TRANSADVOCATE

A Big Win in the USA: Stating the bleedin' obvious

By Zoe

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Abstract

By Zoe Brain NCD 140.3, Transsexual Surgery Docket No. A-13-47 NCD Ruling No. 2 December 2, 2013 BOARD RULING THAT NCD RECORD IS NOT COMPLETE AND ADEQUATE TO SUPPORT THE VALIDITY OF THE NCD The aggrieved party also argues that the NCD when issued was invalid and unsupported by the NCD record. The aggrieved [...]

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> *The aggrieved party also argues that the NCD when issued was invalid and unsupported by the NCD record. The aggrieved party argues that the 1981 NCHCT report acknowledged the effectiveness of transsexual surgery in stating that "eight of the nine studies" that "represent[ed] the major clinical reports thus far published" between 1969 and 1980 on the outcome of the surgery "reported that most transsexuals show improved adjustment on a variety of criteria after sex reassignment surgery."7 NCD Record at 1718. The aggrieved party also argues that the ninth, unfavorable, study on which the NCHCT relied was "severely flawed and ideologically biased," and criticizes two of the sources cited in the 1981 NCHT report as ideologically biased against transgender individuals, based on their published writings. AP Statement at 5. We need not and do not address these arguments since we need not decide here whether the NCD record was complete and adequate to support the NCD at the time the NCD record was developed. In any event, our determination that the NCD record fails to account for developments in the care and treatment of persons with GID during the more than 30 years that have passed since the NCHCT issued its report containing the findings that HCFA adopted in issuing the NCD is, without more, a sufficient basis for our determination that the NCD record is not complete and adequate to support the validity of NCD 140.3.*
>
> *7 The NCHCT discounted these findings on the ground that the eight favorable studies did not meet "the ideal criteria of a valid scientific evaluation of a clinical procedure." NCD Record at 18.*

In summary:

> *Based on the current record in this proceeding initiated by an acceptable NCD complaint from an aggrieved party, the Departmental Appeals Board (Board) has determined that the NCD (National Coverage Determination) record in this case "is not complete and adequate to support the validity of the NCD" denying Medicare coverage for transsexual surgery "for sex reassignment of transsexuals." 42 C.F.R. § 426.525(c)(3); NCD 140.3. The submissions of the aggrieved party and the amici curiae, to which the Centers for Medicare & Medicaid Services (CMS) elected not to respond to defend the NCD, demonstrate that the premises for the NCD, which was based on a 1981 review of medical and scientific sources published between 1966 and 1980, are not reasonable in light of subsequent developments. This proceeding will thus move on to discovery and taking of evidence as provided in 42 C.F.R. §§ 426.532 and 426.540. This ruling does not address the ultimate question of whether the NCD as written is valid under the reasonableness standard, but only whether the existing NCD record on which the NCD was based is complete and adequate to support its validity.*

In other words... the recorded evidential basis for judging that treatment for Trans patients shouldn't be covered by Medicare is inadequate. There is considerable evidence that the conclusion was unjustified when it was made back in 1981, and the veritable mountain of evidence accumulated over the intervening third of a century has universally indicated that it was very wrong indeed. Certainly enough to overcome the burden of proof that the Aggrieved Party bears, and so great an amount that the CMS elected not to contest it.

The next step is to show that the ruling is not just unevidenced and unjustified, but that it is unreasonable and unjustifiable. The CMS may elect not to contest that proposition too, given the data.

This situation should have been reviewed decades ago, when there was possibly a shadow of doubt, rather than today when there's none. If this is treated in the same way as every other medical situation is treated, the result is a foregone conclusion. Unfortunately, that's a big if.

Source (PDF)

Cross-posted from A. E. Brain

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