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March 17, 2015

VIA EMAIL

The Honorable Lewis T. Booker, Jr., U.S. Administrative Law Judge
c/o Stephanie Shelton
Office of Medicare Hearings and Appeals
Midwest Region Field Office
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Cleveland, OH 44114
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Re: ALJ Hearing for Ms. Charlene Rynee Lauderdale,
Appeal Number 1-2814911584

Dear Judge Lewis T. Booker, Jr.,

I am an attorney and authorized representative of Ms. Charlene Rynee Lauderdale **(Member ID: 972146250-1)**, a Medicare Advantage beneficiary enrolled in AARP Medicare Complete HMO, which is administered by United Healthcare ("United"). A hearing has been scheduled before you on Tuesday, March 24, 2015 at 2pm eastern.

As outlined in the Notice of Hearing, the questions before you are as follows:

> Whether Appellant's claim to have the Plan pre-approve and pay for Gender Reassignment Surgery qualifies for coverage and payment under the terms and provisions of the Appellant's Medicare Advantage health insurance plan and, if not covered under such terms and provisions, does the Appellant's claim nevertheless qualify for coverage and payment under the applicable Medicare laws, regulations and policies?

While Ms. Lauderdale has no objection to the framing of these questions, she has asked that I provide additional information to help guide your inquiry.

I. Ms. Lauderdale Admits that the Plan Excludes Gender Reassignment Surgery

Ms. Lauderdale admits that the text of her Medicare Advantage plan expressly excludes coverage for Gender Reassignment Surgery. However, Ms. Lauderdale contends that regardless of the exclusion, her request for pre-approval should have been authorized because Gender Reassignment Surgery is medically necessary care for gender dysphoria, the National Coverage Determination that the Plan's exclusion was premised upon has since been lifted by HHS, applicable Medicare laws do not permit exclusion of medically necessary care, and there is no reasoned basis to deny or delay care at this time.

II. Gender Reassignment Surgery is Medically Necessary

A. Gender Reassignment Surgery is a Form of Medically Necessary Treatment for Gender Dysphoria

Gender Reassignment Surgery is a term that captures a host of surgical interventions aimed at alleviating gender dysphoria. Gender dysphoria is a internationally recognized condition, colloquially known as transsexualism, that refers to a clinically significant disconnect between the patient's internal sense of their gender (gender identity) and the sex they were assigned at birth.[1] Persons afflicted with severe gender dysphoria are sometimes referred to as transgender.

One of the only effective treatments for severe gender dysphoria is Gender Reassignment Surgery.[2] Though a seemingly drastic step, myriad peer review studies show that the health

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[1] *See generally* AMERICAN PSYCHOLOGICAL ASSOCIATION, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-V § 302.85 (2013); E. Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 13 INT'L J. TRANSGENDERISM 165 (2011).

[2] The efficacy of Gender Reassignment Surgery is undisputed by experts in the field and by leading professional organizations. *See, e.g.*, American Medical Association, Resolution: Removing Financial Barriers to Care for Transgender Patients, *reprinted at* http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbt-advisory-committee/ama-policy-regarding-sexual-orientation.page? (last visited Aug. 27, 2014) ("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 . . . ."); Press Release, American Psychological Association, APA Resolves to Play a Leading Role in Improving Treatment for Gender-Variant People (Aug. 17, 2008), *available at* http://www.apa.org/news/press/releases/2008/08/gender-variant.aspx ("The APA recognizes the efficacy, benefit and medical necessity of gender transition treatments for appropriately evaluated individuals and calls upon public and private insurers to cover these medically necessary treatments."); American Academy of Family Physicians, Resolution 9: Encourage Removal of Health Insurance Restrictions for Care of Transgender Patients (2009), *available at* http://www.aafp.org/dam/AAFP/documents/events/alf_ncsc/NCSCSummaryofActions2009_Finalwithconstituency.doc ("[T]he American Academy of Family Physicians (AAFP), support public and private health insurance coverage for treatment of Gender Identity Disorder (GID), removing the categorical exclusions for the treatment of adolescents and adults who suffer from GID and thereby allow their qualified physicians to render the necessary and very effective medical, surgical and mental health modalities now available for the treatment of this disorder."); American College of Obstetricians and Gynecologists, Committee Opinion, Care for Transgender Individuals 1 (December 2011), *available at* http://www.acog.org/~/media/Committee%20Opinions/Committee%20on%20Health%20Care%20for%20Underserved%20Women/co512.pdf?dmc=1&ts=20140826T1734594637 ("The American College of Obstetricians and Gynecologists opposes discrimination on the basis of gender identity and urges public and private health insurance

detriments commonly associated with gender dysphoria are all but alleviated with surgical care.[3] Indeed, studies have shown that anxiety, depression, and other comorbid conditions are drastically improved after genital reassignment.[4] Without genital reassignment, many patients experience a lifetime of debilitating psychological distress that impairs everything from romantic relationships[5] to capacity for self-care.[6]

Patients with gender dysphoria are often diagnosed with comorbid conditions that must be treated simultaneously. Peer literature and prevailing expertise in the field reveal that treatment of gender dysphoria should not be discontinued or delayed simply because comorbid conditions are present.[7] Indeed, studies suggest that delaying treatment for gender dysphoria may exacerbate other conditions.[8] No peer review study, learned treatise, or recognized gender

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plans to cover the treatment of gender identity disorder."); World Professional Association for Transgender Health, WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage for Transgender and Transsexual People Worldwide, June 17, 2008, *available at* http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1352&pk_association_webpage=3947.

[3] *See, e.g.*, Tiffiny A. Ainsworth & Jeffrey H. Spiegel, *Quality of Life of Individuals With and Without Facial Feminization Surgery or Gender Reassignment Surgery*, 19 QUALITY LIFE RESEARCH 1019 (2010) (finding that surgical treatment is associated with improved quality of life for trans women); G. De Cuypere et al., *Long-term Follow-up: Psychosocial Outcome of Belgian Transsexuals After Sex Reassignment Surgery*, 15 SEXOLOGIES 126 (2006) (same); Griet De Cuypere et al., *Sexual and Physical Health After Sex Reassignment Surgery*, 34 ARCHIVES SEXUAL BEHAVIOR 679 (2005) (same); Anne E. Lawrence, *Factors Associated with Satisfaction or Regret Following Male-to-Female Sex Reassignment Surgery*, 32 ARCHIVES SEXUAL BEHAVIOR 299 (2003) (same).

[4] *See, e.g.*, Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review of Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 CLINICAL ENDOCRINOLOGY 214 (2010) (noting marked improvement in levels of anxiety, depression, and other mental health measures after sexual reassignment surgery); Jan Eldh Agnes Berg & Maria Gustafsson, *Long Term Follow Up After Sex Reassignment Surgery*, 31 SCANDANAVIAN J. PLASTIC & RECON. SURGERY & HAND SURGERY 39 (1997) (same); Zoran Rakic et al., *The Outcome of Sex Reassignment Surgery in Belgrade: 32 Patients of Both Sexes*, 25 ARCHIVES SEXUAL BEHAVIOR 515 (1996) (same); C. Mate-Kole et al., *A Controlled Study of Psychological and Social Change after Surgical Gender Reassignment in Selected Male Transsexuals*, 157 BRITISH J. PSYCHIATRY 261 (1990) (same); Bram Kuiper & Peggy Cohen-Kettenis, *Sex Reassignment Surgery: A Study of 141 Dutch Transsexuals*, 17 ARCHIVES SEXUAL BEHAVIOR 439 (1988) (same).

[5] *See, e.g.*, Griet De Cuypere et al., *Sexual and Physical Health After Sex Reassignment Surgery*, 6 ARCHIVES SEXUAL BEHAVIOR 679 (2005) (noting improved satisfaction in sexual relationships after surgery); Maryann Schroder & Richard A. Carroll, *New Women: Sexological Outcomes of Male-to-Female Gender Reassignment Surgery*, 24 J. SEX EDUCATION & THERAPY 137 (1999) (same).

[6] *See, e.g.*, E.C. Wilson et al., *Connecting the Dots: Examining Transgender Women's Utilization of Transition-Related Medical Care and Associations with Mental Health, Substance Use, and HIV*, 92 J. URBAN HEALTH 182 (2015) (finding that utilization of transition-related medical care is highly associated with significantly lower estimated odds of suicidal ideation, binge drinking, and injection drug use; also finding that utilization of transition-related medical care may reduce risk for mental health problems, especially suicidal ideation and substance abuse among transgender women).

[7] *See, e.g.*, E. Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 13 INT'L J. TRANSGENDERISM 165, 181 (2011) ("The **presence of coexisting mental health concerns does not necessarily preclude possible changes** in gender role or access to feminizing/masculinizing hormones or surgery; rather, these concerns need to be optimally managed prior to, **or concurrent with**, treatment of gender dysphoria.") (emphasis added). *See also id.* at 203 (asserting that surgery should not be performed when a patient is "actively psychotic" but that presence of "other serious mental illnesses" does not necessarily preclude surgical intervention).

[8] *See, e.g.*, Nooshin Khobzi Rotondi, *Depression in Trans People: A Review of the Risk Factors*, 13 INT'L J. TRANSGENDERISM 104, 112 (2011) ("limited and inappropriate provisions of care received by trans people may instigate or exacerbate mental health issues").

dysphoria expert teaches that Gender Reassignment Surgery should be delayed simply because comorbid conditions are present. Thus, prevailing wisdom teaches that treatment for gender dysphoria remains medically necessary in the face of comorbid conditions and that, likewise, access to treatment should not be conditioned on "curing" or otherwise fully alleviating the ill effects of comorbid conditions.

B. Applicable Medicare Laws Do Not Permit Exclusion of Medically Necessary Care, Including Gender Reassignment Surgery

It is Ms. Lauderdale's reading of the relevant statutes that gender reassignment surgery, a form of medically necessary surgical treatment for gender dysphoria, must be covered.

Under Social Security Act § 1862(a)(1)(A), 42 U.S.C. §1395y(a)(1)(A), as amended, all Medicare plans[9] must cover medically necessary services that are reasonable and necessary for the diagnosis or treatment of an illness or injury. Though, for a host of discriminatory reasons, Medicare categorically excluded coverage of any transition care for nearly thirty-three years, HHS has now deemed categorical exclusion as unsupported by the literature and other evidence. As of May 20, 2014, HHS' Departmental Appeals Board has determined that the former NCD 140.3 is unreasonable and that "coverage exclusion is no longer reasonable."[10] Thus, to the extent that Gender Reassignment Surgery is deemed to be medically necessary for a particular patient, Medicare Laws mandate coverage.

III. There are No Medical Contraindications to Ms. Lauderdale's Care at this Time

Dr. Lobboprabhu, Ms. Lauderdale's primary psychiatrist, has repeatedly affirmed that Ms. Lauderdale satisfies all existing criteria for Gender Reassignment Surgery and that none of Ms. Lauderdale's comorbid conditions contraindicate care at this time.

Appended to this letter is a January 5, 2015 letter from Dr. Lobboprabhu that sheds light on the errors in MAXIMUS' decision. Specifically, this letter notes that, despite her comorbid conditions, Ms. Lauderdale has already progressed through earlier stages of male-to-female transition without incident. To wit, Ms. Lauderdale has lived fulltime as female since 2005, she has already successfully undergone nongential feminization procedures and has been compliant in her care and recovery, and Ms. Lauderdale fully satisfies all criteria for genital reassignment as established by the World Professional Association for Transgender Health's ("WPATH") *Standards of Care*. This letter also explains that, contrary to MAXIMUS' determination, Ms. Lauderdale's comorbid conditions do not contraindicate care. As per Dr. Lobboprabhu, "In my clinical opinion, this gender reassignment surgery is still medically necessary surgery . . . though, she is still actively being treated for her mood, anger and PTSD, she is mentally stable enough to safely tolerate and cooperate with the gender reassignment surgery." It should be noted that Dr.

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[9] *See* 42 CFR §422.101 (requiring Medicare Advantage plans to pay for medical services which regular Medicare pays for).

[10] *See generally* Departmental Appeals Board, Dep't of Health & Human Servs., NCD 140.3, Transsexual Surgery, Docket No. A-13-87, Decision No. 2576 at 1 (May 30, 2014), *available at* http://www.hhs.gov/dab/decisions/dabdecisions/dab2576.pdf.

Michael R. Kauth, a clinical psychologist with specialized training in combat related PTSD as well as gender dysphoria also signed this letter, affirming that, in his medical judgment, gender reassignment is medically necessary.

A forthcoming letter from Dr. Lobboprabhu will further underscore the efficacy of Ms. Lauderdale undergoing Gender Reassignment Surgery at this time. Upon information and belief, Dr. Lobboprabhu's letter will note that Ms. Lauderdale is presently psychologically stable, she is compliant with her pharmaceutical regimen, she remains committed to her sober lifestyle and continues to thrive as a result, Gender Reassignment Surgery is still medically necessary at this time, and Ms. Lauderdale still satisfies all criteria for genital reconstruction surgery established by WPATH's *Standards of Care*.

Conclusion

As the foregoing reveals, there is no reasoned basis in law or medical judgment to deny Ms. Lauderdale's request for pre-approval of her claim for Gender Reassignment Surgery.

Sincerely,

Ezra Young, Esq.
NY Bar No. 5283114

Encl.

Letter from Dr. Loboprabhu and Dr. Kauth (Jan. 5, 2015)