Literature Review

Re: Medical necessity of facial gender reassignment surgery for transgender women

Date: November 1, 2018

I. Facial gender reassignment surgery is medically appropriate for and consistent with the symptoms and proper diagnosis of gender dysphoria.

Facial gender reassignment surgery is a procedure that changes male secondary sex characteristics into female ones for the purpose of treating gender dysphoria. Facial reassignment has been shown to be highly effective in treating gender dysphoria.

A. Gender dysphoria is an illness or disease.

Gender dysphoria is “[o]ften experienced as depression, anxiety, irritation, and/or agitation, [it] describes the sense that something is very wrong . . . .”¹ Before treatment, individuals with gender dysphoria “live in a dissociated state of mind and body.”² Gender dysphoria is a disease in which there is “incongruence between the individual’s own perception of his/her sex and their biological phenotype.”³ Affected individuals have “a strong desire to undergo medical and surgical treatment … in order to alleviate physical incongruence and gender dysphoria.”⁴ Transsexualism—another term for gender dysphoria—is recognized under the World Health Organization’s International Classification of


³ Ebba K. Lundqvist et al., Quality of life improves early after gender reassignment surgery in transgender women, 40 EUR. J. of PLASTIC SURGERY 223 (2017).

⁴ Id.
Diseases, Tenth Revision (ICD-10) as medical condition F.64.0. It is defined as a “desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one’s anatomic sex, and a wish to have surgery and hormonal treatment to make one’s body as congruent as possible with one’s preferred sex.”

While the exact biological root causes of gender dysphoria have not been identified, magnetic resonance imaging studies have shown that the brains of transgender children, adolescents, and adults match the patterns associated with their affirmed sex rather than sex assigned at birth, even before any hormonal treatment. The regions affected play a role in body perception and self-awareness. The brain contains a detailed map of the body. Neurological problems such as phantom limbs and some symptoms experienced by stroke survivors are known to result from a disconnect between the body and brain’s map of the body. Researchers believe that gender dysphoria is similarly caused by an incongruity between the physical body and the brain’s internal map of the body, which includes sex-specific anatomy.

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5 World Health Organization, International Statistical Classification of Diseases and Related Health Problems, 10th Revision (2016), http://apps.who.int/classifications/icd10/browse/2016/en/#F60-F69 (“A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one’s anatomic sex, and a wish to have surgery and hormonal treatment to make one’s body as congruent as possible with one’s preferred sex.”).


8 Id.

9 V.S. Ramachandran and David Brang, Phantom touch, 4 Scholarpedia 8244 (2009), http://www.scholarpedia.org/article/Phantom_touch.

10 See e.g., V.S. Ramachandran & Paul McGeoch, Phantom Penises in Transsexuals: Evidence of an Innate Gender-Specific Body Image in the Brain, 15 J. of Consciousness
Family and twin studies also indicate a strong genetic component to gender dysphoria. The biological origin of this condition is reflected in the forthcoming ICD-11, in which re-names the condition “gender incongruence” and moves it from a mental health diagnosis to a physical one.

B. Changing sex characteristics is the standard and appropriate treatment for gender dysphoria.

Men and women are sexually dimorphic, that is, they have distinct, sex-linked physical characteristics. Not only do men and women have readily apparent sex differences in genitals, reproductive organs and hormone levels, but men and women also have prominent differences in secondary sex characteristics. These differences can be seen in breasts, facial hair, fat distribution, muscle mass, height, body odor, skin texture, body hair, baldness, voice, Adam’s apple, and facial shape.

Changing physical sex characteristics from one sex to another is the standard treatment for gender dysphoria. According to the World Professional Association for Transgender Health (WPATH), the recognized effective treatment of gender dysphoria is a triadic approach of providing mental health treatment, hormone therapy, and surgeries.


11 Id.; Tinca J. C. Polderman et al., The Biological Contributions to Gender Identity and Gender Diversity: Bringing Data to the Table, 48 Behavior Genetics 95-108 (2018).

12 World Health Organization, ICD-11: Classifying disease to map the way we live and die (2018), http://www.who.int/health-topics/international-classification-of-diseases (“Gender incongruence, meanwhile, has also been moved out of mental disorders in the ICD, into sexual health conditions. The rationale being that while evidence is now clear that it is not a mental disorder, and indeed classifying it in this can cause enormous stigma for people who are transgender, there remain significant health care needs that can best be met if the condition is coded under the ICD.”).

13 See American Medical Association (AMA) House of Delegates’ Resolution 122, Removing Financial Barriers to Care for Transgender Patients at 1, ¶¶ 24-26 (April 18, 2008) (“An established body of medical research demonstrates the effectiveness and
The WPATH Standards of Care recognize that for those who do not experience relief due to other measures, “surgery is essential and medically necessary to alleviate their gender dysphoria . . . relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish greater congruence.”

The purpose of changing (or preventing the change of) sex characteristics is to treat gender dysphoria. This purpose underscores the medical necessity as opposed to cosmetic nature of these treatments. For example, genital reassignment surgery is not a cosmetic surgery performed to “improve the appearance” of a person’s genitals, but to change a penis into a vagina or vice versa. That is, it changes the sex of a person’s genitals, making the primary purpose of the surgery functional, not cosmetic. Likewise, facial reassignment surgery is not designed to “improve the appearance” of a person’s face, but rather to change a male face into a female one. That is, it changes the sex of a face so that it functions as a face that is consistent with the person’s brain sex. Accordingly, facial reassignment is one of the primary forms of sex reassignment surgery.

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C. Facial reassignment surgery is performed to change the sex of a face.

1. The face plays a most important role in social functioning.

As J. Joris Hage, MD, notes:

In most human relationships, the face represents the most important expression between people. It reflects our personality and emotions and is intimately connected with both verbal and nonverbal communication. The head and face are commonly considered to be the location of the “self.” Because of this psychological and social significance, anything that appears abnormal in the face has a direct influence on one’s self-confidence. An individual with a noticeable deformity or incongruity of the face may be the object of visual and verbal aggression, leading to feelings of shame, impotence, anger, and even humiliation. An example of such an incongruity may be masculine features found in a female face….16

People can readily determine someone’s sex from their face alone, even as infants.17 While people are highly accurate, most errors are made in judging female faces as male.18 That is, transgender women

16 J. Joris Hage et al., Gender-Confirming Facial Surgery: Considerations on the Masculinity and Femininity of Faces, 99 PLASTIC AND RECONSTRUCTIVE SURGERY 1799, 1799 (1997); Masami K. Yamaguchi et al., Judgment of Gender Through Facial Parts, 24 PERCEPTION 563, 563 (1994) (“In social settings, the “face plays the most important role in transmitting visual information from one person to another.”).

17 Id.; Heather A. Wild et al., Recognition and Sex Categorization of Adults’ and Children’s Faces, 77 J. EXPERIMENTAL CHILD PSYCH. 269, 271 (2000) (Morphing many faces together “clearly show[s] global structural differences between the male and female faces. These global differences consist of large-scale shape differences that are difficult to describe concisely using verbal labels, but which are easily associated with male versus female faces.”).


19 Vicki Bruce et al., Sex Discrimination: How Do We Tell the Difference Between Male
who have ambiguous faces or some male facial qualities are likely to be perceived by others as male. Moreover, the top part of the face is categorized first, so if there is a prominent brow ridge, for example, that will override the rest of the face, and the person will be classified as male.\textsuperscript{20}

Classifying faces as male or female is regarded as “one of the most biologically important tasks of facial categorization.”\textsuperscript{21} The “gendering” of other people has important social functions, not just in reproduction, but in social interactions in general.\textsuperscript{22} As one surgeon notes, “it is greatly distressing to be identified by others as a member of the opposite sex” in conflict to your own deeply held sense of self.\textsuperscript{23} Outside of being misgendered, there is also internal distress associated with experiencing one’s own body as being drastically incongruent.

2. **Male and female faces differ in specific, known and measurable ways, and surgery can change the sex of these features.**

Faces contain significant distinguishing sex characteristics that make male and female faces readily distinguishable.\textsuperscript{24} For example, the chin,

\textit{and Female Faces?), 22 PERCEPTION 131, 132 (1993) (3/4 of the errors were misjudging female faces. “Overall accuracy for female faces was 93.8% compared with 98.2% with the male.”).}

\textsuperscript{20} Jean-Yves Baudouin & Glyn W. Humphreys, \textit{Configural Information in Gender Categorisation. 35 PERCEPTION 531, 539 (2006) (studying categorization by “aligning the top half of one face with the bottom half of another. The two faces had the same or different genders.”).}

\textsuperscript{21} Heather A. Wild et al, \textit{Recognition and Sex Categorization of Adults’ and Children’s Faces: Examining Performance in the Absence of Sex-Stereotyped Cues, 77 J. OF EXPERIMENTAL CHILD PSYCHOLOGY 269, 270 (2000).}

\textsuperscript{22} Yamaguchi, \textit{supra} note 16, at 563.

\textsuperscript{23} Jeffrey H. Spiegel, \textit{Facial Determinants of Female Gender and Feminizing Forehead Cranioplasty, 121 LARYNGOSCOPE 250, 260 (2011).}

\textsuperscript{24} Jean Yves Baudouin & Mathieu Gallay, \textit{Is Face Distinctiveness Gender-Based?, 32 (No. 4) J. EXPERIMENTAL PSYCHOL. 789, 790 (2006) (“[T]he face population is not normally distributed around a central tendency but quite bimodal with two “central” tendencies, one for each gender.”); Rupert Dempf & Alexander W. Eckert, \textit{Countouring the Forehead and Rhinoplasty in the Feminization of the Face in Male-to-Female}}
nose and forehead are the primary characteristics physical anthropologists and forensic pathologists can use to determine the sex of a skull. Men have broader and longer chins, deeper and narrower eyes due to brow ridge development. The average male head has a more prominent nose, brow, chin, jaw and upper neck, and average females have somewhat more protusive cheeks.

Due to testosterone, male and female faces sharply diverge at puberty when “boys’ cranial bones grow, producing heavier brow-ridges, and larger jaws, while girls’ faces grow less and retain small brows (leading to a perception of larger eyes), jaws, and noses.” But even before puberty, face shape is different and “adult facial masculinity may also be predicted well from face shape at ages 6-7.”

References:
25 Dempf & Eckert, supra note 24, at 417.
27 Vicki Bruce et al., Sex Discrimination: How Do We Tell the Difference Between Male and Female Faces?, 22 Perception 131, 145 (1993) (3/4 of the errors were misjudging female faces. “Overall accuracy for female faces was 93.8% compared with 98.2% with the male.”).
28 Lynda Boothroyd et al., Facial Masculinity is Related to Perceived Age but not Perceived Health, 26 Evolution and Hum. Behav. 417, 418 (2005) (citations omitted); Katrin Schaefer et al., Visualizing Facial Shape Regression upon 2nd to 4th Digit Ratio and Testosterone, 29 Collegium Antropologicum 415, 415 (2005) (“Typical male traits develop under the influence of testosterone whereas female traits are formed under the absence of high testosterone.”).
29 Robert P. Burriess et al., 2D:4D and Sexually Dimorphic Facial Characteristics, 36 Archives of Sexual Behav. 377, 378 (2007) (“Some of these differences are apparent from an early age. Male nose width, for example, is significantly greater from about age eight. Growth spurts at puberty further increase sex differences, particularly at the mandible.”).
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The forehead is easily distinguishable between men and women, and “[m]any of the most prominent gender differences have been found to exist in the supraorbital and frontal cranial region of the facial skeleton.”30 Female foreheads generally have “less flatness, and more of a continuous mild curvature.”31 Female foreheads are more vertical than male foreheads, which also have a more acute nasofrontal angle.32 The forehead plays a significant role in whether a person is recognized as male or female.33 Studies have strongly supported the significance of forehead modification in transgender patients.34 The procedure reduces the protrusion of the male brow ridge above the eyes, correcting the concavity of the forehead, which “eliminates the masculine characteristic and gives a continuous female curvature of the forehead.”35

Eyebrows are similarly important cues in identifying gender.36 Measuring the gap separating the eyebrows is one of the “better discriminators


31 Dempf & Eckert, supra note 24, at 416 (“The male forehead has extensive supraorbital bossing, and above this, there is often a flat area before the convex curvature of the upper forehead begins. In the female, the degree of supraorbital bossing is considerably less, frequently non-existent, and above this, there is usually less flatness and more of a continuous mild curvature.”); Monstrey et al., Surgery: Male-to-Female Patient, supra note 15, at 111.

32 Lee, supra note 30, at 499.

33 See Spiegel, Facial Determinants, supra note 23, at 3 (“Studies documenting the differences between male and female eyes and eyebrows have shown that a man’s eyebrows are heavier, straighter, and closer to the eyes. In contrast, women’s eyebrows are more arched, rising to a peak at the lateral limbus.”).


35 Id.; Monstrey et al., Surgery: Male-to-Female Patient, supra note 15, at 111.

36 Yamaguchi, supra note 16, at 574.
The vertical distance between the eyelids and the eyebrows is greater in women than in men. Additionally, in contrast with male faces, females tend to have thinner eyebrows that are higher above the eyes. A browlift is a common way to raise the eyebrows and the hairline—women also have higher hairlines—and “significantly feminizes this area.” Forehead reconstruction and simultaneous hair transplant can feminize the hairline pattern, an important feature of gender identification in the upper third of the face.

Likewise, rhinoplasty is another common feminizing procedure. Hormone therapy redistributes fat, but has no effect on the shape of the nasal bone and cartilage. Female noses are smaller and have a less angular nasal tip than male noses. Male noses “appear more deeply set and the cheek bones less prominent.” A smaller and lower nose with a greater nasal tip projection can help create a female countenance in transgender women. And changing the shape of the nose “can have

37 Bruce et al., supra note 27, at 141-142.
38 Jean Yves Baudouin & Guy Tiberghien, *Gender is a Dimension of Face Recognition*, 28 J. EXPERIMENTAL PSYCHOL. 362, 363 (2002).
39 Baudouin & Gallay, *Is Face Distinctiveness Gender-Based?*, supra note 24, at 790.
45 Id. at 270.
significant effects on the apparent masculinity of the face.”\textsuperscript{46} “The nose is a prominent feature on the face, and its refinement can significantly improve gender recognition.”\textsuperscript{47} The feminizing effects of rhinoplasty are often more pronounced when accompanied by other procedures such as brow ridge reduction and correcting the jaw and chin.\textsuperscript{48}

Moreover, women tend to have heart-shaped or triangular faces.\textsuperscript{49} Cheek implants can help to achieve that female shape and are “paramount in certain cases.”\textsuperscript{50}

In addition, the angle of a jaw is sexually dimorphic with females having a more angled jaw and males having a squared off, flat jaw.\textsuperscript{51} Surgery to reduce this angle will make the face appear more feminine as jaw development and brow ridge development are two factors that disproportionately allow for classification of faces as male or female.\textsuperscript{52}

Men and women also have marked differences in the structures of the chin, which is “a significant marker of gender.”\textsuperscript{53} Women tend to have more “pointed, narrow and vertically shorter,” while men’s chins are wider and vertically higher.\textsuperscript{54} Males tend to have more prominent

\begin{thebibliography}{99}
\bibitem{46} Bruce et al., \textit{Sex discrimination}, \textit{supra} note 27, at 150.
\bibitem{47} Bellinga et al., \textit{Technical and Clinical Considerations}, \textit{supra} note 42.
\bibitem{48} Hage et al., \textit{Rhinoplasty as Gender Confirming Surgery}, \textit{supra} note 43, at 270.
\bibitem{50} \textit{Id.} at 890.
\bibitem{51} Burris, \textit{supra} note 29 at 379; Alfred G. Becking et al., \textit{Transgender Feminization of the Facial Skeleton. 34 Clinics in Plastic Surgery} 557, 559 (2007); Altman, \textit{supra} note 49, at 891.
\bibitem{52} Thornhill et al., \textit{Facial sexual dimorphism}, \textit{supra} note 26, at 135.
\bibitem{53} Monstrey et al., \textit{Surgery: Male-to-Female Patient}, \textit{supra} note 15 at 113; Bruce, \textit{Sex discrimination}, \textit{supra} note 27, at 150.
\bibitem{54} Monstrey et al., \textit{Surgery: Male-to-Female Patient}, \textit{supra} note 15, at 113.
\end{thebibliography}
chins, with females having more convex chin profiles. A chin implant can feminize the face.

Further, a prominent Adam’s apple is “an extremely masculine characteristic.” A trachea shave is a safe and effective procedure to eliminate this sex-specific characteristic that otherwise makes transgender women appear male.

II. Facial reassignment surgery is provided in accordance with applicable medical and/or professional standards and is known to be effective, as proven by scientific evidence, in materially improving health outcomes.

A. Peer-reviewed literature demonstrates that facial reassignment successfully alleviates gender dysphoria and improves social functioning.

Facial reassignment is appropriate with regard to standards of good clinical practice and generally recognized as effective by the relevant scientific community, evidence-based medicine, and professional standards of care. There is a significant body of research documenting the safety, efficacy and medical necessity of facial reassignment surgery. One study found that “facial feminization is a key element in the treatment of gender dysphoria and that it can be more important from the patient’s psychological point of view,” than genital reassignment.

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56 Id.
57 Monstrey et al., Surgery: Male-to-Female Patient, supra note 15, at 113.
58 Altman, supra note 49, at 886.
61 Luis Capitán et al., Facial Feminization Surgery: The Forehead. Surgical Techniques and Analysis of Results, 134 Plastic and Reconstructive Surgery 609-619
Improvement in quality of life is seen following surgical facial reassignment, and it should be considered an integral part of the treatment for gender dysphoria. Surgery decreases body dissatisfaction and experienced dysphoria in social interactions. Successful facial reassignment “change[s] the lives of troubled individuals in a way that provides patients immeasurable relief and happiness.” These patients experience significant improvements in lifestyle, social relationships, self-esteem, body image, employment status, and sexual adjustment. Other studies report that patient satisfaction is high following these procedures. Facial surgery is successful in reducing mental health issues to typical population levels.

For transgender women, facial surgery is a necessary intervention to complete medical transition and affords the individual a body that is not dysmorphic but rather integrated in its femaleness. Feminizing the face

62 See Tiffany A. Ainsworth & Jeffrey H. Spiegel, Quality of Life of Individuals with and without Facial Feminization Surgery or Gender Reassignment Surgery, 19 Quality of Life Research 1019, 1024 (2010) (finding that the mental health-related quality of life for transsexual women who have had feminizing facial reconstruction is significantly higher than for transsexual women who have not had feminizing facial reconstruction).

63 Becking et al., Facial Corrections Patients, supra note 60.


65 Shams, Case Report, supra note 72, at 8-9. See also Hoenig, supra note 34, at 1043.

66 Altman, supra note 49, at 894; Raffaini et al., Full Facial Feminization Surgery, supra note 69; Morrison et al., Facial Feminization, supra note 69.

67 See Annelou L.C. de Vries et al., Comparing Adult and Adolescent Transsexuals: An MMPI-2 and MMPI-A Study, 186 Psychiatry Research 414, 416 (2011) (finding the majority of adult trans people scored “in the clinical range” on two or more clinical scales of the MMPI-2, a widely used mental health assessment questionnaire, and 35% were in the clinical range for four or more scales); Ainsworth & Spiegel, Quality of Life, supra note 62, at 1021 (finding trans women who had not undergone facial surgery performed significantly worse on a measure of mental health than non-transgender women).
“has a significant impact in determining the gender of the patient.”\textsuperscript{68}

Surgery results in the loss of masculine features, and gender dysphoria is reduced.\textsuperscript{69} The results are stable in long-term follow-ups and desired shape is achieved immediately after surgery.\textsuperscript{70} Feminizing the forehead results in the likelihood that the patient will be identified as a woman.\textsuperscript{71}

Feminizing the face is more important for social recognition as female than genital reassignment surgery.\textsuperscript{72}

While facial reassignment is undertaken primarily to help alleviate the debilitating cognitive dissonance and discomfort of gender dysphoria, there are also effects in terms of reducing negative encounters with others. Misgendering, staring and confusion by others trigger gender dysphoria and threaten the well-being and safety of transgender women. People who are visibly transgender—generally due to their secondary sex characteristics—experience more discrimination than non-visibly transgender people.\textsuperscript{73} People respond with a more negative assessment of transgender women with masculine facial features as compared to more typical female features.\textsuperscript{74} The more frequently a person is seen as transgender by others, “the more they are subject to major and day-to-day discrimination.”\textsuperscript{71}

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\bibitem{68} Spiegel, \textit{Facial Determinants}, supra note 23, at 250.

\bibitem{69} Mirco Raffaini et al., \textit{Full Facial Feminization Surgery: Patient Satisfaction Assessment Based on 180 Procedures Involving 33 Consecutive Patients}, 137 \textit{PLAST RECONSTR SURGERY} 438-48 (2016); Shane D. Morrison et al., \textit{Facial Feminization: Systematic Review of the Literature}, 137 \textit{PLASTIC AND RECONSTRUCTIVE SURG.} 1759-70 (2016).

\bibitem{70} Hoenig, \textit{supra} note 34, at 1045.

\bibitem{71} Spiegel, \textit{Facial Determinants}, \textit{supra} note 23, at 257.

\bibitem{72} Mohammad Ghasem Shams et al., \textit{Case Report: Feminizing the Male Face}, 9 \textit{EPLASTY} 8, 8-9 (2009).

\bibitem{73} Lisa R. Miller & Eric A. Grollman, \textit{The Social Costs of Gender Nonconformity for Transgender Adults: Implications for Discrimination and Health}, 30 \textit{SOC. FORUM} 809 (2015).


\end{thebibliography}
day discriminatory treatment.”

Experiencing transgender-related discrimination, verbal or physical harassment, which is more likely when people are visibly transgender, specifically increases suicide risk. In addition, being visibly transgender results in a greater likelihood of attempted drug/alcohol abuse and smoking. Facial reassignment thus creates health gains beyond alleviating gender dysphoria and attendant depression and anxiety.

B. Medical opinions of professional societies and standards of care hold facial gender reassignment surgery in transgender women to be appropriate.

Internationally recognized medical associations and accepted standards of care acknowledge the medical necessity of facial reassignment. The World Professional Association for Transgender Health is recognized by the American Medical Association (“AMA”) and others as “the leading international, interdisciplinary professional organization devoted to the understanding and treatment of gender identity disorders.” WPATH publishes the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People,* which the AMA and others recognize as the “internationally accepted Standards of Care . . . recognized within the medical community to be the standard of care for treating people with” gender dysphoria.

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75 Miller, supra note 73, at 826.


77 Miller, supra note 73, at 826.

78 AMA House of Delegates’ Resolution 122, supra note 13, at 1, ¶¶ 15-17 (April 18, 2008).

79 WPATH, Standards of Care, supra note 14.

80 AMA House of Delegates’ Resolution 122, supra note 13, at 1, ¶¶ 16-20; See Madeleine B. Deutsch & Jamie L. Feldman, *Updated Recommendations from the World Professional Association for Transgender Health Standards of Care,* 87 AM. FAM. PHYSICIAN 89 (2013). Further, the United States government has in its regulatory guidance repeatedly recognized WPATH to be a leader in setting standards for transgender healthcare. See 81 Fed. Reg. 31,435 n.263 (HHS Section 557 regulation) & 81 Fed.
The WPATH Standards of Care note that facial reassignment surgeries “in an individual with severe gender dysphoria can be considered medically necessary, depending on the unique clinical situation of a given patient’s condition and life situation.”

WPATH also released a statement on medically necessary treatment for trans people that specifically listed facial reassignment procedures as medically necessary surgeries. WPATH notes that, “[n]on-genital surgical procedures are routinely performed … notably, … facial feminization surgery,” and that “[t]hese surgical interventions are often of greater practical significance in the patient’s daily life than reconstruction of the genitals.”

The Endocrine Society—the world’s oldest, largest, and most active organization devoted to research on hormones and the clinical practice of endocrinology—has published clinical guidelines for treatment of gender dysphoric people, which provide detailed guidance for treatment consistent with the WPATH Standards of Care. The guidelines note that masculinization of the face is one of the things puberty suppression treatment in transgender adolescents is designed to prevent, and notes the increased use of facial surgeries.

Reg. 39,136 n. 166 (Department of Labor regulation).

81 WPATH Standards of Care, supra note 14, at 64.


83 Id. at 3 (quoting Monstrey et al., Surgery: Male-to-Female Patient, supra note 15).


85 Id. at 13.

86 Id. at 26.
C. Other insurers and state Medicaid plans acknowledge this care to be medically necessary.

The fact that a categorical ban on facial reassignment surgery is not in alignment with prevailing medical opinion is also reflected in that private insurers routinely cover facial reassignment procedures and regard them as medically necessary. Government health plans such as Medicaid will also cover surgery for facial reassignment. And in a case involving the unlawful exclusion of transgender-related care from the Wisconsin state employee health plan, a jury awarded reimbursement for facial gender reassignment surgery.

D. Sufficient data exists to cover this treatment.

Because of historic insurance exclusions for treatments of gender dysphoria, people were unable to access care due to a lack of providers and an inability to afford care. This has led to a dearth of research about treatments for gender dysphoria. While transgender individuals could certainly benefit from more research, deferring action until more studies are conducted cannot be used to justify the denial of transgender-related care. Sufficient data exists to demonstrate the benefits of hormonal and surgical care for transgender patients, and surgery—including

87 See TRANSCEND LEGAL, Medical Policies on Facial Reconstruction, https://transcendlegal.org/health-insurance-medical-policies/facial-reconstruction (listing policies form Asuris, BCBS of Illinois, BCBS of Massachusetts, BCBS of Minnesota, BCBS of Montana, BCBS of New Mexico, BCBS of Oklahoma, BCBS of Texas, EmblemHealth, Health Net, Independence Blue Cross, Moda Health Plan, Regence, Tufts Health Plan, and University Health Alliance).


90 See, e.g., Louis Gooren, Care of Transsexual Person, 364 NEW ENGLAND J. OF MEDICINE, 1251, 1256 (2011) (recommending sex reassignment even in the face of
facial reassignment—is the standard of care in clinical practice. While some private, non-peer reviewed surveys have called into question the efficacy of facial reassignment surgery, such reports are not evidence-based and cannot form the basis of a non-discriminatory reason for denying coverage.

E. Facial reassignment is not designed to improve appearance, but rather to change the sex of the face.

Facial reassignment surgery has the “sole objective of converting a masculine face to a more feminine one.” It is a group of surgical procedures “the aim of which is to change the features of a male face to that of a female face.” It is not undertaken to improve appearance, but rather “to alter the perceived gender of an individual’s face.”

Even if there were an incidental effect of improving appearance, that does not bar coverage because the primary purpose is to alter the sex of the face to treat gender dysphoria, not improve appearance. In the context of rejecting the idea that a transgender woman who had undergone facial reassignment surgery had a propensity for cosmetic surgery, the U.S. Tax Court noted that “there is substantial evidence that such sur-

research limitations and questions about long-term risks).


92 For example, see the Hayes Directory Report, Ancillary Procedures and Services for the Treatment of Gender Dysphoria. At a cost of $7,000, this report is not available to be critically evaluated by medical scientists and clinicians. It is not possible to evaluate bias, financial interests or academic credentials of the actual authors as they are not known.

93 Altman, supra note 49, at 893.

94 Altman, supra note 49, at 885; Dempf & Eckert, supra note 24, at 416 (noting the procedures are carried out “to change the shape of a face to the characteristics of the desired sex.”).

95 Spiegel, Challenges in care, supra note 64, at 233.
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gery [facial reassignment] may have served the same therapeutic purposes of (genital) sex reassignment surgery and hormone therapy; namely, effecting a female appearance in a genetic male.\textsuperscript{96}

A patient with gender dysphoria does not seek facial reassignment in order to look beautiful, but rather to look like herself. That is, simply to look female—what she would have looked like had she not gone through male puberty and watched her face masculinize.

WPATH explains that “medical procedures attendant to sex reassignment are not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient. These reconstruction procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition.”\textsuperscript{97} The AMA has also stated that sex reassignment procedures are not cosmetic.\textsuperscript{98}

Covering facial reassignment surgery for transgender women is consistent with providing other treatments for gender dysphoria as well as continuing to exclude all cosmetic procedures. These procedures cannot be viewed outside of the context in which they are provided: namely, treating gender dysphoria.

Facial reassignment would be cosmetic if performed on a cisgender (non-transgender woman) as there is no diagnosis of gender dysphoria. A cisgender woman is already recognized as female and the surgery would not be changing her sex in any way.\textsuperscript{99} The more accurate compar-

\textsuperscript{96} O’Donnabhain v. C.I.R., 134 T.C. 34, 61 (2010) (holding that genital reassignment surgery is not cosmetic, but a tax-deductible treatment for a disease).

\textsuperscript{97} WPATH, \textit{Position Statement}, supra note 82, at 3.

\textsuperscript{98} See AMA House of Delegates’ Resolution 122, \textit{supra} note 13, at 1, ¶¶ 22-28 (“An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with GID . . . . Health experts in GID, including WPATH, have rejected the myth that such treatments are ‘cosmetic’ or ‘experimental’ and have recognized that these treatments can provide safe and effective treatment for a serious health condition.”).

\textsuperscript{99} Even if a cisgender woman had a more masculine face, she would lack the constellation of other physical characteristics that—in conjunction with a masculine face—can
ison is not to a cisgender woman, but to a cisgender man. Just as a cisgender man would not undergo genital reassignment surgery to “improve his appearance,” a cisgender man would not improve his appearance by undergoing a surgery that resulted in him looking like a woman. Facial reassignment surgery goes far beyond any incidental improvement in appearance and affects something far more fundamental: how the world sees a person’s sex.

**III. Conclusion**

Peer-reviewed medical literature, medical opinions of professional societies, evidence-based professional standards of care, and the opinions of health care professionals involved in the specialty of treating gender dysphoria all concur that facial reassignment surgery is safe, effective, and medically necessary for treating gender dysphoria.

cause transgender women to be consistently perceived as male such as height, body size, and voice.