

ADMINISTRATIVE RULES SUMMARY

TO: Medical Care Advisory Committee
FROM: Medicaid Policy
DATE: August 29, 2016
RE: He-W 531 Physician Services

1. Status: Draft rule emailed to MCAC on August 29, 2016. Rule presented to MCAC on September 12, 2016. RSA 161:11 requires the department to present administrative rule changes associated with the Affordable Care Act (ACA) to the joint health care reform oversight committee (JHCROC). This rule will enter into rulemaking after the 9/14/16 JHCROC meeting, and any subcommittee work will take place simultaneous with rulemaking.

2. Target Dates:

- **Rule to MCAC via email: 8/29/16**
- **Rule presented to MCAC: 9/12/16**
- **RNF to be published: 9/22/16**
- **Public hearing: earliest 10/23/16**
- **JLCAR: 11/17/16**

3. Rule Summary:

- **Reason for rulemaking (e.g., expiration, statutory change, policy change).**
 - Two changes are being made to He-W 531:
 - Services can now be delivered for fee-for-service (FFS) recipients via telehealth:
 - RSA 167:4-D requires the Department to cover Medicaid services delivered via telehealth with the exception of primary care and to report to legislature on the fiscal impact of the program by March 1, 2017. Accordingly, the rule is being amended to allow for the delivery of services via telehealth for the fee-for-service population. (Chapter law 206:4 of 2015).
 - Gender reassignment surgeries are now a covered services when medically necessary:
 - The U.S. Department of Health and Human Services Office of Civil Rights issued a final rule implementing Section 1557 of the Affordable Care Act (ACA) codified in 45 CFR Part 92. The rule prohibits all health care entities receiving federal funding from discrimination. 45 CFR §92.207(b) prohibits categorical or automatic exclusions or limitations on coverage for all health services related to gender transition, and prohibits limiting coverage or denying claims related to gender transition if such denial or limitation results in discrimination. The federal regulation does allow for an individual medical necessity determination for a particular requested service and allows for a determination of whether a requested service meets coverage requirements. Accordingly, He-W 531 incorporates Anthem's clinical criteria for gender reassignment surgeries.
- **General overview of the rules.**
 - This rule permits the department to cover physician services.
- **Description of the specific changes being proposed to the rule.**
 - To incorporate telehealth as a form of health care delivery, definitions for medical specialist, and telemedicine have been added.
 - To permit coverage for gender reassignment surgery, Anthem's Clinical UM guideline #CG-SUR-27, effective 2/11/2016 has been incorporated by reference.
- **Description of who is affected generally by the rule; and who is impacted by the specific changes (e.g., Medicaid beneficiaries and/or providers).**

- FFS recipients wanting to receive specialty care via telehealth.
- Medicaid recipients who are transgendered and want to receive services related to gender transition.
- **Description of any specific eligibility changes.**
 - The rule does not change eligibility.
- **Description of any fiscal impact to recipients, providers, or the State of New Hampshire.**
 - The coverage of gender reassignment will have a fiscal impact to the general fund; however the exact costs are indeterminable. The services will be paid 50% general fund dollars and 50% federal fund dollars for those in FFS or managed care. For those in PAP, the federal government pays 100% of the medical costs for those in PAP. On January 1, 2017, the amount reduces to 95% for FY 2017 and to 94% in FY 2018. While the fiscal impact is indeterminable, national studies show the prevalence of transgender individuals is .4% to 1.3% of the general population. (Medscape Article: Health Needs of Transgender people poorly understood, 7/21/16). The department does not know how many medicaid recipients within FFS or managed care are transgendered or how many within that population will meet the medical necessity determination to receive approval for gender reassignment.

4. Issues of Concern: None.

5. Department Contacts:

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