Transgender Advocates File Lawsuit Demanding New York Medicaid Cover Transgender Healthcare

The lawsuit argues that New York’s current regulation banning transgender healthcare coverage by Medicaid is unconstitutional

NEW YORK, NY [DATE NEEDED] – The Sylvia Rivera Law Project (SRLP), The Legal Aid Society, and Willkie Farr & Gallagher LLP (“Willkie Farr”) filed a federal class action lawsuit against New York State Department of Health today on behalf of two transgender women who have been denied medically necessary healthcare coverage by New York State’s public health insurance because of a discriminatory Medicaid regulation.

The Medicaid regulation, which was enacted in 1998 and never revisited since, prohibits all forms of gender reassignment treatment as well treatments intended to “promote” such treatment. The regulation provides: “Payment is not available for care, services, drugs, or supplies rendered for the purpose of gender reassignment (also known as transsexual surgery) or any care, services, drugs, or supplies intended to promote such treatment.” 18 NYCRR 505.2(l).

New York State denies medically necessary healthcare to transgender and gender non-conforming people based on information that has been widely discredited by medical authorities and disavowed by the federal government. The American Medical Association, the American Psychological Association, and the American Psychiatric Association have all issued statements affirming the safety, effectiveness, and medical necessity of transgender health treatments, and urged the removal of any barriers to providing this care.

"The Department of Health denies this medically necessary care because it claims that it is not safe and effective. This position is in conflict with overwhelming medical evidence and the federal government which recently decided that this care is safe and effective and should be provided under Medicare” said Kimberly Forte, Supervising Attorney of The Legal Aid Society’s LGBT Law and Policy Initiative.
In June of 2014, Health and Human Services, the agency that administers the federal Medicare program, reversed its own categorical exclusion of transgender health services. As a result, Medicare recipients may now request coverage for gender-affirming hormones and surgeries on a case-by-case basis. “This is a huge step,” says SRLP Staff Attorney Elana Redfield. “Transgender Medicare recipients can now apply for the health care they need. It shouldn’t be different for people on Medicaid who need the very same care.”

Medicaid is meant to ensure that qualifying low-income people without private health insurance coverage have access to necessary healthcare; however, transgender people are being denied treatments that are necessary for survival. While transgender people live in poverty at four times the national average, according to the National Transgender Discrimination Survey, a staggering 19% of transgender people report lacking any form of health insurance, including Medicaid. New York’s Medicaid regulation adds to the barriers transgender people already face to accessing healthcare.

“This regulation aggravates discrimination against a community that is already struggling to survive,” said SRLP Staff Attorney Pooja Gehi. “When our clients cannot access healthcare they need, they have a harder time getting identity documents such as state ID, or getting jobs, housing, and basic social services. It contributes to the cycles that keep transgender people in poverty.”

Studies have shown that the lack of access to safe and comprehensive healthcare correlates with increased suicidality, higher rates of drug and alcohol abuse, and higher rates of unemployment. Healthcare coverage for transgender people is available through many private and some public insurance plans, and no jurisdiction, employer or insurance company which covers trans health care has found the cost to be prohibitive.

In November 2013, SRLP and GLAAD created an infographic and released a series of educational PSA videos featuring transgender advocates, allies, and healthcare providers discussing popular misconceptions about transgender healthcare, and how this population is being prevented from accessing adequate healthcare because they are transgender.

"Transgender healthcare isn't 'special' healthcare," said plaintiff Angie Cruz. "It's the same healthcare that non-trans people get every day when they need it, but it's only being denied to transgender people. When you think about it like that, it's just not fair."

“No one should be denied access to medically necessary healthcare on the basis of discredited medical theories or outmoded societal norms,” said Mary Eaton of Willkie Farr. “We think the Medicaid regulation is unlawful and should be struck down.”

The lawsuit challenges the regulation on three main legal points:
• New York State’s Medicaid regulation conflicts with the federal Medicaid Act, which prohibits certain forms of discrimination in state Medicaid programs. Medicaid discriminates because it provides most of the healthcare transgender people need to others who are not transgender.

• New York State’s Medicaid regulation conflicts with the Affordable Care Act, section 1557, which prohibits discrimination in health care on the basis of gender identity or expression amongst any entity that receives federal funding.

• The New York State Constitution prohibits discrimination on the basis of sex, which includes sex stereotyping. Denial of necessary medical care solely on the basis of assigned birth sex is discrimination on the basis of sex stereotyping.

By repealing the exclusionary regulation New York State Department of Health can ensure that transgender people receiving Medicaid have the same access to essential care, and the opportunities that grow from it, as their non-transgender peers.

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