

August 19, 2012
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To whom it may concern:

I am writing to appeal the denial of several claims. The dates of service were March 1 through 3, 2012, and the providers were UCSF Department of Surgery and Dr. Scott Hansen. In addition, I am also appealing the denial of a claim with date of service March 26, 2012, for a follow-up appointment at St. Mary's Medical Center. As I received the denial on May 29, 2012, I am sending this letter within the 90-day deadline for appeals.

HCC denied this claim because of two exclusion clauses in its policy:

16: Modifications of the physical body in order to improve the psychological, mental or emotional well-being of the Covered Person, such as sex-change surgery.

42: Treatment required as a result of complications or consequences of a treatment or condition not covered under this certificate.

In February 2012, I underwent metoidioplasty and scrotoplasty with Dr. Toby Meltzer in Scottsdale, Arizona. I chose to pay for these procedures out of pocket and did not file any insurance claims for it. Despite my choice to pay for the procedures myself, my metoidioplasty and scrotoplasty were *not* "modifications of the physical body in order to improve the psychological, mental or emotional well-being of the Covered Person." Rather, these procedures were medically necessary for me, as per evidence-based standards of care for people with my medical condition. Those standards of care show that the treatments I received are necessary to attain basic physical functioning. Thus, neither clause 16 nor any other exclusion clause applies to these procedures. And thus, clause 42 does not apply to the emergency care that I received as a result of complications from metoidioplasty and scrotoplasty. Therefore, HCC is obligated to pay the entire claim.

In brief:

1. The metoidioplasty and scrotoplasty that I underwent were not cosmetic and were not merely to improve my emotional well-being. Rather, they were medically necessary.
2. The medical necessity of these surgeries for a person with gender identity disorder is recognized by all relevant mainstream medical organizations.
3. These surgeries are part of a protocol of care that is medically necessary.

4. Excluding coverage for these treatments is sex discrimination under California's Unruh Civil Rights Act.
5. Because the original surgery was not subject to exclusion under clause 16, the follow-up treatment is not subject to exclusion under clause 42: the rule that was used to exclude the original surgery does not actually apply.

In the rest of this letter, I will elaborate on these points.

The term "sex-change surgery" is not a clinical term and is both obsolete and misleading; a more descriptive term is "genital reconstructive surgery" or the names of the specific surgeries I had, metoidioplasty and scrotoplasty. For a transsexual man who has a diagnosis of gender identity disorder, metoidioplasty and scrotoplasty are necessary to enable normal functioning, which would be impossible otherwise. A cissexual man (man who was assigned male at birth) who returned from a war with injuries that had mutilated his penis and testicles would need reconstructive surgery to restore sexual functioning, because sexual functioning is considered part of the minimal quality life that a human being should expect. No one would claim in this case that the reconstructive surgery was merely to "improve [his] psychological, mental or emotional well-being". Likewise, my reconstructive surgery was not optional for me.

The American Medical Association, in their Resolution: 122 (A-08)¹ agrees:

"GID, if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death..."

"An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with GID..."

"Health experts in GID..., have rejected the myth that such treatments are 'cosmetic' or 'experimental' and have recognized that these treatments can provide safe and effective treatment for a serious health condition..."

The AMA also, in its own words: "...opposes limitations placed on patient care by third-party payers when such care is based upon sound scientific evidence and sound medical opinion..." It also says that the "...denial of these otherwise covered benefits for patients suffering from GID represents discrimination based solely on a patient's gender identity..." The AMA opposes "categorical exclusions of coverage for treatment of gender identity disorder when prescribed by a physician." HCC's exclusion clause 16 is a perfect example of such a "categorical exclusion". All quotations are from Resolution 122 (A-08). This

¹ Available online at http://www.tgender.net/taw/ama_resolutions.pdf

resolution was adopted as an official policy of the AMA, and is also known as “H-185.950 Removing Financial Barriers to Care for Transgender Patients.”²

The American Psychological Association has also stated that reconstructive surgeries such as metoidioplasty and scrotoplasty are medically necessary for trans people.

“APA recognizes the efficacy, benefit and necessity of gender transition treatments for appropriately evaluated individuals and calls upon public and private insurers to cover these medically necessary treatments...”³

The medical community recognizes hormone replacement therapy and reconstructive surgery as part of the standard protocol for treating trans patients. The UCSF Center for Excellence for Transgender Health has a set of protocols for trans care that show that metoidioplasty and scrotoplasty, as well as other reconstructive surgeries that trans people undergo, are part of routine care for trans people.⁴ They are not body modifications. UCSF’s documentation of its protocol shows that the treatment I had is part of an accepted protocol designed to treat patients who have GID.

In my particular case, the surgeon who performed my surgery, Dr. Toby Meltzer, follows the WPATH Standards of Care, developed by the World Professional Association for Transgender Health.⁵ I had to qualify for the surgery under a set of criteria designed to include people for whom surgery is medically necessary, and exclude those for whom it is not.

To summarize, by excluding treatment for reconstructive surgery for trans people, HCC rejects mainstream scientific consensus. HCC must justify its rejection of evidence-based medicine in this case alone. In addition, HCC seems to be arguing that my reconstructive surgery was not medically necessary for me. If this is accurate, then I require justification that the research that UCSF and WPATH have done, and the protocols they have developed, are not valid.

In the absence of this evidence, I conclude that exclusion clause 42 does not apply, and that HCC is contractually obligated to pay for the care that I received at UCSF Medical Center and at St. Mary's Hospital for an infection that I contracted after having surgery. Because this treatment is a consequence of a *medically necessary* treatment, no exclusion clause in HCC's policy would support denial of coverage for the emergency treatment that I received. Thus, the denial of coverage must be reversed.

² As per

<http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbtt-advisory-committee/ama-policy-regarding-sexual-orientation.page>

³ From <http://www.apa.org/about/policy/chapter-12b.aspx#transgender>

⁴ Available online at <http://transhealth.ucsf.edu/trans?page=protocol-00-00>

⁵ <http://www.wpath.org/>

I attach a supporting letter from Dr. Michelle Orenge-MacFarlane, who saw me on the day that I went to the emergency room and recommended that I seek emergency treatment. Also, I will send other supporting letters under separate cover. Each of the physicians is responsible only for the medical opinions stated in their own letter; none of them necessarily endorse or agree with any given claim I have made in this letter.

Under California's Unruh Civil Rights Act⁶, discrimination based on gender identity and gender expression is sex discrimination and therefore illegal. Because of the absence of medical or scientific reasons for HCC to include exclusion clause 16 in its policy, the clause apparently codifies discrimination based on gender identity and expression, because it specifically names "sex-change surgery" as an example of a non-covered procedure. The use of this outmoded and inaccurate terminology makes it obvious that the intent behind clause 16 is to single out members of a protected class for discrimination. (The protected class is that of people whose gender identity and/or gender expression differs from the norm.) In fact, this clause shows a specific animus towards a protected class, something that California courts have historically considered to be especially suspicious. HCC's actions constitute sex discrimination, because they discriminate on the basis of the sex that a policyholder was assigned at birth. A male person who was assigned male at birth *would* have coverage for genital reconstructive surgery that was medically necessary for him: clause 16 does not exclude such surgeries. A male person who was *not* assigned male at birth does *not* have coverage for equivalent, medically necessary surgeries, as per clause 16. This is plainly discrimination on the basis of sex.

Because I've shown that the application of clause 16 to my original metoidioplasty and scrotoplasty is invalid, the application of clause 42 to the follow-up treatment I received for complications from surgery is also invalid, and this follow-up treatment should be covered.

HCC writes policies in the State of California under the laws of California, and not under the laws of which the state in which HCC is incorporated. The right of a state to regulate its own affairs in matters of insurance is codified under the McCarran-Ferguson Act, and in writing policies in California, HCC chooses to avail itself of the benefit of doing business in California and is thus subject to the laws California enacts to protect its citizens. Should I receive an unfavorable response to this letter, I will seek legal assistance in challenging this discriminatory action to the full extent allowed by law.

This is a time when the tide is turning towards less discrimination against trans people, not more, particularly in the state of California. Google, Microsoft, and other major employers provide coverage in their group health insurance plans for treatment as per acknowledged medical protocols for care of trans people. Kaiser is currently under pressure, via public protests, to extend its coverage for trans care to include reconstructive surgery as well as hormone therapy. This July, the City of San Francisco passed a resolution to remove trans exclusion clauses from its health care plan for uninsured San Francisco residents. On the federal level, in April, the Equal Employment Opportunity Commission ruled that Title

⁶ Available online at http://www.dfeh.ca.gov/Publications_Unruh.htm

VII protects employees from discrimination on the basis of gender identity or expression. Overwhelmingly, the trend is towards more legal protections for trans people. A court in Alameda County or San Francisco County is very unlikely to rule in favor of a health insurance company and against a trans plaintiff. I lived in Alameda County when I first obtained the policy with HCC, and in San Francisco County during the dates of service for the denied claims. Alameda County Superior Court is known for having the first openly transgender trial judge in the US (Victoria Kolakowski).

The case would likely be high-profile and generate negative publicity for HCC, as its outcome would set precedent that would affect every health insurance provider in California. I have discussed this matter with staff at the Transgender Law Center and at the National Center for Lesbian Rights, and they are interested in helping me pursue it. I'm sure that nobody employed by HCC wants their company to be famous for opposing the LGBT community.

HCC can avoid this outcome simply by paying the claims that I have already filed. If I succeed in proving in court that HCC's clause constitutes illegal discrimination, I will also seek reimbursement for my original surgery in February, which occurred during the time when I was covered by HCC, at an additional cost to HCC of \$18,000, aside from court costs and any punitive damages that might be awarded. Of course, if I do not succeed, I will persist in appealing the decision as far as possible. A protracted court battle over discriminatory health care policies that affect trans people would be the target of a great deal of public interest, and is unlikely to cast HCC in a positive light.

I expect to receive a response by October 1, 2012 (six weeks after mailing this letter). I will consider a non-response to be a denial, and thus will proceed to exercise my legal rights as per the Unruh Civil Rights Act.

Sincerely,

Timothy Chevalier

Attachments:

1. Supporting letter from Dr. Michelle Orenge-MacFarlane
2. American Medical Association Resolution 122 (A-08)
3. American Psychological Association "Resolution on transgender and gender identity and gender expression non-discrimination"
4. Excerpt from UCSF Center for Excellence for Transgender Health
5. Excerpt from WPATH Standards of Care
6. California's Unruh Civil Rights Act