

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

CODY FLACK, et al.,  
*Individually and on behalf of all others similarly situated,*

Plaintiffs,

v.

ORDER

18-cv-309-wmc

WISCONSIN DEPARTMENT OF HEALTH  
SERVICES, et al.,

Defendants.

---

On October 9, 2019, the court heard oral argument on the parties' proposals for final equitable relief in this case. Consistent with that hearing, the court has drafted the following order. The parties may have seven days to submit any edits or objections they have to this proposed order.

The court also GRANTS plaintiffs' consent motion for leave to file an amended proposed order. (Dkt. #237.)

PROPOSED ORDER

IT IS ORDERED that:

1. For the reasons stated in the court's August 16, 2019, Opinion and Order (dkt. #217), Wis. Admin. Code §§ DHS 107.03(23)–(24), 107.10(4)(p) (“the Challenged Exclusion”), are hereby declared null and void under: Section 1577 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; the Medicaid Act's availability requirement, 42 U.S.C. § 1396a(a)(10)(A); the Medicaid Act's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B); and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
2. Defendants are also permanently enjoined from enforcing the Challenged Exclusion.
3. Within 90 days of this order, defendants shall:

- a. issue a *ForwardHealth Update* that includes a notice of this order permanently enjoining enforcement of the Challenged Exclusion and explains that Medicaid-enrolled patients, clients, or constituents may be eligible to request coverage for gender-confirming services that were previously excluded from coverage under the Challenged Exclusion;
  - b. provide notice to the social service providers on Appendix A of plaintiffs' amended proposed order (Pls.' Am. Proposed Order, App. A (dkt. #237-1) 12) that this court has permanently enjoined enforcement of the Challenged Exclusion and that Medicaid-enrolled patients, clients, or constituents may be eligible to request coverage for gender-confirming services that were previously excluded from coverage under the Challenged Exclusion;
  - c. provide notice to all Wisconsin Medicaid Health Maintenance Organizations ("the HMOs") that this court has permanently enjoined enforcement of the Challenged Exclusion and that individual authorization requests for gender-confirming services are subject to the Wisconsin Department of Health Services' standard review, prior authorization procedures, and determinations for medical necessity, and encourage the HMOs to consider notifying, if appropriate, individuals who were previously denied coverage for services because of the Challenged Exclusion that they may be eligible for coverage of a service or services previously found to be excluded; and
  - d. provide notices, if appropriate, to fee-for-service beneficiaries previously denied coverage because of the Challenged Exclusion that they may be eligible for coverage of a service or services previously found to be excluded.
4. Within 180 days of this order, defendants shall also publish a coverage policy regarding gender-confirming treatments previously excluded under the Challenged Exclusion.

Dated this 10th day of October, 2019.

BY THE COURT:

/s/

---

WILLIAM M. CONLEY  
District Judge