

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES  
Before the Director of the Department of Insurance and Financial Services

In the matter of:

Jasmine Glenn  
Petitioner

v

Priority Health Choice Inc.  
Respondent

File No. 160506-001

Issued and entered  
this 22<sup>nd</sup> day of August 2017  
by Randall S. Gregg  
Special Deputy Director

**ORDER**

**I. PROCEDURAL BACKGROUND**

On July 6, 2017, attorney Jay Kaplan, authorized representative of Jasmine Glenn (Petitioner), filed with the Director of Insurance and Financial Services a request for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On July 13, 2017, after a preliminary review of the information submitted, the Director accepted the request.

The Petitioner has health care coverage through Priority Health Choice, Inc., (PHC) a Medicaid health maintenance organization. PHC operates under rules established by the federal Medicaid program and the Michigan Department of Health and Human Services (MDHHS), the administrator of the Medicaid program in Michigan. Requirements for Medicaid HMOs are codified in MDHHS's Medicaid Provider Manual. The Petitioner's benefits are described in PHC's *Healthy Michigan* certificate of coverage.

The Director notified PHC of the external review request and asked for the information used to make its final adverse determination. PHC provided its response on July 24, 2017.

The medical issues in the case were analyzed by an independent review organization which submitted its report to the Director on August 15, 2017.

**II. FACTUAL BACKGROUND**

The Petitioner is undergoing gender reassignment from male to female. The Petitioner and her physicians have requested coverage for two outpatient surgeries for which PHC has declined to provide coverage: electrolysis to remove excess hair in the genital area as a prerequisite for a vaginoplasty, and feminization surgery to make her

facial features conform to a more feminine appearance. PHC believes these procedures constitute cosmetic surgery which is excluded from coverage under the Petitioner's benefit plan.

The Petitioner appealed the coverage denials through PHC's internal grievance process. At the conclusion of that process, PHC affirmed its denials in a final adverse determination issued June 15, 2017. The Petitioner now seeks the Director's review of that final adverse determination.

### **III. ISSUE**

Was PHC correct to deny coverage for the Petitioner's requested medical procedures?

### **IV. ANALYSIS**

#### Priority's Argument

In its final adverse determination, PHC wrote:

Requested coverage will not be provided in accordance with Priority Health Medical Policy 91612-R1 Gender Reassignment Surgery, Medical Policy 91535-R3 Cosmetic and Reconstructive Surgery Procedures, the Healthy Michigan Plan Certificate of Coverage and Michigan Department of Health and Human Services (MDHHS) Medicaid Provider Manual. Specifically, services associated with gender reassignment surgery that are performed solely for the purpose of improving or altering appearance or self-esteem related to one's appearance, are considered cosmetic in nature and not medically necessary.

The Appeal Committee understood that [Petitioner] felt that these procedures were medically necessary; however, various procedures related to the gender reassignment are carved out as cosmetic in accordance with the Healthy Michigan Certificate of Coverage.

#### Petitioners' Argument

In the external review request, the Petitioner's representative wrote:

Priority Health is [Petitioner's] Medicaid plan. Michigan's Medicaid policy will not pay for services that are not medically necessary, including elective cosmetic procedures. [Petitioner's] physicians have indicated that both electrolysis and facial feminization surgeries are medically necessary for her. Priority has a blanket policy deeming these procedures are cosmetic, ignoring [Petitioner's] physician recommendations in violation of Michigan's Medicaid policy and law governing Medicaid.

The Petitioner's representative submitted a brief presenting their arguments in more detail. The brief includes a section titled "Summary of the Argument" which states:

As a Michigan Medicaid Provider, Priority must comply with all state and federal Medicaid laws and regulations. See Medicaid Provider Manual, Medicaid Health Plans, p 1.

Federal Medicaid law requires Priority to cover all medically necessary care. See, e.g., *Engler*, 73 F3d at 636. In the Sixth Circuit, as in the majority of jurisdictions, the treating physician's determination of medical necessity is dispositive. See *id.* [Petitioner's] treating physicians have certified that electrolysis and facial feminization surgery are medically necessary to treat [Petitioner's] gender dysphoria ... Priority must therefore cover them.

Even if Ms. Glenn's physicians' determinations were not dispositive, as some courts outside the Sixth Circuit have held ... Medicaid regulations prohibit denying care on the basis of diagnosis or medical condition. See 42 CFR § 440.230(c). Thus, Priority may *not* deny coverage of [Petitioner's] treatment for gender dysphoria on the grounds that it is not medically necessary while simultaneously covering equally needed treatment for other conditions. See, e.g., *Pinneke v Preisser*, 623 F2d 546, 549 (CA 8, 1980). Absent a showing that Priority subjects care for diagnoses other than gender dysphoria to the same standard of medical need being applied to [Petitioner] here, then, Priority's denial violates federal Medicaid law.

#### Director's Review

Under the Patient's Right to Independent Review Act (PRIRA), medical questions, including questions of medical necessity, are subject to review by the Director with the advice of an independent medical reviewer. See sections 3(a) and 11(7) of the PRIRA, MCL 550.1903(a) and 550.1911(7).

The Petitioner's benefits are described in PHC's *Healthy Michigan* certificate of coverage. PHC is required to provide the benefits mandated by the Medicaid program as codified in the Michigan Medicaid Provider Manual. Neither the *Healthy Michigan* certificate nor the Michigan Medicaid Provider Manual make specific reference to gender reassignment surgery. Nevertheless, PHC has approved coverage for a vaginoplasty as part of the Petitioner's gender reassignment.

PHC has denied coverage for two other procedures it considers to be cosmetic: facial feminization surgery and hair removal in the genital region. Under the Petitioner's benefit plan, coverage is not provided for cosmetic procedures (an exclusion that is common in health insurance benefit plans). Surgical procedures which are cosmetic are not medically necessary.

The Director assigned an independent review organization (IRO) to determine whether the two procedures at issue in this appeal are medically necessary. Such a review is required by section 11(7) of the Patient's Right to Independent Review Act, MCL 550.1911(7).

The IRO reviewer is a physician in active practice for more than thirty years who is board-certified in general surgery and plastic surgery. The IRO report included the following analysis in response to the Director's questions:

*1. Is the facial feminization surgery requested for the Petitioner medically necessary in connection with the Petitioner's gender reassignment surgery?*

No. Ms. Glenn's physician has recommended a pretrichial brow lift and posterior scalp advancement, supraorbital brow burring/recontouring, and bilateral malar fat grafting.

These procedures are sought after and desirable and are reasonable for Ms. Glenn to consider and request. However, these are performed for aesthetic reasons and, therefore, cosmetic in nature.

There is no anticipation in the plastic-surgical community that these procedures are medically necessary and covered by health insurance. These procedures are performed to improve the appearance of an individual's facial features and are considered cosmetic in nature in the plastic-surgical community.

A review of the plastic surgery literature reveals relatively little regarding facial feminization surgery. A review of available literature was published in June 2016 in the *Journal of Plastic and Reconstructive Surgery* (*Plast Reconstr Surg.* 2016 Jun;137(6):1759-70). A total of 24 articles were identified by the authors. The authors point out that Medicare has begun to cover gender reassignment surgery; this refers to surgery of the genitalia. This does not include facial feminization surgery. The authors point out a lack of data in the literature on which to assess the outcomes of facial feminization surgery.

*2. Is the electrolysis requested for the Petitioner medically necessary as a precondition for the Petitioner to have a vaginoplasty (the vaginoplasty has already been authorized by the Petitioner's insurer)?*

Yes, in this reviewer's clinical opinion. This reviewer is in agreement with Dr. Kuzon [one of the Petitioner's physicians] that completion of permanent hair removal prior to vaginoplasty is reasonable and that hair on or in the neovagina could potentially be a functional issue. It is desirable for hair removal to be performed at some point in time, preferably prior to vaginoplasty.

Hair removal prior to vaginoplasty is typically recommended and would be considered medically necessary. It is felt that the presence of hair may be associated with an increase in surgical complication and/or late functional difficulties following the procedure. However, the literature does not appear to support this belief as complications were not increased with or without pre-vaginoplasty hair removal.

While the Director is not required in all instances to accept the IRO's recommendation, the recommendation is afforded deference by the Director. *Ross v Blue Care Network of Michigan*, 480 Mich 153 (2008). In a decision to uphold or reverse an adverse determination the Director must cite "the principal reason or reasons why the director did not follow the assigned independent review organization's recommendation." MCL 550.1911(18)(b). The IRO's analysis is based on extensive experience, expertise, and professional judgment. In addition, the IRO's recommendation is not contrary to any provision of the *Simply Blue* certificate of coverage. See MCL 550.1911(17).

The Director, discerning no reason why the IRO's recommendation should be rejected in the present case, finds that the facial feminization surgery is cosmetic and is, therefore, not medically necessary and is not a covered benefit. The Director further finds that the electrolysis is not a cosmetic procedure. The electrolysis is medically necessary for completion of the vaginoplasty and is, therefore, a covered benefit.

**V. ORDER**

The Director reverses Respondent PHC's denial of coverage for the electrolysis procedure. PHC shall immediately approve coverage for the electrolysis procedure. See MCL 550.1911(19). PHC shall, within seven days of providing coverage, submit to the Director proof it has implemented this order.

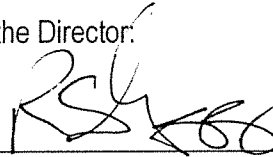
The Director upholds PHC's denial of coverage for facial feminization surgery.

To enforce this order, the Petitioner may report any complaint regarding its implementation the Department of Insurance and Financial Services, Health Plans Division, toll-free 877-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this order may seek judicial review no later than 60 days from the date of this order in the circuit court for the Michigan county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin  
Director

For the Director:

A handwritten signature in black ink, appearing to read 'RS Gregg', is written over a horizontal line.

Randall S. Gregg  
Special Deputy Director



physicians review  
ORGANIZATION

State of Michigan  
Department of Insurance and Financial Services  
P.O. Box 30220  
Lansing, MI 48909-7720

**INDEPENDENT EXTERNAL MEDICAL REVIEW**

Appeals Section File #: 160506-001  
PRO Case #: 70131

Respondent: Priority Health Choice, Inc.  
Complainant: Jay Kaplan  
Patient: Jasmine Glenn

Notification Received: 07-31-2017  
Documentation Received: 08-10-2017  
External Review Conducted: 08-14-2017  
Recommendation Provided: 08-15-2017

**External Review Assignment:**

Physicians Review Organization, Inc. is a URAC-accredited independent review organization, and on July 31, 2017 was selected by the Michigan Department of Insurance and Financial Services (MIDIFS) to conduct an external review on Appeals Section File #160506-001. This case involves the denial of preauthorization for hair removal and facial feminization surgery related to gender reassignment services under *Priority Health's Medical Policy 91612-R1 for Gender Reassignment Surgery* and *Priority Health's Medical Policy 91535-R3 for Cosmetic and Reconstructive Surgery Procedures*.

**Documentation for Review:**

- 08-10-2017 facsimile – facsimile to IRO from Priority Health  
Subject: DIFS External Review – 160506-001, Attachments:
  - Document – Priority Health's Position Regarding Member Request For External Review
  - 06-15-2017 Letter – letter to Patient from Respondent
  - Document – Priority Health Choice Inc. Level 2 Internal Review Committee Decision Form
  - Member's Level 2 Review, Level 1 Determination and Level 1 Review
  - Medical Department Authorization Charts (27 pages)
  - Medical Records – University of Michigan 74-80 (7 pages)
  - Case Management Records 81-90 (10 pages)
  - Prescription Claim Documentation 91-99 (9 pages)
  - Telephone Records 100-109 (10 pages)
  - Medical Policy 91612-R1 Gender Reassignment Surgery 110-116 (7 pages)
  - Medical Policy 91535-R3 Cosmetic and Reconstructive Surgery Procedures (15 pages)
  - Healthy Michigan Plan Certificate Coverage (16 pages)
  - Medicaid Provider Manual (5 pages)
- 07-31-2017 Letter – letter to IRO from MIDIFS, Notice of External Review Assignment

- 07-13-2017 Letter – letter to Respondent from MIDIFS, Notice of Filed Request for External Review
- 07-13-2017 Letter – letter to Complainant from MIDIFS, Eligibility for External Review
- Document – Health Care-Request for External Review, signed by Patient on 07-5-2017
- 07-11-2017 Letter – letter to MIDIFS from Respondent
- 06-15-2017 Letter – letter to Patient from Respondent
- Document – Priority Health Choice Inc. Level 2 Internal Review Committee Decision Form
- Document – Immediate Notice to Health Carrier of Receipt of an External Review Request, Date Sent 07-06-2017
- 07-31-2017 Letter – letter to Complainant from MIDIFS, Eligibility for External Review
- 07-31-2017 Letter – letter to Respondent from MIDIFS, Notice of Filed Request for External Review
- 07-06-2017 Email – email to MIDIFS from Complainant
- 160506 06-13-17 Glenn, Jasmine Appeal Case.pdf
  - Member’s Level 2 Review, Level 1 Determination and Level 1 Review (43 pages)
  - Medical Department Authorization Charts (27 pages)
  - Medical Records – University of Michigan 74-80 (7 pages)
  - Case Management Records 81-90 (10 pages)
  - Prescription Claim Documentation 91-99 (9 pages)
  - Telephone Records 100-109 (10 pages)
  - Medical Policy 91612-R1 Gender Reassignment Surgery 110-116 (7 pages)
  - Medical Policy 91535-R3 Cosmetic and Reconstructive Surgery Procedures (15 pages)
  - Healthy Michigan Plan Certificate Coverage (16 pages)
  - Medicaid Provider Manual (5 pages)
- Document – Priority Health’s Position Regarding Member Request For External Review (7 pages)
- Document – Priority Health, A Health Michigan Plan handbook and Certificate of Coverage (68 pages)
- Document – Legal Brief For DIFS External Review (17 pages)
- 05-25-2017 Letter – letter to Complainant from Respondent

#### **Clinical Case Summary:**

Ms. Jasmine Glenn is a 40-year-old transgender individual who is being treated for and living as a female. Ms. Glenn is requesting electrolysis as well as facial feminization surgery.

#### **Question(s) for Reviewer:**

**1. Is the facial feminization surgery requested for the Petitioner medically necessary in connection with the Petitioner's gender reassignment surgery?**

No. Ms. Glenn’s physician has recommended a pretrichial brow lift and posterior scalp advancement, supraorbital brow burring/recontouring, and bilateral malar fat grafting. These procedures are sought after and desirable and are reasonable for Ms. Glenn to consider and request. However, these are performed for aesthetic reasons and, therefore, cosmetic in nature.

There is no anticipation in the plastic-surgical community that these procedures are medically necessary and covered by health insurance. These procedures are performed to improve the appearance of an individual’s facial features and are considered cosmetic in nature in the plastic-surgical community.

A review of the Plastic surgery literature reveals relatively little regarding facial feminization surgery. A review of available literature was published in June 2016 in the Journal of Plastic and Reconstructive Surgery (Plast Reconstr Surg. 2016 Jun;137(6):1759-70). A total of 24 articles were identified by the authors. The authors point out that Medicare has begun to cover gender reassignment surgery; this refers to surgery of the genitalia. This does not include facial feminization surgery. The authors point out a lack of data in the literature on which to assess the outcomes of facial feminization surgery.

**2. Is the electrolysis requested for the Petitioner medically necessary as a precondition for the Petitioner to have a vaginoplasty (the vaginoplasty has already been authorized by the Petitioner's insurer)?**

Yes, in this reviewer's clinical opinion. This reviewer is in agreement with Dr. Kuzon that completion of permanent hair removal prior to vaginoplasty is reasonable and that hair on or in the neovagina could potentially be a functional issue. It is desirable for hair removal to be performed at some point in time, preferably prior to vaginoplasty.

Hair removal prior to vaginoplasty is typically recommended and would be considered medically necessary. It is felt that the presence of hair may be associated with an increase in surgical complication and/or late functional difficulties following the procedure. However, the literature does not appear to support this belief as complications were not increased with or without pre-vaginoplasty hair removal.

**Reviewer's Clinical Rationale for the Decision:**

Facial features may differ between men and women. Facial feminization procedures are performed to address these appearance differences. Facial feminization surgery (FFS) is a group of surgical procedures which are performed to change the features of a male face to that of a female face. This surgery does not aim to rejuvenate the face. Some non-transsexual women may undergo some feminizing surgical procedures if they feel that they have male facial characteristics. A number of facial surgical procedures are utilized to feminize the face, often involving sculpture and contouring of the facial skeleton. These may include correction of the hairline by scalp advance, contouring the forehead, brow lift, rhinoplasty, cheek implants, resection of the buccal fat pads, lip lift and lip augmentation with dermis graft, mandible angle reduction and taper, genioplasty and thyroid shave.

**Recommendations:**

Ms. Glenn asserts that her treatment requested is medically necessary because her physician has indicated so. She provides examples including AIDS patients, abortions, etc. While procedures and treatments for transgender individuals is very often desired, coverage for gender reassignment surgery is not necessarily reasonable for any treatment or procedure that may be desired or requested. There are many examples of what are considered cosmetic procedures that are performed to address self-esteem and psychological issues. This would include undesirable features an individual may have been born with or developed as a result of age.

**References:**

1. Journal of Plastic and Reconstructive Surgery. (June 2016). 137(6):1759-70.
2. Patient-reported complications and functional outcomes of male-to-female sex reassignment surgery. Arch Sex Behav. 2006 Dec; 35(6):717-27.

**Conflict of Interest Statement:**

The IRO physician reviewer is ABMS board certified in General Surgery and Plastic Surgery. The IRO physician and has an active medical license in the state of Michigan. The IRO physician reviewer has been in active clinical practice for 30 years.

The IRO physician reviewer attests to not having any material professional, familial, or financial conflict of interest to: the referring entity, the insurance issuer or group health plan that is the subject of the review including any employee, officer, director, management employee, administrator, plan fiduciary, or to the covered person whose treatment is the subject of the review and the covered person's authorized representative, or to the health care provider or group whose service is under review, any association recommending the health care service or treatment under review, the facility at which the recommended service or treatment would or was provided, the developer or manufacturer of the principal drug, device, procedure, or other therapy under review.

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES  
Before the Director of Insurance and Financial Services

In the matter of:

Kari Lieber,  
Petitioner,  
V

File No.: 160506-001

Priority Health Insurance Company,  
Respondent.

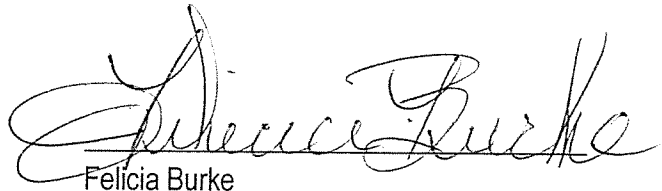
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PROOF OF SERVICE

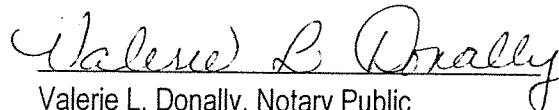
**Felicia Burke**, being duly sworn, says that on August 22, 2017, she served a copy of the Order upon the following parties by depositing the same in an United States Postal Depository in the City of Lansing, Michigan, enclosed in an envelope, first class mail, bearing postage prepaid, plainly addressed as follows:

Joanna Brink  
Priority Health  
1231 East Beltline NE  
Grand Rapids, MI 48525

Jay Kaplan  
2966 Woodward Ave  
Detroit, MI 48201

  
Felicia Burke

Subscribed to and sworn before me on August 22, 2017.

  
Valerie L. Donally, Notary Public  
Ingham County, Michigan  
Acting in Ingham County, Michigan  
My commission expires: 07/25/2018