

WSR 22-22-103

EXPEDITED RULES

HEALTH CARE AUTHORITY

[Filed November 2, 2022, 9:50 a.m.]

Title of Rule and Other Identifying Information: WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health care authority (HCA) is correcting a typographical error in the cross-reference to the early and periodic screening, diagnosis, and treatment program rules in subsection (1)(f). The current cross-reference points to chapter 182-543 WAC. This should read chapter 182-534 WAC.

Reasons Supporting Proposal: To correct a typographical error.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Cathy Carroll, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-2033.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule making is for correction purposes only, as allowed by RCW 34.05.353 (1)(c).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Wendy Barcus, Rules Coordinator, HCA, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9272, email arc@hca.wa.gov, AND RECEIVED BY January 4, 2023.

November 2, 2022
Wendy Barcus
Rules Coordinator

OTS-4180.1

AMENDATORY SECTION (Amending WSR 21-08-058, filed 4/5/21, effective 5/6/21)

WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria. (1) Overview of treatment program.

(a) **Medicaid agency coverage.** The medicaid agency covers the services listed in (b) of this subsection to treat gender dysphoria (also referred to as gender incongruence) under WAC 182-501-0050 and 182-531-0100. These services include life-changing procedures that may not be reversible.

(b) **Medical services covered.** Medical services covered by the agency include, but are not limited to:

(i) Presurgical and postsurgical hormone therapy;

(ii) Puberty suppression therapy;

(iii) Behavioral health services; and

(iv) Surgical and ancillary services including, but not limited

to:

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospitalization;

(F) Physician services; and

(G) Hospitalizations and physician services required to treat postoperative complications of procedures performed under this section.

(c) **Surgical services covered.** Surgical services to treat gender dysphoria are a covered service for clients who have a diagnosis of gender dysphoria made by a provider who meets the qualifications outlined in chapter 182-502 WAC.

(d) **Medical necessity.** Under this program, the agency authorizes and pays for only medically necessary services. Medical necessity is defined in WAC 182-500-0070 and is determined under WAC 182-501-0165 and limitation extensions in accordance with WAC 182-501-0169.

(e) **Provider requirements.** Providers should be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria, including experience utilizing standards of care that include the World Professional Association for Transgender Health (WPATH) Standards of Care.

(f) **Clients age twenty and younger.** The agency evaluates requests for clients age twenty and younger according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter ((182-543)) 182-534 WAC. Under the EPSDT program, the agency pays for a service if it is medically necessary, safe, effective, and not experimental.

(g) **Transportation services.** The agency covers transportation services under the provisions of chapter 182-546 WAC.

(h) **Out-of-state care.** Any out-of-state care, including a presurgical consultation, must be prior authorized as an out-of-state service under WAC 182-501-0182.

(i) **Reversal procedures.** The agency does not cover procedures and surgeries related to reversal of gender affirming surgery.

(j) **Corrective surgeries for intersex traits.** The agency covers corrective or reparative surgeries for people with intersex traits who received surgeries that were performed without the person's consent.

(2) **Prior authorization.**

(a) **Prior authorization requirements for surgical services.** As a condition of payment, the agency requires prior authorization for all surgical services to treat gender dysphoria, including modifications to, or complications from, a previous surgery, except as provided in subsection (3) of this section.

(b) **Required documentation.** The provider must include the following documentation with the prior authorization request:

(i) **Two psychosocial evaluations required.** Documentation of two separate psychosocial evaluations performed within (~~eighteen~~) 18 months preceding surgery by two separate qualified mental health professionals as defined in WAC 182-531-1400. These providers must be licensed health care professionals who are eligible under chapter 182-502 WAC, as follows:

(A) Psychiatrist;
(B) Psychologist;
(C) Psychiatric advanced registered nurse practitioner (ARNP);
(D) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC);

(E) Mental health counselor (LMHC);
(F) Independent clinical social worker (LICSW);
(G) Advanced social worker (LASW); or
(H) Marriage and family therapist (LMFT).

(ii) **One psychosocial evaluation for top surgery.** For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation.

(iii) **Evaluation requirements.** Each comprehensive psychosocial evaluation must:

(A) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders*;

(B) Document that:

(I) The client has:

- Lived for (~~twelve~~) 12 continuous months in a gender role that is congruent with their gender identity, except for top surgery, hysterectomy, or orchiectomy; or

- Been unable to live in their gender identity due to personal safety concerns.

(II) The client has been evaluated for any coexisting behavioral health conditions and if any are present, the conditions are adequately managed.

(iv) **Hormone therapy.** Documentation from the primary care provider or the provider prescribing hormone therapy that the client has:

(A) Had (~~twelve~~) 12 continuous months of hormone therapy immediately preceding the request for surgery, as appropriate to the client's gender goals, unless hormones are not clinically indicated for the individual, with the exception of mastectomy or reduction mammo-plasty, which do not require hormone therapy; or

(B) A medical contraindication to hormone therapy; and

(C) A medical necessity for surgery and that the client is adherent with current gender dysphoria treatment.

(v) **Surgical.** Documentation from the surgeon of the client's:

(A) Medical history and physical examination(s) performed within the (~~twelve~~) 12 months preceding surgery;

(B) Medical necessity for surgery and surgical plan; and

(C) For hysterectomies, a completed agency hysterectomy consent form must be submitted.

(c) **Other requirements.** If the client fails to complete all of the requirements in subsection (2)(b) of this section, the agency will not authorize gender affirming surgery unless:

(i) The clinical decision-making process is provided in the referral letter and attachments described in subsection (2)(b) of this section; and

(ii) The agency has determined that the request is medically necessary in accordance with WAC 182-501-0165 based on review of all submitted information.

(d) **Behavioral health provider requirements.** Behavioral health providers who perform the psychosocial evaluation described in subsection (2)(b)(i) of this section must:

(i) Meet the provisions of WAC 182-531-1400;

(ii) Be competent in using the *Diagnostic Statistical Manual of Mental Disorders*, and the *International Classification of Diseases* for diagnostic purposes;

(iii) Be able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(iv) Be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(v) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria.

(e) **Clients age ((seventeen)) 17 and younger.** Clients age ((seventeen)) 17 and younger must meet the requirements for prior authorization identified in subsection (2)(a) through (d) of this section, except that:

(i) One of the comprehensive psychosocial evaluations required in subsection (2)(b)(i) of this section must be performed by a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

(ii) For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation from a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

(3) **Expedited prior authorization (EPA).**

(a) **Approved EPA procedures.** The agency allows a provider to use the EPA process for clients age ((seventeen)) 17 and older for the following medically necessary procedures:

(i) Bilateral mastectomy or reduction mammoplasty with or without chest reconstruction; and

(ii) Genital or donor skin graft site hair removal when medically necessary to prepare for genital reassignment.

(b) **Clinical criteria and documentation.** To use the EPA process for procedures identified in (a) of this subsection, the following clinical criteria and documentation must be kept in the client's record and made available to the agency upon request:

(i) One comprehensive psychosocial evaluation performed by a licensed behavioral health provider within the ((eighteen)) 18 months preceding surgery that meets the requirements identified in subsection (2) of this section;

(ii) Documentation from the primary care provider or the provider prescribing hormone therapy of the medical necessity for surgery and

confirmation that the client is adherent with current gender dysphoria treatment; and

(iii) Documentation from the surgeon of the client's:

(A) Medical history and physical examinations performed within the ((~~twelve~~)) 12 months preceding surgery; and

(B) Medical necessity for surgery and surgical plan.

(c) **Documentation exception.** When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required is either a:

(i) Letter of medical necessity from the treating surgeon that includes the size and location of the area to be treated, and expected date of planned genital surgery; or

(ii) Letter of medical necessity from the provider who will perform the hair removal that includes the surgical consult for bottom surgery and addresses the need for hair removal prior to gender affirming surgery.

(d) **Prior authorization required for other surgeries.** All other surgeries to treat gender dysphoria, including modifications to, or complications from a previous surgery require prior authorization to determine medical necessity.

(e) **Recoupment.** The agency may recoup any payment made to a provider for procedures listed in this subsection if the provider does not follow the EPA process outlined in WAC 182-501-0163 or if the provider does not maintain the documentation required by this subsection.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-08-058, § 182-531-1675, filed 4/5/21, effective 5/6/21; WSR 15-16-084, § 182-531-1675, filed 7/31/15, effective 8/31/15.]