

# TRANSITION-RELATED HEALTH CARE

**The kinds of health care associated with gender transition** have too often been misunderstood as cosmetic, experimental or simply unnecessary. Yet there is medical consensus that hormone therapy and sex reassignment surgery (SRS) are *medically necessary* for many transgender people. It's quite clear now that a person's gender identity—one's inner sense of being male or female—is deep-seated and cannot be changed, and therefore that this transition-related health care can be crucial.

The courts have come a long way on this issue in recent years, citing decades of medical data to find in more and more cases that it's discrimination not to provide transition-related health care as readily as other medically necessary treatment.

The problem is that most public and private insurance companies are still behind the times. Many cite cost, even though that hasn't turned out to be an issue at all for the growing number of employers now providing coverage. Often the real hesitation is based on a mixture of anti-transgender prejudice and ideas about such care that are out of sync with modern medical thinking.

**The language used by doctors and the courts** in this area can be frustrating, because it generally relies on technical terms such as Gender Identity Disorder (GID), a mental health diagnosis that describes the extreme distress some people experience when their bodies don't match

their gender identity. Some people feel that this diagnosis unnecessarily stigmatizes transgender people and encourages mistreatment of them. Whatever term is used, however, it is not fair for health care policies to have different standards for treating transgender people who have medical needs associated with transition than for someone, for instance, with diabetes who needs vital care. In both cases, a doctor makes an individualized assessment to determine if treatment is warranted—if it is, both patients should get the recommended care.

This fact sheet explains the medical community's current framework for understanding transition-related care as medically necessary and how Lambda Legal and other advocates are applying this in the legal domain to challenge denial of such care as discriminatory. Also highlighted are ways that private industry and municipal government have begun to follow the medical mainstream by dropping barriers to health care for transgender people and setting standards for a more equitable future.

## MY STORY A STRUGGLE, A STEP FORWARD AND THEN INSURANCE SAYS "NO"

**Roman Rimer, 29**

"I have memories as a child of wanting to be male-bodied, but I assumed I was meant to be the way I was. I struggled a lot.

"I never enjoyed having breasts. I remember once in college I went to be fitted for a bra in a store and I couldn't stop crying. I couldn't really figure out why; I just assumed there was something wrong with me or I was too emotional.

"I bound my chest for a while and then I had surgery. My insurance company said they would cover 70 percent of a double mastectomy if there was a history of breast cancer—which was the case—but not for sex reassignment. I got a letter in the mail, saying, 'We don't cover this.'"





# FAQ

## Answers to Common Questions about Transition-Related Health Care

### Q. What exactly is Gender Identity Disorder (GID)?

**A.** GID, also known as “transsexualism,” is a medical diagnosis recognized by the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which is the American Psychiatric Association’s encyclopedia of official diagnoses. The World Health Organization’s *International Classification of Diseases* (ICD) recognizes that GID is “characterized by a persistent and intense distress about assigned sex, together with a desire to be, or insistence that one is, of the other sex.”

The American Medical Association (AMA) established in a 2008 resolution that GID is a “serious medical condition” with symptoms including “distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death.”

### Q. Does every transgender person have GID?

**A.** No they do not, because not every transgender person experiences the distress associated with GID or requires medical transition.

### Q. What is the treatment for GID?

**A.** The treatment for GID involves some combination of “triadic therapy”: hormone therapy, sex reassignment surgery and/or Real Life Experience (living for a period of time in accordance with your gender identity). Each patient must be evaluated on a case-by-case basis, with expert medical judgment required for both reaching a diagnosis and determining a course of treatment. There is no set formula for gender transition.

These treatment protocols are outlined in the Standards of Care published by the World Professional Association for Transgender Health (WPATH), which keeps the public up to date on the “professional consensus about the psychiatric, psychological, medical, and surgical management of GID.”

### Q. Can sex reassignment surgery (SRS) and/or hormone therapy be considered “medically necessary” by doctors for people with GID?

**A.** Yes, doctors have found such treatments to be medically necessary for many people. The AMA passed a resolution in 2008 recognizing “an established body of medical research” that “demonstrates the effectiveness and medical necessity of mental health care, hormone therapy, and sex reassignment surgery as forms of therapeutic treatment for many patients diagnosed with GID.” Similar policy statements have been issued by a range of medical organizations, including the American Psychological Association, the American Academy of Family Physicians, the National Association of Social Workers and WPATH (see [www.lambdalegal.org/trans-insurance](http://www.lambdalegal.org/trans-insurance) for full text).

Courts have repeatedly ruled that these treatments may be medically necessary and have recognized GID as a legitimate medical condition constituting a “serious medical need” (see Lambda Legal’s victory in *Fields v. Smith*,<sup>1</sup> next page). Courts have also found that psychotherapy alone is insufficient treatment for GID, and that for some people, SRS may be the *only* effective treatment.<sup>2</sup>

### Q. Health insurance plans that exclude services related to gender transition often say they are “cosmetic” or “experimental.” Is this true?

**A.** No. The myth that transition-related care is “cosmetic” or “experimental” is discriminatory and out of touch with current medical thinking. The AMA and WPATH have specifically rejected these arguments, and courts have affirmed their conclusion. In a case brought by Gay and Lesbian Advocates and Defenders (GLAD), *O’Donnabhain v. Commissioner*, for instance, the Internal Revenue Service lost its claim that such treatments were cosmetic and experimental when a transgender woman deducted her SRS procedures as a medical expense.

<sup>1</sup> *Fields v. Smith*, 2010 U.S. Dist. LEXIS 78914 (E.D. Wis. July 9, 2010)

<sup>2</sup> *In re Heilig*, 372 Md. 692 (Md. 2003)

### DEFINITION

#### “Medical Necessity” Explained

**Why all the focus on the term “medical necessity”?** It’s a technical term used by the insurance industry describing treatment that a physician considers to be vital for a particular patient.

According to the AMA, health care is medically necessary when “a prudent physician” selects it “for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is: (1) in accordance with generally accepted standard of medical practice; (2) clinically appropriate in terms of type, frequency, extent, site, and duration; and (3) not primarily for the convenience of the patient, physician, or other health care provider.”



“I got a letter in the mail, saying,  
‘We don’t cover this.’ —ROMAN RIMER”

**Q. Is it true that some health plans won’t cover GID but will pay for the same treatments, as long as they are not related to gender transition?**

**A.** Yes: Psychotherapy, hormone therapy, breast augmentation or removal, hysterectomy, and a range of other procedures are frequently covered for non-GID-related medical conditions, but are often denied if related to gender transition.

Such exclusions leave no room for individual medical assessments of the kind recommended by the AMA and other professional medical organizations. They also may be unconstitutional because they deny care to a group of people based on who they are.

For people who are incarcerated, courts have called these sorts of blanket policies “deliberate indifference”<sup>3</sup> and ruled that they violate the Eighth Amendment prohibition against cruel and unusual punishment.<sup>4</sup>

**Q. Wouldn’t it be expensive for insurance companies to cover transition-related health care?**

**A.** Some employers worry that covering transition-related health care will raise the cost of insurance premiums, but there are data showing that is not the case. While the cost is prohibitive for many individuals, it’s negligible when an insurance plan takes it on—because GID is so rare.

For example, San Francisco, which became the first U.S. city to provide insurance coverage for GID-related care in 2001, quickly learned that the change would not cost municipal employees anything at all. After four years, during which time the city paid out only 11 GID-related claims, the surcharge that employees had been paying to cover the policy change was reduced to zero. There simply was no need to take in the extra money, because the cost of covering these claims was so negligible.

Not treating GID, on the other hand, can be quite a strain on the health care system. According to the AMA, “Delaying treatment for GID can cause and/or aggravate additional serious and expensive health problems, such as stress-related physical illness, depression, and substance abuse problems.”

<sup>3</sup> *DeLonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003)

<sup>4</sup> See *Barrett v. Coplan*, 292 F.Supp.2d 281, 285 (D.N.H. 2003); *Houston v. Trella*, No. 04-1393 (JLL), 2006 WL 2772748, \* 21 (D.N.J. Sept. 25, 2006); *Bismark v. Lang*, No. 2:02-cv-FtM-29SPC, 2006 WL 1119189, \*19 (M.D. Fla. April 26, 2006); *Kosilek v. Maloney*, 221 F.Supp. 2d 156, 186 (D.Mass. 2002).



People who need transition-related care while in prison are often at the mercy of outmoded treatment policies, on top of being vulnerable to harassment by prisons officials or fellow inmates. **Under these extreme conditions, many inmates injure themselves, some going so far as to “self-treat” by attempting to perform surgery to remove their own genitals, which can be life-threatening.**

But many transgender prisoners have been successful in demonstrating their need for health care behind bars by arguing that this lack of care violates the Eighth Amendment’s prohibition of cruel and unusual punishment. In *Fields v. Smith*, for instance, Lambda Legal represented transgender women incarcerated in Wisconsin who had been on hormone therapy for years before the state legislature passed a law in 2006 banning transition-related care for inmates in state prisons. No other state has such a law. **The withdrawal symptoms and horrible physical and mental effects that inevitably followed this change in policy were devastating to these women.**

A U.S. District Court found in the inmates’ favor in a 2010 ruling that the law violated the Eighth Amendment because “[t]he decision of whether or not certain treatment or a particular type of surgery is ‘medically necessary’ rests with the individual recipient’s physician.” The court also ruled that the Wisconsin law violated the equal protection clause of the Fourteenth Amendment because prisoners with GID were denied many of the exact same medical treatments permitted prisoners with other diagnoses.

**The court said transgender people should have the same access as similarly situated non-transgender people to an individual assessment of their medical and psychological needs, as well as to the appropriate treatment options.** Lambda Legal is working to uphold this ruling in the 7th Circuit Court of Appeals.



**Q. Do some employers and insurance companies cover GID?**

**A.** Yes, a growing number of employers—including major firms such as Nike, Microsoft and Google—are leading the way in this area by removing outmoded and discriminatory exclusions of transition-related health care and offering trans-inclusive coverage as part of diversity initiatives. Aetna, Cigna and Blue Cross/Blue Shield are among providers now including coverage of transition-related health care, although it is up to each employer to make sure that a plan is inclusive. For more information, go to [www.hrc.org/issues/workplace/benefits/transgender\\_inclusive\\_benefits.htm](http://www.hrc.org/issues/workplace/benefits/transgender_inclusive_benefits.htm).

**STIGMA**

Concerns about  
the Term "GID"

The GID diagnosis is disliked by many transgender people, because it can be interpreted as meaning they are mentally ill or otherwise stigmatize them. WPATH is among a range of professional organizations that have called for the **"de-psychopathologisation of gender variance worldwide"** to help fight the prejudice that makes transgender people "more vulnerable to social and legal marginalization and exclusion." Yet because of the way the U.S. health care system is currently set up, some kind of diagnosis is necessary to get insurance coverage for transition-related treatment. Among the most common proposals for addressing these problems with the term GID is to move the diagnosis from the DSM into the medical category in the ICD, in order to clarify that transition-related health care is not a mental health issue but a medical one. However, until there's a clear alternative to GID that facilitates access to medically necessary care for transgender people—especially those who are poor or incarcerated—we are likely stuck with the diagnosis.

# TIPS

## ADVOCATING FOR INSURANCE COVERAGE OF YOUR MEDICAL NEEDS

If you are denied insurance coverage for transition-related health care, consider taking these steps:

- 1** Get a copy of your health insurance policy to see if there is any discriminatory exclusion language. If so, find out what the process is to appeal a denial of coverage. You will likely need to provide written documentation from your doctor that this treatment is deemed medically necessary for you.
- 2** Use official statements from any of the following five professional organizations (links to them online are available at [www.lambdalegal.org/trans-insurance](http://www.lambdalegal.org/trans-insurance)) as backup for your argument that transition-related care is not cosmetic or elective and should be covered:
  - American Academy of Family Physicians
  - American Medical Association
  - American Psychological Association
  - National Association of Social Workers
  - World Professional Association for Transgender Health
- 3** Contact Lambda Legal's Help Desk (toll-free: **866-542-8336** or [www.lambdalegal.org/help](http://www.lambdalegal.org/help))

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, Suite 1500, New York, NY 10005-3904. If you feel you have experienced discrimination, call our Help Desk toll-free at 866-542-8336 or go to [www.lambdalegal.org/help](http://www.lambdalegal.org/help).