

Assessment of Public Comments for the 45th Amendment to 11 NYCRR 52 (Insurance Regulation 62).

The New York State Department of Financial Services (“Department”) received comments from an organization that represents psychiatrists in New York (“psychiatrists’ organization”); a national organization that provides crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender, and questioning youth (“LGBTQ”), aged 13-24 years old, (“LGBTQ youth organization”); and an organization that characterizes itself as “a statewide lobbying organization on behalf of the Christian community” (“lobbying organization”). The psychiatrists’ organization supports the proposed regulation but believes it is only the first step and advocates action that would prohibit physicians and mental health professionals from offering or providing services to change the sexual orientation of a minor. The LGBTQ youth organization also submitted comments in support of the proposed regulation. The lobbying organization submitted comments in opposition to the proposed regulation.

Specific comments in opposition to the proposed regulation by the lobbying organization include the following.

Comment

The regulation is unnecessary or highly premature given that the Department acknowledged in the regulatory impact statement that it is not known if any mental health professional in New York provides conversion therapy to minors.

Department’s Response

Although it is not known whether there are mental health professionals in New York that provide such therapy or will provide the therapy in the future, to the extent that a mental health professional in New York currently provides or will provide in the future conversion therapy, this amendment will prohibit health insurance coverage for the therapy.

Comment

Although the regulatory impact statement contends that the proposed regulation would impose no compliance costs on insurers, the regulation likely would require insurers to review, and possibly revise, their own insurance provisions, to inform mental health professionals and insureds of the ban on conversion therapy to minors, and to take steps to monitor compliance, all of which would impose costs on insurers.

Department's Response

The Department has revised the regulatory impact statement to reflect that there may be some costs to insurers to comply with the regulation. However, any such costs will be nominal. Insurers generally file policy form changes each year, and any changes necessary to comply with the regulation will be included with the other annual changes. In addition, the revised policy form will inform insureds of the ban. Therefore, insurers will not need to incur additional costs to send separate notifications to insureds. Additionally, any costs incurred as a result of the regulation may be offset by a reduction in claims.

Comment

The proposed regulation is an attempt to implement the provisions of a bill, (S.121/A.4958), which failed to pass the New York Legislature.

Department's Response

The proposed bill, S.121/A.4958, would prohibit a mental health care professional from providing conversion therapy to minors and would make doing so professional misconduct that could result in disciplinary action. The proposed regulation does not prohibit mental health professionals from providing conversion therapy to minors, nor does it make doing so professional misconduct. The proposed regulation prohibits health insurance coverage for conversion therapy provided to minors. As explained in the regulatory impact statement, the Superintendent of Financial Services ("Superintendent") has the authority to prohibit health

insurance policy forms that contain provisions that are misleading. Therefore, the Department did not make any changes in response to this comment.

Comment

The proposed regulation is based on a false premise that there is a growing consensus in the medical community that conversion therapy can be harmful to minors and that the regulatory impact statement offers no basis for this claim other than a series of conclusory statements by professional associations.

Department's Response

As stated in the regulatory impact statement, numerous relevant professional organizations have repudiated and discredited conversion therapy as being medically invalid and potentially harmful, and have taken positions that its members should avoid providing conversion therapy, particularly to minors. The regulatory impact statement also refers to a study that was conducted. Therefore, the Department did not make any changes in response to this comment.

Comment

Instead of banning conversion therapy, the Department should regulate forms of therapy that encourage minors to pursue “gender transitions” as such transitions can lead to significant hormonal changes, unnecessary elective surgeries, and even permanent infertility.

Department's Response

Health insurance coverage for gender dysphoria is a separate and distinct issue from conversion therapy provided to minors. Insurance Circular Letter No. 7 (2014) describes an insurer's responsibilities regarding health insurance coverage for gender dysphoria. The Department did not make any changes in response to this comment.