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Transgender Health and the Law: Identifying and Fighting Health Care Discrimination

Health Care Access

Like most people in the United States, transgender and gender non-conforming people have great difficulty securing affordable, comprehensive health care. The situation is compounded by systemic discrimination and health care providers' lack of basic cultural competency on transgender issues. Gender identity discrimination in the form of ignorance, insensitivity, and outright bigotry is alienating and keeps people from accessing medically necessary care, such as hormone therapy, surgery, and mental health services. Health care injustice has life-long effects on people's ability to learn, work, and care for themselves mentally and physically.

What is Gender Identity Discrimination?

Gender identity discrimination in health care settings occurs when you are denied equal access to health care and services, and/or you are subjected to a hostile or insensitive environment because you are, or are perceived to be, transgender or gender non-conforming. Such discrimination may be compounded with discrimination based on other characteristics (i.e. race, sex, sexual orientation, disability, etc.). Some examples of gender identity-related health care discrimination are: 1) being denied complete or partial health insurance coverage; and 2) inappropriate treatment from health care providers, facilities, or community-based organizations.

Discrimination in Private Health Insurance¹

Denial of Coverage

Many transgender people have their applications for health insurance denied when they disclose their transgender status or transition-related medical history (such as hormone level tests) to a potential insurer. Such denial of coverage is most common when applying for a private individual plan, but could also happen when applying for employer-based and other group plans. If your application for coverage is denied on the basis of your transition-related medical history or transgender status, you may have some legal recourse. Depending on the reason given for the denial, you may be able to take action against the insurance company. Contact TLC for suggestions on filing an appeal.

¹ This section of this pamphlet pertains particularly to private health insurance. TLC has a separate publication on public health insurance titled: *Medi-Cal and Gender Reassignment Procedures*.

Treatment Exclusion for Transgender-Related Care and Services

Most health insurance policies still specifically exclude transgender-related care and services. This often means that you will not be covered for procedures like: hormone therapy, transition-related surgery, and/or gender identity-related mental health services. While the legality of such exclusions is not yet clear, you do have options other than filing a lawsuit. If you are denied coverage under one of these exclusions, you should file a timely appeal with your insurance company. Filing such an appeal can be time-consuming, but it generally costs little, if any, money. Even if you do not prevail, the information you provide about the medical necessity of the procedures you have requested helps educate the insurer about transgender health issues, thus advancing transgender access to health care. TLC can give you some suggestions on how to file a comprehensive appeal.

If transgender-related care and services are not specifically excluded in your policy, your insurance company might still deny the claim on the basis that these procedures are considered cosmetic or experimental. However, in deciding cases related to Medi-Cal, California courts have determined that transition-related procedures are neither cosmetic nor experimental. If your insurance company has used this explanation to justify denial of coverage, contact TLC about appealing the decision.

Treatment Exclusion for Non-Transgender Services

Unfortunately, some insurance companies broadly interpret language excluding transgender-related care and services to deny coverage for non-transition-related procedures for transgender individuals. Insurers justify these exclusions by stating that your current medical problem is somehow related to your transition. For example, the insurer might argue (often times without any proof) that liver damage or blood clotting results from hormone therapy. Or, they may refuse to cover expenses related to a defective breast implant on the basis that the implant was “elective surgery.” While the law is unclear in this area, such a denial is likely a violation of your policy. If your insurance company has used this explanation to justify denial of coverage, contact TLC about appealing the decision.

Treatment Exclusion for “Gender-Specific” Services

Because the U.S. health care system largely overlooks the needs of transgender people, certain health care services are believed to be accessed only by men and other services only by women. This system of binary gender designation can be problematic for transgender health care recipients. Sometimes, transgender patients will have trouble scheduling certain appointments (such as an FTM getting a gynecological appointment) or making sure that they receive thorough examinations (such as an MTF having to remind her primary care physician to test her for prostate cancer).

And all too often, transgender people are denied coverage for medically necessary procedures because their documented gender does not correspond to the “gender-specific” service. Female-to-male transgender people, in particular, may have difficulty obtaining gynecological services

or treatment for gynecological cancers. If you experience a denial of this sort, you should not hesitate to appeal it. Contact TLC if you would like assistance preparing your appeal.

Should I Change My Gender Marker on My Current Insurance?

Because of such problems, many transgender people are rightfully concerned about changing the gender marker in their medical records to reflect their gender identity. Changing the gender marker on your insurance is likely to alert the insurance company that you are transgender, and could possibly jeopardize your benefits. We urge you to contact TLC before doing so.

Which Gender Marker Should I Use When I Sign Up With A New Insurer?

The unfortunate reality is that regardless of what your gender marker is in your health records, it is possible that you will face denial for gender-specific procedures. FTMs who list their gender as male may have no trouble receiving testosterone, but may not be able to access gynecological services, or vice versa. Similarly, MTFs who designate female in their medical records may access female hormones but not care for prostate or testicular cancer. If you want to discuss what avenue might be best in your situation, contact TLC.

Discrimination by Providers of Health Care and Services

In addition to being denied health insurance coverage, you may experience gender identity-related health care discrimination when seeking care and services from doctors, nurses, hospital staff, and/or other health care providers (such as acupuncturists, chiropractors, or mental health therapists). Gender identity discrimination can also occur in residential/long-term care facilities (such as mental health or drug treatment facilities) and public health community-based organizations (such as HIV prevention agencies).

Discriminatory conduct can include: inappropriate name or pronoun use, invasive inquiries about your genitalia or transgender status, denial of access to the restroom or housing facility that corresponds to your gender identity, use of epithets, and/or hostile or intimidating behavior. Some examples of discrimination are: being forced to revert to the gender you were assigned at birth in order to access health care, or having a dentist or ear/nose/throat doctor ask questions about your genitals.

Since most medical schools and other health care training programs do not educate their students on transgender health issues, this kind of inappropriate behavior happens too often. While state law is not explicit on this issue, such conduct is likely illegal. If you experience this kind of discrimination, you can contact TLC or you can contact one of the following agencies:

The Department of Fair Employment and Housing is the state agency that investigates complaints of discrimination, including discrimination in public accommodations. They can be reached at 1-800-884-1684. You can find out more information about them at www.dfeh.ca.gov.

The Medical Board of California is the state agency that licenses and investigates misconduct of a variety of health care professionals in California (see a list of which professionals at

www.medbd.ca.gov). The Board can also accept discrimination complaints against health care professionals and will send an advisory letter to a professional when a complaint is filed. To file a complaint, call 1-800-633-2322.

This pamphlet was produced by TLC's Health Care Access Project (HCAP), a joint effort of TLC and The California Endowment. If you have questions about HCAP or would like to book a free workshop on transgender health law issues, contact Willy Wilkinson at Willy@transgenderlawcenter.org.

The information in this pamphlet is not meant to substitute for advice from an attorney or appropriate agency. Because of the changing nature of the law, we cannot be responsible for any use to which it is put.

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