
Edmund G. Brown Jr.
Governor

Brent A. Barnhart
Director
Department of Managed Health Care

DATE: April 9, 2013

LETTER No. 12-K

GENDER NONDISCRIMINATION REQUIREMENTS

The purpose of this letter is to remind health care service plans (health plans) of their obligations under the Insurance Gender Nondiscrimination Act (IGNA), codified in Health and Safety Code section 1365.5.¹ IGNA prohibits health plans from discriminating against individuals because of the individual's gender, including gender identity or gender expression. This prohibition extends to the availability of health coverage and the provision of benefits.²

Background

IGNA prohibits health plans from denying a person a contract (health coverage), or from limiting benefits, because of the individual's sex.³ IGNA defines "sex" to include "gender," "gender identity," and "gender expression."⁴ IGNA requires health plans to provide transgender individuals with the same contracts and coverage benefits that are available to non-transgender individuals.

IGNA does not prohibit health plans from applying nondiscriminatory exclusions or limitations, conducting medical necessity determinations or applying appropriate utilization management criteria on a case-by-case basis with respect to specific requests for transgender services. However, if a health plan denies an individual's request for services on the basis that the services are not medically necessary or that the services do not meet the health plan's utilization

¹ AB 1586 (Koretz – Chap. 421, Stats. 2005).

² IGNA also amends Insurance Code section 10140.

³ Health and Safety Code section 1365.5.

⁴ "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. Penal Code section 422.56, subd. (c).

management criteria, the health plan's decision is subject to review through the Department's Independent Medical Review (IMR) process.⁵

Some existing health plan Evidences of Coverage (EOC) contain exclusions or limitations based upon an individual's transgender status. Examples of EOC language that is inconsistent with the Knox-Keene Act (Act),⁶ including IGNA, and the Act's implementing regulations are those that seek to exclude coverage of (1) "transsexual surgery", and/or (2) "transgender or gender dysphoria conditions." Exclusions or limitations that are non-compliant with IGNA may result in transgender individuals being denied medically necessary care and access to the Department's IMR process.

Required Action by Health Plans

Based on section 1365.5, and in compliance with the Act, the Department directs health plans to:

1. Ensure that individuals are not denied access to medically necessary care because of the individual's gender, gender identity or gender expression;
2. Review all current relevant health plan documents to ensure that they are compliant with IGNA and the Act. This includes plan documents previously approved or not objected to by the DMHC;
3. Revise all current health plan documents to remove benefit and coverage exclusions and limitations related to gender transition services;
4. Revise all current health plan documents to remove benefit and coverage exclusions and limitations based upon an individual's gender, gender identity or gender expression; and
5. File any revised relevant health plan documents (e.g. EOCs, subscriber documents, enrollment application forms, etc.) with the Department as an Amendment to the health plan's license within 90 days, but no later than July 9, 2013. The filing should highlight as well as underline the changes to the text as required by California Code of Regulations, title 28, section 1300.52(d).

⁵ Health and Safety Code section 1374.30.

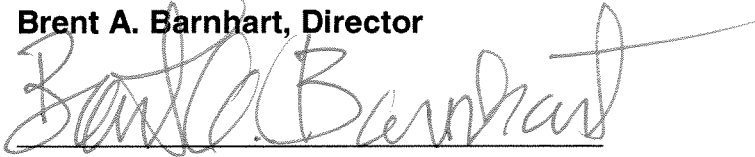
⁶ Knox-Keene Health Care Service Plan Act of 1975, as amended, Health & Saf. Code § 1340, *et seq.*

Authority Cited

Health and Safety Code sections 1341, 1343, 1344, 1345, 1367 and 1365.5 and implementing regulations.

If you have any questions concerning this letter, please contact the Office of Legal Services at (916) 322-6727.

Brent A. Barnhart, Director

A handwritten signature in black ink that reads "Brent A. Barnhart". The signature is written in a cursive style and is positioned below the printed name. A horizontal line is drawn under the signature.