sionals who work in prisons with individuals convicted of a sexually violent offense in jurisdictions with SVP laws. Specifically, this case highlights that clinical documentation could eventually be used by the prosecuting team should the individual convicted of a sex offense later face SVP proceedings in a given jurisdiction. Documentation of treatment is important, but treating clinicians who work with offender populations should familiarize themselves with SVP procedures in their state, so that they may be aware of the implications of their documentation and related standards for what to note in treatment records for this patient population.

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Medicaid Coverage for Transgender Women Seeking Gender-Affirming Surgery

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Medicaid Is a Government Unit Under the Iowa Civil Rights Act's Definition of a Public Accommodation and Denial of Gender-Affirming Surgeries Is Gender Discrimination and a Violation of the Iowa Civil Rights Act

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In *Good v. Iowa Dep't of Human Servs.,* 924 N.W.2d 853 (Iowa 2019), the Iowa Supreme Court found that Medicaid was a government unit under the definition of a public accommodation and that denial of coverage for gender-affirming surgeries violated the Iowa Civil Rights Act on the basis of gender discrimination. The court affirmed the decision of the district court to strike down Iowa Admin. Code r. 441–78.1 (4), which denied Medicaid coverage for gender-affirming surgeries. EerieAnna Good and Carol Beal, the plaintiffs in the case, are transgender women from Iowa with gender dysphoria who sought gender-affirming surgery as deemed medically necessary by their doctors. They both were enrolled in a managed care organization (MCO) with Medicaid, which denied their request for coverage of gender-affirming surgeries.

Facts of the Case

Ms. Good and Ms. Beal had presented as female for many years. They had changed their names, birth certificates, driver's licenses, and social security cards. Both women experienced anxiety and depression as a result of their gender dysphoria and had health care providers who deemed that surgery was medically necessary to treat their gender dysphoria. They sought Medicaid coverage for surgical interventions through their MCOs; Ms. Good sought a gender-affirming orchiectomy procedure from AmeriHealth Caritas Iowa in January 2017, and in June 2017 Ms. Beal sought gender-affirming vaginoplasty, penectomy, bilateral orchiectomy, clitoroplasty, urethroplasty, labiaplasty, and perineoplasty from Amerigroup of Iowa, Inc.

Iowa Admin. Code r. 441–78.1 (4) (2014) stipulates that coverage of "cosmetic, reconstructive, or plastic surgery" is prohibited because these procedures are aimed to improve appearance and help people feel better from a psychological perspective, rather than improve bodily functions. Gender-affirming surgeries are excluded from coverage under this rule because they do not restore bodily function. Iowa code includes language that specifically prohibits "[p]rocedures related to transsexualism, hermaphroditism, gender identity disorders, or body dysmorphic disorders . . . [b]reast augmentation mammoplasty, surgical insertion of prosthetic testicles, penile implant procedures, and surgeries for the purpose of sex reassignment" (IAC Ch 78, p 3 (2014), available at: https://www.legis.iowa.gov/docs/iac/rule/02-05-2014.441.78.1.pdf).

Ms. Good filed her request for Medicaid preapproval on January 27, 2017, but Medicaid denied her request given the rule that excluded "sex reassignment" surgery as a covered benefit. She filed an internal appeal and later an appeal to the Department of Human Services (DHS), both of which were denied, upholding AmeriHealth's denial of coverage. Ms. Good then appealed to the director of DHS, but the denials were upheld and it was determined that DHS lacked jurisdiction to review Ms. Good's constitutional challenge to the rule. She filed a petition for judicial review in the district court on September 21, 2017 claiming that Iowa Admin. Code r. 441–78.1 (4) is in violation of the Iowa Civil Rights Act (ICRA) (Iowa Code § 216.7(1)(*a*) (2009)) and the equal protection clause of the Iowa Constitution,

which prohibit sex and gender discrimination. Ms. Beal had a similar process with Amerigroup and filed a petition for judicial review in district court on December 15, 2017. She presented the same arguments.

DHS filed to dismiss both cases on various grounds. The district court consolidated the cases and denied the DHS motions to dismiss, finding that DHS's denial of Medicaid coverage was reversible and would disproportionately negatively impact private rights, and that the decision to deny coverage for gender-affirming surgery was "unreasonable, arbitrary, and capricious." The Iowa Supreme Court retained and reviewed the appeal by DHS.

Ruling and Reasoning

The Iowa Supreme Court affirmed the district court ruling. DHS had challenged the ruling on several grounds, which the Iowa Supreme Court considered. It ruled that Medicaid is a government unit under the ICRA's definition of a public accommodation and that denying coverage of the sought-after surgical procedures violated ICRA's prohibition against gender identity discrimination, that the denial of coverage violated equal protection rights embedded within the Iowa Constitution, and that the rule allowing the denial would negatively impact private rights disproportionately. While the district court ruled that the ICRA was not violated, because the gender discrimination clause does not include "transsexuals," the Iowa Supreme Court noted that the rule violated the ICRA prohibition against gender discrimination.

DHS had asserted that a public accommodation must be a physical place or establishment of facility. The Iowa Supreme Court affirmed that the DHS is a "government unit" in accordance with the ICRA definition (and dictionary definitions) and that prior cases before the court support the argument that the ICRA does not define public accommodation as a physical place. As Medicaid offers benefits to the public, it was ruled to be a public accommodation.

DHS had further asserted that Iowa Admin. Code r. 441–78.1 (4) did not consist of a gender discriminatory provision because Medicaid beneficiaries were not entitled to gender-affirming surgery, whether the beneficiary was transgender or not. DHS argued that the exclusion of coverage for these surgeries, including surgery related to "transsexualism," related to broad categories of excluded surgeries used more for cosmetic and psychological purposes. The Iowa Supreme Court noted that the Iowa legislature modified the ICRA in 2007, adding "gender identity" as a protected group if it served as the basis for denial of services. The court therefore found that Iowa Admin. Code r. 441–78.1 (4) discriminates based on gender and violates the equal protection clause of the ICRA since the ICRA encompasses transgender individuals and the discrimination is based on the nonconformity between Ms. Good and Ms. Beal's gender identity and biological sex. Therefore, DHS and its agents were prohibited from denying coverage for the surgeries because Iowa Admin. Code r. 441–78.1 (4) violates the ICRA's prohibition on gender-identity discrimination. The court did not accept the DHS argument that the gender-affirming surgeries were cosmetic or being performed primarily for psychological purposes. The court further noted that coverage for some surgeries of a cosmetic nature was allowable, such as revision of scarring or congenital anomaly corrections, but that coverage for surgery of a transgender individual was not allowable and therefore discriminatory. Because it found that the 2007 amended ICRA was violated, the Iowa Supreme Court did not address the other matters raised on appeal.

Discussion

The language and policies included in Iowa Admin. Code r. 441–78.1 (4) were antiquated and did not reflect the way the DSM-5 or the medical community understands gender identity. For example, the court must rule on medical procedures based on language in the code, such as "sex reassignment" when accepted medical terminology is "gender-affirming surgery." Terms such as "transsexualism" are no longer used and are now considered incorrect and offensive. As we continue to learn about gender identity, policies and agency language have not caught up with the way that gender is viewed and the way that gender dysphoria is treated. The use of the administrative legal system in this case helped redefine medically necessary treatment for transgender individuals and those with gender dysphoria, and solidified an area where discrimination could contribute to disparate care for certain individuals.

It is important for physicians or evaluating forensic psychiatrists working with patients or evaluees with gender dysphoria to be aware of evolution in medical definitions and treatment options as well as evolving policies to effectively treat individuals and

avoid causing further harm. Physicians who are treating or are in the position of reviewing cases for forensic purposes should be familiar with contemporary terminology, language, and policy. Forensic experts should also be aware of the medical standard of care as it changes. This case also raises the point that, as court rulings and claims for medically necessary treatments align with advancing medical science, public dollars for appropriate care may need to be identified if not readily available.

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Determining Liability When a Patient Develops Tardive Dyskinesia

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Despite Concerns about Negligent Misrepresentation in the Manufacturer's Marketing, an Antipsychotic's FDA Class Label Warning Regarding Tardive Dyskinesia Was Adequate

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In *Johnson & Johnson, Inc. v. Fortenberry*, 234 So.3d 381 (Miss. 2017), the Supreme Court of Mississippi examined a trial court's ruling in a product liability suit. Action was brought against the manufacturer of the second-generation antipsychotic Risperdal after a patient developed tardive dyskinesia. The trial court's jury awarded the patient $1.95 million for failure to provide an adequate warning as well as negligent misrepresentation of tardive dyskinesia risk. On appeal, the court reversed and found that the class label warning provided an adequate warning. At the same time, the court was also in support of $650,000 in economic damages. The court also noted that the negligent misrepresentation claim was outside of the scope of the state's product liability law and that jury instructions for this claim were improper. The trial court's ruling was reversed and remanded.

Facts of the Case

Louise Taylor was psychiatrically hospitalized for a psychotic episode in 1998. Her outpatient psychiatrist, Dr. Richard Rhoden, initially continued her hospital-initiated, first-generation antipsychotic, haloperidol. Dr. Rhoden later prescribed quetiapine, a second-generation antipsychotic. After a suicide attempt by an overdose with quetiapine, Dr. Rhoden prescribed Risperdal, another second-generation antipsychotic. Per Dr. Rhoden, Ms. Taylor and her daughter received information regarding possible side effects of Risperdal, including tardive dyskinesia (TD), which is a potentially irreversible, involuntary movement disorder linked to antipsychotic use. Like all other antipsychotic medications on the market, Risperdal had a Food and Drug Administration (FDA) class label warning for tardive dyskinesia.

Ms. Taylor was prescribed Risperdal from March 1999 until January 2001. At a January 2001 visit with Dr. Rhoden, Ms. Taylor was noted to have developed oral dyskinesia. Dr. Rhoden consequently decreased Risperdal and restarted quetiapine. In February 2001, Ms. Taylor was reported to have developed tardive dyskinesia.

Ms. Taylor filed a complaint (through her conservator and niece, Brenda Fortenberry) against Ortho-McNeil Janssen Pharmaceuticals, the manufacturer and distributor of Risperdal, as well as its parent company, Johnson & Johnson, Inc., claiming that the medication resulted in the development of tardive dyskinesia. (Ms. Taylor named Dr. Rhoden in the lawsuit, but that claim settled out of court.) The trial court jury found in Ms. Taylor's favor, noting Janssen's "failure to provide adequate warnings/instructions" and Janssen's "negligent marketing/misrepresentation" (*Fortenberry*, p 386). Ms. Taylor was awarded $650,000 in economic damages and $1.3 million in noneconomic damages.

Janssen appealed the decision on several grounds. Janssen argued that Ms. Taylor's failure-to-warn claim did not present evidence suggesting that the Risperdal warning was inadequate. Janssen also argued that they were entitled to judgment due to insufficient evidence on Ms. Taylor's negligent misrepresentation claim. Janssen argued that there was no proof that Dr. Rhoden, in prescribing Risperdal to