Ending the Epidemic Task Force
Committee Recommendation
CR39

Recommendation Title: An Integrated Comprehensive Approach to Transgender Healthcare

a. **Adding Gender Identity or Expression to the existing Human Rights Law in New York State**
b. **Providing Medicaid Coverage & Universal Health Insurance Coverage for all medically necessary transition related health care for transgender New Yorkers**

1. **For which goal outlined in the Governor's plan to end the epidemic in New York State does this recommendation apply?** *1, 2 and 3*

2. **Proposed Recommendation:**

   a. Every state that has successfully provided comprehensive healthcare for transgender individuals has also concurrently had a human rights law that protected transgender people through the addition of the language "gender identity or expression." Without the existence of human rights protections for transgender New Yorkers, it becomes inordinately more difficult for the State Finance Department who oversees all public health insurance to enforce such policy changes and regulations. Furthermore, those changes are vulnerable to removal with any change in leadership. With a human rights law in place, that becomes impossible. The same is true for public insurance, Medicaid. At the federal level full healthcare coverage is now in place with the regulatory changes of June 2014. It is not wise healthcare policy to have gaps in care due to variances in differing entities.

   Adding the category “gender identity or expression” to the existing New York State (NYS) Human Rights Law will make it illegal to discriminate in the areas of employment, housing, public transportation, public accommodations, and credit (NYS Executive Law, Article 15). Transgender people’s rights are not statutorily protected allowing for discrimination to occur placing them at risk for disparate health issues and decreased access to HIV care and treatment. Access to housing and health care and results increased heath for transgender people and a lowering of such costs associated with healthcare.

   Making discrimination against transgender individuals illegal would do much to alleviate the burdens upon transgender people in their attempts to access steady employment, stable housing and competent healthcare – both through greater availability of employer-based health insurance and the legal requirement to offer the same level of access to medical care to transgender people as to non-transgender people. All of these outcomes would in turn lower the risks of HIV infection in the transgender population and their partners.

b. Expanding Medicaid Coverage for medically necessary transition related healthcare for transgender individuals improves other health needs and improves compliance with care: improving mental health, decreased substance use, improving the safety of hormone use and other products that otherwise would be obtained illegally, decreasing risk of transmission of hepatitis and HIV, improve engagement in general and HIV treatment in care. Transgender individuals are 50 times likelier to contract HIV.

The proposed expansion, while a great first step and very needed and welcomed change has several immediate drawbacks to it. It is recommended that the Department of Health engage medical and psychological experts in the care and treatment of transgenderism who are fully informed with current state of the art in treatment, current scientific knowledge and paradigm base for treatment and who also have a deep working knowledge of the World Professional Association for Transgender Health (WPATH) Standards of Care (SOC), v.7, pub. 9/2011. It appears from the proposed regulation that such research was not undertaken.

It is recommended elsewhere in these recommendations that the trauma informed care model be widely taught and implemented within the HIV/AIDS programmatic and nonprofit venues. In regard to Medicaid and health insurance coverage for transgender people, applying this model in conjunctions with the above suggested experts would lead to a recommendation that the health coverage not be linked to the Diagnostic and Statistical Manual (DSM-5) diagnosis of Gender Dysphoria. That diagnosis within the transgender treatment community is considered stigmatizing and discriminatory, an inaccurate description of the health needs of the transgender individual, and is not widely used to gain care. Furthermore the diagnosis provides no exit mechanism for when a transgender person's gender dysphoria is resolved. Carrying a mental health diagnosis so fraught with misunderstanding and stigma, backed in outdated bad science can and does add to the burden of discrimination and violence directed toward transgender people, and has been found to actually increase the violence toward them (S. Winter, reporting on research study, WPATH Conference, 2007).

Additionally, to exclude from care the most vulnerable and most at risk of new HIV infections, those 18-21 years of age is of grave concern and it is recommended that this stipulation be dropped and care for all transgender people (both children and adults) be provided. Children who do not receive the medically necessary care of puberty suppression or early hormone administration are at a greatly increase risk for homelessness, HIV and other illness, alcohol and substance abuse and violence. It is common practice to treat transgender youth and, again, it is recommended that Medicaid cover such medically necessary procedures.

Furthermore, it is recommended that there be more careful reading of the WPATH SOC It is no longer a mandatory or compulsory hierarchy of care for people with transgenderism. Transgender individuals under the current SOC, v.7, are permitted to access such medically

necessary treatments as are deemed medically necessary for them in no particular order, i.e., it may be medically necessary for a female to male transgender person to have chest reconstruction surgery prior to living full time as male or taking hormone treatment. We recommend this be corrected.

Additionally it is proposed that Universal Health Insurance Coverage be implemented for all. It is therefore proposed that the Commissioner of Finance clarify that all medically necessary transition related health care for transgender individuals is covered in all commercial plans regulated by NYS. As has been recommended above for Medicaid coverage, so it is recommended for Health Insurance Coverage.

It is also recommended that it is made clear by when such insurance companies should have such policies in place for access and implementation as there is a both a huge shortage of qualified hormone and surgical providers and a huge number of people waiting to access care. We further recommend that the New York State Department of Health (NYSDOH) immediately create, again in consultation with the above noted experts, programs for provider training in both hormone and surgical care in partnership with WPATH and medical schools. The risk here is that transgender people's desire for medical intervention will make them unduly vulnerable to receive care from either untrained or poorly trained providers, hearkening back to the reason why WPATH was founded in 1979 to prevent such occurrences. Poor health outcomes are a crucial risk factor in risk of new HIV infection.

Finally, it is noted that the creation of such Medicaid and Health Insurance Coverage for transgender people still maintains a hodge-podge of health care coverage for transgender people. Companies (and there are numerous such companies in NYS) who are governed by the Employee Retirement Income Security Act, 1974 (ERISA) have self-insured health plans for their employees. These plans essentially have no entity (either state or federal) that governs the formulation or implementation of their plans. While there are no current figures for the number of transgender employees affected by such plans, we may guess that it is significant. This includes both Fortune 500 companies and companies who restrict certain coverages in their plans due to religious objections. It is recommended that where possible and where appropriate the Department of Finance engage in a collaborative and educational outreach to heavily encourage such companies to adopt plans that are fully transgender inclusive to provide seamless care for all transgender New Yorkers. While not yet tested in the courts, it is a widely held belief that such self-insured plans that exclude transgender health care would be in direct violation of the recent interpretation of Title VII of the 1964 Civil Rights Act as interpreted by both Labor Secretary Perez and Attorney General Holder at the Department of Justice. That knowledge may assist the Department of Finance and the Department of Health in working this through with self-insured companies. Otherwise, it is recommended that the NYS Department of Finance undertake an education campaign on behalf of transgender New Yorkers so that they may make informed employment decisions.

List of key individuals, stakeholders, or populations who would benefit from this recommendation

- Transgender individuals (for both a and b)

List of measures that would assist in monitoring impact

For gender identity:

- A critical need to improve data collection to include transgender in data collection.
- Tracking of housing stability
- Tracking of vocational training and employment

For Medicaid & Universal Health Coverage:

- A critical need to improve data collection to include transgender in data collection
- Tracking the number of transgender living in New York State
- Tracking costs associated and cost-effectiveness of improved health care access

Footnotes or References

The Cost of Employment and Housing Discrimination against Transgender Residents of New York by Jody L. Herman, April 2013 See more at: http://williamsinstitute.law.ucla.edu/research/transgender-issues/ny-cost-of-discrimination-april-2013/#sthash.LbpM6DkV.dpuf.

Local Laws and Government Policies Prohibiting Discrimination Based on Gender Identity in New York By Christy Mallory, Sarah Liebowitz, May 2013 See more at: http://williamsinstitute.law.ucla.edu/research/workplace/ny-local-gi-laws-jun-2013/#sthash.Wn0EQTJB.dpuf.

Herbst, HJ, Jacobs, ED, Finlayson, T, McKelroy, VS, Neumann, MS, Crepaz, N. (2008) Transgender HIV prevalence and risk behaviors. AIDS and Behavior, 12(1):1-17.

National Transgender Discrimination Survey http://transequality.org.

Costs and Benefits of Providing Transition-related Health Care Coverage in Employee Health Benefits Plans: Findings from a Survey of Employers - See more at: http://williamsinstitute.law.ucla.edu/research/transgender-issues/costs-benefits-providing-transition-related-health-care-coverage-herman-2013/#sthash.PbbjfZZ6.dpuf.

3. **Would implementation of this recommendation be permitted under current laws or would a statutory change be required?**

For gender identity: Statutory change required

For Medicaid & Universal Health Coverage: Permitted under current law

4. **Is this recommendation something that could feasibly be implemented in the short-term (within the next year) or long-term (within the next three to six years)?** Within the next year, with some exceptions, perhaps up to three years.

5. **Please list the TF numbers of the original recommendations that contributed to this current version**: TF55, TF47, TF118, TF148, and TF177.