

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CODY FLACK, *et al.*,

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTIONS TO THE COURT'S
PROPOSED FINAL ORDER**

Plaintiffs Cody Flack, *et al.*, respond as follows to Defendants' Objections to the Proposed Final Order [ECF No. 245]:

1. Plaintiffs do not oppose Defendants' Objection No. 1, which objects to the phrase "gender-confirming" in Paragraphs 3(a), 3(b), and 3(c) of the Court's Proposed Order [ECF No. 239]. Plaintiffs request that the phrase "gender-confirming services" be replaced with the phrase "surgical procedures/services and drugs (including hormones) to treat gender dysphoria." As this Court has found, the outdated phrase "transsexual surgery" was not defined in the Challenged Exclusion, but has been interpreted by Wisconsin Department of Health Services ("DHS") to refer to "any surgical procedure intended to treat gender dysphoria," Summ. J. Op. & Order 9 & n.12 [ECF No. 217]. The Court has also found that coverage for hormone treatments for gender dysphoria has been inconsistent because of the undefined scope of the Challenged Exclusion. *Id.* at 9, 14 & n.16. Plaintiffs' proposed language is intended to clarify that the relevant services are for the treatment of gender dysphoria, and to prevent similar ambiguity moving forward.

2. In response to Defendants' Objection No. 2, Plaintiffs believe their language change requested in Paragraph 1 above will make Defendants' proposed addition to Paragraph

3(c) unnecessary, since all “surgical procedures/services or drugs (including hormones) to treat gender dysphoria” are subject to DHS’s standard review and approval procedures, whether or not DHS and/or a Wisconsin Medicaid HMO previously considered them to be excluded by the Challenged Exclusion.

Dated: October 21, 2019

Respectfully submitted,

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