

S.37, An act relating to access to legally protected health care activity and regulation of health care providers

Written Testimony from Ashley Berliner, Director of Medicaid Policy, Department of Vermont Health Access 2/8/23

Today, Medicaid is already largely aligned with the provisions of this bill. Medicaid has had criteria for Gender Affirming Surgeries since 2008. Medicaid's coverage policy was codified into rule in 2019 after prolonged and vigorous stakeholder engagement that included community members, physicians, mental health professionals, advocacy organizations, and other relevant associations.

Medicaid provides broad coverage of medically necessary treatment and services for gender dysphoria. The only exclusions to that coverage are for services that have traditionally been considered cosmetic or services that are not serving a medical purpose. Medicaid's policy was developed to be consistent with the *World Professional Association for Transgender Health* (WPATH) standard of care.

Related to the abortion provisions of this bill, Vermont Medicaid covers abortions, regardless of reason, for Medicaid members. Federal Medicaid funds are used for the limited abortions permitted under the Hyde amendment (instances of rape, instance, or life of the mother), and state-only dollars are used for abortions that are prohibited from being paid for with federal funds. Additionally, last month Medicaid began a new Global Commitment investment to pay for all federally allowable abortions, regardless of income or state residency.

Medicaid's existing coverage of abortion and gender-affirming services is consistent with the intent and goals of this legislation. However, there are some technical modifications needed in order for the Department to operationalize and effectively administer these policies. The following changes are requested in an effort to best carry out the intentions and goals of this bill in a way that is feasible from a technical perspective.

1. Sec. 1. Definitions. "Gender-affirming health care services"
 - Overly broad.
 - Needs to be limited to services that are medically necessary.
 - Should include "gender incongruence" alongside gender dysphoria, per WPATH standards of care.
2. Sec. 3. *Insurance Coverage.*
 - (b) *Coverage.*
 - i. For Medicaid, needs to be limited to medically necessary and as permitted by federal law.
 - (c) *Cost sharing.*
 - i. Medicaid requests being exempted from this provision for the following reasons:
 1. Medicaid has very limited copayments, limited to \$1-\$3 prescriptions copays and \$3 copays for outpatient hospital visits.
 2. Medication cannot be withheld for inability to pay.
 3. Medicaid limits out-of-pocket costs to no greater than 5% of individual's Medicaid income.
 4. Gender-affirming services cover thousands of procedural codes. Vermont's 40-year-old Medicaid claims system would require individual edits to each of those codes in order to ensure copays were not charged for individuals with gender dysphoria diagnosis. In order to implement this requirement, AHS would have to deprioritize existing, high-priority projects in order to pivot to programming these cost sharing exemptions. Were the Agency to do so, it would be a huge undertaking that would never fully be complete due to the evolving standards of care for gender dysphoria.

3. *Sec. 4 Coverage for Abortion and Abortion-Related Services*

- (b) *Coverage.*
 - i. Federal Medicaid funding cannot be used for abortions not excluded by the Hyde Amendment (rape, incest, life of mother). State funds are used for all other abortions. In practice, all abortions are currently covered for Medicaid members.
- (c) *Cost Sharing.*
 - i. Medicaid requests being exempted from this provision for the following reasons:
 1. Medicaid has very limited copayments, limited to \$1-\$3 prescriptions copays and \$3 copays for outpatient hospital visits.
 2. Medication cannot be withheld for inability to pay.
 3. Medicaid limits out-of-pocket costs to no great than 5% of individual's Medicaid income.
 4. Vermont's 40-year-old Medicaid claims system would require individual edits to each individual procedural code related to abortion services. While not requiring nearly the resources needed for the gender-affirming cost sharing provision, this requirement would still require many hours of system programming that would delay other high-priority projects.

4. *Sec. 5. State Plan Amendment.*

- Request language to be changed from "shall seek" to "shall seek if needed". At this time, need for a State Plan Amendment is not anticipated.

5. *Sec. 14. Disclosure of Protected Health Information*

- *Request language to be changed as follows:* covered entity **OR BUSINESS ASSOCIATE** to not disclose'