REPORT OF THE BOARD OF TRUSTEES

B of T Report 26-A-14

Subject: Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients (Resolution 5-A-13)

Presented by: David O. Barbe, MD, MHA, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws (Lynn Parry, MD, Chair)

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BACKGROUND

The Resident and Fellow Section introduced Resolution 5-A-13, "Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients," which was referred to the American Medical Association (AMA) Board of Trustees (BOT) for a report back to the House of Delegates (HOD) at the 2014 Annual Meeting. Resolution 5-A-13 asked:

> That our AMA support policies that allow for a change of sex designation on birth certificates for transgender individuals based upon verification by a physician that the individual has undergone gender transition according to applicable medical standards of care;
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> That our AMA support eliminating any government requirement that an individual have undergone surgery in order to change the sex designation on birth certificates; and
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> That our AMA support that any change of sex designation on an individual's birth certificate not hinder access to medically appropriate preventive care.

Resolution 5 asks for support of identical policies as Resolution 4-A-13, which was adopted by the HOD Policy H-65.967. The Reference Committee was concerned about disagreement in the medical community over what constitutes a medical change in sex, and the possible long-term and unintended consequences of changing the sex on one's birth certificate prior to surgery, including the ramifications for insurance coverage of reproductive care. This report will discuss the concerns raised by Resolution 5 and propose adopting recommendations in lieu of Resolution 5. Input for this report was provided by the LGBT Advisory Committee.

DISCUSSION

*Current Medical Understandings of Gender Transition*

A person's gender identity refers to one's self-identification as a man or a woman, as distinct from one's anatomical sex at birth. Usually, people born with the physical characteristics of males identify and live their lives as men, and those with physical characteristics of females identify and live their lives as women. However, one's gender identity does not always align with one's anatomical birth sex. This discordance can sometimes lead to gender dysphoria, i.e., a feeling of

stress and discomfort with one's anatomical sex. Gender dysphoria, if clinically significant and persistent, is diagnosed as gender dysphoria (GD).

GD is recognized as a serious medical condition in both the International Classification of Diseases-10 (ICD-10) and the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), published by the American Psychiatric Association.[1] It is characterized by a persistent and often intense discomfort with one's anatomical sex and with one's primary and secondary sex characteristics. This conflict can create intense emotional pain and suffering that is intractable, severe and often incapacitating.[2] If left medically untreated, this condition predictably results in dysfunction, debilitating depression and, for some people, suicidality and death.

The World Professional Association For Transgender Health, Inc. (WPATH) (formerly known as "The Harry Benjamin International Gender Dysphoria Association, Inc."),[3] has established internationally accepted standards of care (SOC) for the treatment of people with GD.[4] For people with severe GD, the course of care includes gender transition, a medical protocol for enabling the individual to live as the sex that is consistent with the person's gender identity, often referred to as a person's affirmed gender or sex. The current SOC recommend a medically appropriate combination of mental health care, social transition (sometimes referred to as the "real life experience"), hormone therapy and/or sex reassignment surgery. The determination of the proper level and combination of treatments necessary for gender transition rests with the individual treating physician in consultation with the patient and other treating mental health professionals.

For many persons, social transition and hormone therapy may be sufficient to treat GD. Others will require a different therapeutic regime, including gender affirmation surgery. As set forth in the SOC, "while many individuals need both hormone therapy and surgery to alleviate their gender dysphoria, others need only one of these treatment options and some need neither. Some patients may need hormones, a possible change in gender role, but not surgery; others may need a change in gender role along with surgery, but not hormones."[5]

As with most serious medical conditions, the correct course of treatment for any given individual is a decision made by the treating physician and the patient, with the goal of enabling the patient to achieve genuine and lasting comfort with his or her gender. As explained in the SOC, "Treatment is individualized: What helps one person alleviate gender dysphoria might be very different from what helps another person. This process may or may not involve a change in gender expression or body modifications."[6]

The only effective treatment of GD is medical care to support the person's ability to live fully consistent with one's gender identity. Efforts to change a person's gender identity are futile and, like sexual orientation change efforts, can have a disastrously negative impact on the patient. An established body of medical research studies demonstrates the effectiveness and medical necessity of mental health care, social transition, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for people diagnosed with GD.[7]

*Eliminating the Requirement that Individuals Undergo Surgery in Order to Change Their Sex Designation on Birth Certificates*

While originally intended as a record of the existence and circumstances of birth, the birth certificate now is used widely in determining eligibility for employment, obtaining other documents (e.g., driver's licenses, social security cards, passports, and other state identification documents), establishing school records, proving age, and enrolling in government programs. Birth certificates are also used extensively to assist in determining eligibility for public assistance and

other benefits, to enroll children in school, and as proof of age eligibility for sports and other age restricted activities.

Across the country, laws governing corrections to gender markers on birth certificates are relatively uniform in large part because many states adopted the relevant provisions of the 1977 revision of the Model State Vital Statistics Act (MSVSA), which recommended that corrections to gender markers on birth certificates be granted after applicants change their sex by "surgical procedure" and provide a court order to that effect.[8] The only states which allow corrections to gender markers on birth certificates on the basis of "clinically appropriate treatment," as opposed to surgery, are California, Vermont and Washington.[9]

In 2008 the American Psychological Association (APA) released the following statement: "Be it resolved that the APA encourages legal and social recognition of transgender individuals consistent with their gender identity and expression, including access to identity documents consistent with their gender identity and expression…" The basis for changing gender markers on identity documents according to the APA is a person's "social transition," not a specific medical event, such as hormone therapy or surgery.[10]

Health experts in GD, including WPATH, in the interest of the health and well-being of transgender people, reject that a person should have to undergo surgery or accept sterilization as a condition of obtaining an accurate birth certificate.[11] For many individuals, surgery may even be counter-indicated. WPATH has urged governments to eliminate surgical requirements as part of the process for changing identity documents because such requirements serve as a barrier to effective treatment.[12] In addition, WPATH issued a statement condemning surgical requirements in 2010, stating "no person should have to undergo surgery or accept sterilization as a condition of gender recognition." The WPATH Board of Directors urged governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.[13]

Also in 2010, the US Department of State abandoned its surgery-based policy in favor of a new policy requiring a letter from a physician (without reference to the patient's surgical status) to update the birth certificates of U.S. citizens born in other countries.

Accordingly, it is timely for the AMA to support eliminating any government requirement that an individual must have undergone surgery in order to change the sex designation on a birth certificate. Further, given that state vital statistics statutes specify when gender markers on birth certificates can be changed, the AMA should support modernizing state vital statistics statutes to ensure accurate gender markers on birth certificates.

*Any Change in an Individual's Sex Designation on a Birth Certificate Should not Hinder Access to Medically Necessary or Appropriate Care*

Possessing accurate identification documents that are consistent with a person's gender identity is essential to basic social and economic functioning in our country. Access to employment, housing, health care and travel all hinge on having appropriate documentation. In addition, having identity documents with incorrect sex designation can expose transgender individuals to bias, discrimination, harassment, and even violence, particularly when transgender individuals must disclose those inaccurate identity documents for inspection.[14] These outcomes, according to WPATH, "may have a deleterious impact on a person's social integration and personal safety."[15] Disproportionate discrimination, harassment and violence against transgender individuals have been shown to contribute to health disparities within the transgender community.[16] Unfortunately, there are unintended consequences to changing an individual's sex designation on a birth

certificate, such as creating an inconsistency between the gender noted on the birth certificate and the individual's anatomical sex.

Government records that reflect the sex indicated on a person's birth certificate can affect what gender people are considered to be by their health insurance providers, their health systems, their state's medical assistance program or Medicare. Depending on what gender is recorded in these records, certain treatments, screenings and procedures may be disallowed, despite the fact that the best practice is to screen and treat all of a person's bodily organs, regardless of a person's gender identity and regardless of whether or not the treatment relates to gender transition. For example a transgender woman may be denied gynecological services because they are only covered for females.[17] The literature is replete with anecdotal evidence of transgender individuals being denied medically necessary treatment both related to gender transition and ordinary preventive medical care. Insurance companies have denied reimbursement for treatment related to transgender individual's anatomy because such does not match up with the sex recorded on their insurance records. Common health problems that receive routine treatment in other contexts may not receive adequate attention when the patient is transgender.[18]

Several state insurance commissions have enacted policies that now require an insurer to cover any sex-specific mandated coverage, if medically necessary, regardless of whether a person has transitioned to live as the sex that is different from the sex identified in the statute. In other words, a Pap smear mandate would be applicable to a biological female who self-identifies as male, and a prostate screening mandate would be applicable to a biological male who self-identifies as female.[19] Another state has prohibited the denial, cancellation, limitation or refusal to issue or renew health coverage because of a person's sexual orientation, which has been defined to include transgender status.[20]

Physicians with experience in health care needs of transgender patients can be difficult to locate, and transgender patients often encounter discrimination from physicians rather than understanding. Testimony from transgender individuals indicates that many health care professionals routinely refuse to treat even non-transition related health issues.[21] Some transgender patients do not want transition-related services at all, but prefer to receive medical care from physicians who have worked with other gender-variant individuals and understand how to approach non-normative gender expression or behavior.[22]

Best medical practices reflect that individuals should receive the care that is appropriate regardless of whether or not it matches with the gender on the birth certificate. The American Congress of Obstetricians and Gynecologists recognizes that transgender individuals who were anatomically female at birth but are now living as a male will continue needing breast and reproductive organ screening, unless they have had a mastectomy or had their ovaries, uterus and/or cervix removed. Services that ob-gyns should be able to offer transgender patients include preventive care, Pap tests, sexually transmitted infection screenings, etc.[23]

The sex indicated on a birth certificate or insurance card or other identity document should have no bearing on the health care services made available to transgender individuals. The American Medical Association should adopt the position that a person's sex designation on a birth certificate should not hinder access to medically appropriate preventive care.

RECOMMENDATIONS

The Board of Trustees recommends that the following statements be adopted in lieu of Resolution 5-A-13 and the remainder of this report be filed:

1. That our AMA Policy H-65.967 be reaffirmed. (Reaffirm HOD Policy)

2. That our AMA support elimination of any requirement that individuals undergo gender affirmation surgery in order to change their sex designation on birth certificates and support modernizing state vital statistics statutes to ensure accurate gender markers on birth certificates. (New HOD Policy)

3. That our AMA support that any change of sex designation on an individual's birth certificate not hinder access to medically appropriate preventive care. (New HOD Policy)

Fiscal Note: Less than $500

REFERENCES

[1] *Diagnostic and Statistical Manual of Mental Disorders*, America Psychiatric Association, (4th ed. 2000).
[2] *Principles of Transgender Medicine and Surgery*, Ettner, Monstrey, & Eyler, Eds (2007).
[3] WPATH ("World Professional Association for Transgender Health, Inc.") is the leading, international, professional organization devoted to the understanding and treatment of gender identity disorders and is actively involved in supporting, educating, and advocating on behalf of individuals diagnosed with gender identity disorder. The organization's membership includes licensed professionals in the disciplines of medicine, internal medicine, endocrinology, plastic and reconstructive surgery, urology, gynecology, psychiatry, nursing, psychology, neuropsychology, and other disciplines. http://www.wpath.org/About.htm.
[4] http://www.wpath.org/soc.htm.
[5] *Id.*, 2.
[6] *Id.*, 5.
[7] Brown G R: A review of clinical approaches to gender dysphoria. J Clin Psychiatry. 51(2):57-64, 1990. Newfield E, Hart S, Dibble S, Kohler L. Female-to-male transgender quality of life. Qual Life Res. 15(9):1447-57, 2006. Best L, and Stein K. (1998) "Surgical gender reassignment for male to female transsexual people." Wessex Institute DEC report 88; Blanchard R, et al. "Gender dysphoria, gender reorientation, and the clinical management of transsexualism."J Consulting and Clinical Psychology. 53(3):295-304. 1985; Cole C, et al. "Treatment of gender dysphoria (transsexualism)." Texas Medicine. 90(5):68-72. 1994; Gordon E. "Transsexual healing: Medicaid funding of sex reassignment surgery." Archives of Sexual Behavior. 20(1):61-74. 1991; Hunt D, and Hampton J. "Follow-up of 17 biologic male transsexuals after sex-reassignment surgery." Am J Psychiatry. 137(4):432-428. 1980; Kockett G, and Fahrner E. "Transsexuals who have not undergone surgery: A follow-up study." Arch of Sexual Behav. 16(6):511-522. 1987; Pfafflin F and Junge A. "Sex Reassignment. Thirty Years of International Follow-Up Studies after Sex Reassignment Surgery: A Comprehensive Review, 1961-1991." IJT Electronic Books, available at http://www.symposion.com/ijt/pfaefflin/1000.htm; Selvaggi G, et al. "Gender Identity Disorder: General Overview and Surgical Treatment for Vaginoplasty in Male-to-Female Transsexuals." Plast Reconstr Surg. 2005 Nov;116(6):135e-145e; Smith Y, et al. "Sex reassignment: outcomes and predictors of treatment for adolescent and adult transsexuals." Psychol Med. 2005 Jan; 35(1):89-99; Tangpricha V, et al. "Endocrinologic treatment of gender identity disorders. " Endocr Pract. 9(1):12-21. 2003; Tsoi W. "Follow-up study of transsexuals after sex reassignment surgery." Singapore Med J. 34:515-517. 1993; van Kesteren P, et al. "Mortality and morbidity in transsexual subjects treated with cross-sex hormones." Clin Endocrinol (Oxf). 1997 Sep;47(3):337-42; World Professionals Association for Transgender Health Standards of Care for the Treatment of Gender Identity Disorders v.6 (2001). Principles of Trangsnder Medicine and Surgery, Ettner, Monstrey, & Eyler, Eds (2007).
[8] Model State Vital Statistics Act and Regulations § 21(e) (Ctr. For Disease Control & Prevention 1992), *available at* http://www.cdc.gov/nchs/data/misc/mv-sact92b.pdf.

[9] Wash. Rev. Code Ann. § 43.70.150 (West 2009); 18 V.S.A. § 5112(b) (West 2011); CA HL & S § 1004430 (West 2012).
[10] APA Policy Statement: Transgender, Gender Identity & Gender Expression Non-Discrimination, available at http://www.apa.org/about/policy/transgender.aspx.
[11] The WPATH Identity Recognition Statement, June 16, 2010 (*available at* http://www.wpath.org/documents/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf ) states: "No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures."
[12] Press Release, World Prof. Ass'n for Transgender Health (June 16, 2010), *available at* www.wpath.org.
[13] Press Release, World Prof. Assn for Transgender Health (June 16, 2010), *available at* http://www.wpath.org/documents/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf.
[14] Mottet, 392-393.
[15] WPATH Statement June 16, 2010, *available at* http://wwwwpath.org.
[16] Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, Injustice at Every Turn, A Report of the National Transgender Discrimination Survey. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011), 72.
[17] Id. at 397
[18] Deborah Rudacille, The Riddle of Gender 220 (2005) (discussing barriers to adequate healthcare for LGBT patients, including poor physician access, lack of awareness in the medical community about the health concerns of LGBT patients, and the failure of curricula in most medical schools to address LGBT health issues).
[19] Oregon Insurance Division Bulletin INS 2012-01; State of California Department of Insurance Bulletin 2007-2 (Implementation of AB 1586: Insurance Gender Non-discrimination); Vermont Department of Financial Regulation, Division of Insurance Bulletin No. 174. (Guidance Regarding Prohibited Discrimination on the Basis of Gender Dysphoria Surgery and Related Health Care)
[20] State of Colorado, Department of Regulatory Agencies, Division of Insurance, Bulletin No. B-4.49.
[21] Jaime M. Grant et al., Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 73-74 (2011) *available at* http://transequality.org/PDFs/NTDS_Report.pdf (reporting that 19% of a national sample of transgender individuals had been refused care by a medical provider due to their transgender or gender non-conforming status)
[22] Evan Eyler, Primary Medical Care of the Gender Variant Patient, in Principles of Transgender Medicine and Surgery 15, 19-21 (Randi Ettner et al. eds., 2007)
[23] The American College of Obstetrics and Gynecologists, Ob-Gyns: Prepare to Treat Transgender Patients (November 21, 2011)