
situated,*

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES, *et al.*,

Defendants.

Case No. 3:18-cv-00309-wmc
Judge William Conley

FOURTH DECLARATION OF ORLY T. MAY, ESQ.

I, Orly T. May, declare as follows:

1. I am an attorney for the Plaintiffs in the above-captioned case. I previously submitted declarations in connection with Plaintiffs' Motion for Preliminary Injunction [ECF No. 21], Plaintiffs' Motion for Summary Judgment [ECF No. 166], and Plaintiffs' Reply in Support of their Motion for Summary Judgment [ECF No. 197].

2. Exhibit 1 to this Declaration is a true and correct copy of the email Wisconsin Department of Health Services sent to the *ForwardHealth* listserv on August 21, 2019 with the subject "ForwardHealth Update 'Transgender Surgery Policy,'" linking to the August 2019 *ForwardHealth Update* referenced in paragraph 3 below.

3. Exhibit 2 to this Declaration is a true and correct copy of the August 2019 *ForwardHealth Update*, titled "Transgender Surgery Policy," available at <https://www.forwardhealth.wi.gov/kw/pdf/2019-20.pdf> (last accessed and printed on Sep. 10, 2019).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and information.

Executed this 10th day of September, 2019.



Orly T. May

EXHIBIT

1

From: ForwardHealth@www.ForwardHealth.wi.gov <ForwardHealth@www.ForwardHealth.wi.gov>

Sent: Wednesday, August 21, 2019 12:50 PM

To: Polly Shoemaker <pshoemaker@safetyweb.org>

Subject: ForwardHealth Update "Transgender Surgery Policy"



The August 2019 *ForwardHealth Update* (2019-20), titled "[Transgender Surgery Policy](#)," has been published by ForwardHealth.

For complete policies and procedures, please see the Online Handbook on the ForwardHealth Portal. Providers are reminded that they are responsible for all information in the *Updates*.

EXHIBIT

2

**Update****August 2019****No. 2019-20**

Affected Programs: BadgerCare Plus, Medicaid

To: Advanced Practice Nurse Prescribers With Psychiatric Specialty, Ambulatory Surgery Centers, Community Health Centers, Hospital Providers, Intensive In-Home Mental Health and Substance Abuse Treatment Services for Children Providers, Master's-Level Psychotherapists, Nurse Practitioners, Outpatient Mental Health Clinics, Physician Assistants, Physician Clinics, Physicians, Psychologists, Qualified Treatment Trainees, Rural Health Clinics, Tribal Federally Qualified Health Centers, HMOs and Other Managed Care Programs

Transgender Surgery Policy

Overview

In response to the preliminary injunction 18-cv-309-wmc by the United States District Court for the Western District of Wisconsin, effective April 23, 2019, providers may no longer exclude transgender services based on the Wisconsin Administrative Code's currently enjoined exclusion of: "Drugs, including hormone therapy, associated with transsexual surgery or medically unnecessary alteration of sexual anatomy or characteristics" and "Transsexual surgery." Services previously considered noncovered under these exclusions are currently allowable under ForwardHealth with an approved prior authorization (PA) request.

This *ForwardHealth Update* includes documentation and PA requirements for coverage of transgender surgery.

Documentation Requirements for PA Requests

ForwardHealth will review PA requests for transgender surgery related to the treatment and management of gender dysphoria on a case-by-case basis in accordance with federal regulations, including those found in Section 1557 of the Affordable Care Act and in accordance with medical necessity as defined in Wis. Admin. Code § DHS 101.03(96m).

When submitting a PA request for transgender surgery, providers must include the following:

- A completed Prior Authorization Request Form (PA/RF), F-11018 (05/2013)
- A completed Prior Authorization/Physician Attachment (PA/PA), F-11016 (07/2012)
- Clinical records from the treating medical physician that detail the member's history and medical management related to gender dysphoria
- Clinical records from the member's treating behavioral health professional that indicate the following:
 - ✓ A diagnosis of gender dysphoria
 - ✓ The member's personal level of distress and impact on the member's employability, and/or daily functioning, over time, relating to the diagnosis
 - ✓ The anticipated impact of the transgender surgery on the member's level of distress, employability, and/or daily functioning over time

Note: If additional information is needed to substantiate the medical necessity of the requested service, the PA request will be returned to the provider. A returned provider review letter requesting more information is not a denial. Refer to the Returned Requests topic (topic #427) and the Returned Provider Review Letter Response Time topic (topic #4737) in the Decisions chapter of the Prior Authorization section

of the ForwardHealth Online Handbook on the ForwardHealth Portal for additional information.

How to Submit PA Requests

Providers may submit PA requests via the Portal at www.forwardhealth.wi.gov/, which includes the capability to upload PA attachment forms and additional supporting clinical documentation. Providers may refer to the Provider Portal Prior Authorization User Guide, available on the Portal, for instructions on submitting PA attachments.

Providers may submit PA requests to ForwardHealth by fax at 608-221-8616 or by mail to the following address:

ForwardHealth
Prior Authorization
Ste 88
313 Blettner Blvd
Madison WI 53784

PA and Claim Submission

When submitting PA requests and claims for transgender surgery, providers must indicate the procedure code that best describes the service performed. The procedure code indicated on the claim must match the procedure code submitted on the approved PA request.

Information Regarding Managed Care Organizations

This *Update* contains fee-for-service policy and applies to services members receive on a fee-for-service basis only. For managed care policy, contact the appropriate managed care organization (MCO). MCOs are required to provide at least the same benefits as those provided under fee-for-service arrangements.

The *ForwardHealth Update* is the first source of program policy and billing information for providers.

Wisconsin Medicaid, BadgerCare Plus, SeniorCare, and Wisconsin Chronic Disease Program are administered by the Division of Medicaid Services, the Wisconsin Department of Health Services (DHS). The Wisconsin AIDS Drug Assistance Program and the Wisconsin Well Woman Program are administered by the Division of Public Health, DHS.

For questions, call Provider Services at 800-947-9627 or visit our website at www.forwardhealth.wi.gov/.

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