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BULLETIN 14-02

Date: January 27, 2014

To: Insurers, Nonprofit Health Services Plans, and Health Maintenance Organizations
("Carriers")

Re: Clarification of Coverage for Transgender Individuals

The purpose of this Bulletin is to clarify the scope of the exclusion in the benchmark plan selected to define essential health benefits (EHB) in Maryland for "treatment leading to or in connection with transsexualism, or sex changes or modifications, including but not limited to surgery."

The exclusion is based upon COMAR 31.11.06.06B(32), applicable to carriers that offered the comprehensive standard health benefit plan in the small employer market for plan years prior to 2014. Under applicable State law, as incorporated in the State's EHB benchmark plan, the exclusion should be narrowly applied to items and services that are directly related to the gender reassignment process. It does not exclude coverage for medically necessary items or services, including medically necessary preventive services, solely on the grounds that the person receiving the services is a transgender individual.

Section 27-208(b)(1) of the Insurance Article, Annotated Code of Maryland,¹ prohibits unfair discrimination between individuals of the same class and of essentially the same hazard (1) in the amount of premium, policy fees, or rates charged for a policy or contract of health insurance; (2) in the benefits payable under a policy or contract of health insurance; (3) in any of the term or conditions of a policy or contract or health insurance; or (4) in any other manner. Furthermore, under § 27-303, it is an unfair claim settlement practice and a violation of the Unfair Claim Settlement Practices subtitle of the Insurance Article to refuse to pay a claim for an arbitrary or capricious reason based on all available information or to fail to meet the requirements of Title 15, Subtitles 10A (related to the complaint process for adverse decisions) and 10B (related to determinations by private review agents).

Read together, these provisions prohibit a carrier from discriminating among insureds under a

¹ Unless otherwise noted, all statutory references in this Bulletin are to the Insurance Article, Annotated Code of Maryland, 2011 Replacement Volume and Supplements thereto.

health benefit plan on the basis of the insured's actual or perceived gender identity, or on the basis that the insured is a transgender individual.

Questions concerning this Bulletin should be directed to the Life/Health Section of the Maryland Insurance Administration at 410-468-2170.

Signature on original

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Therese M. Goldsmith
Commissioner