

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

CODY FLACK,  
SARA ANN MAKENZIE,  
MARIE KELLY, and  
COURTNEY SHERWIN,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF  
HEALTH SERVICES and  
LINDA SEEMEYER, in her official capacity  
as Secretary of the Wisconsin Department  
of Health Services,

Defendants.

Case No. 3:18-cv-00309-wmc  
Judge William Conley

**SUPPLEMENTAL EXPERT WITNESS DECLARATION  
OF JACLYN WHITE HUGHTO, PhD, MPH**

I, Jaclyn White Hughto, PhD, MPH, declare as follows:

1. I have been retained by counsel for Plaintiffs as an expert in the above-captioned lawsuit. I submitted an expert witness declaration [Dkt. No. 26] (“Hughto Dec.”) with Plaintiffs’ Motion for a Preliminary Injunction in this case [Dkt. No. 18]. I prepared this supplemental declaration to be submitted with Plaintiffs’ motion for a class-wide preliminary injunction. In this supplemental declaration, I address the potential cost impact to the Wisconsin Medicaid program if the exclusion on gender-confirming surgical care is lifted or enjoined. I also respond to the report of David V. Williams submitted to this Court by Defendants on August 23, 2018 regarding the estimated cost to the State of Wisconsin of covering gender-confirming surgeries for Wisconsin Medicaid enrollees [Dkt. No. 74-1] (“Williams Report”).

2. My background, qualifications, and compensation for my services in this case, and the basis for my opinions in this case are described in my original declaration and in my C.V. attached to that declaration.

3. In preparation for this declaration I consulted the following sources: (1) reports from leading governmental agencies (e.g., Center for Disease Control and Prevention, National Institute of Health) and non-governmental organizations (e.g., Kaiser Family Foundation) documenting the prevalence and costs associated with various health outcomes, including suicide, violence, and substance use, as cited in the list of references to this report (attached as Exhibit A); (2) the Williams Report; and (3) a number of reports estimating the costs of gender-confirming care (attached as Exhibits B-E).

4. I have actual knowledge of the matters stated in this supplemental declaration.

### **Summary of Opinions**

5. In my professional opinion, the elimination of the Medicaid exclusion for gender-confirming surgeries would result in minimal short-term costs to the State of Wisconsin and would lead to significant longer-term cost savings for the State.

6. The removal of Wisconsin's categorical exclusion of Medicaid coverage for gender-confirming surgeries would have a minimal impact on the state budget. According to the State's own expert, Mr. Williams, the estimated annual cost of covering gender-confirming surgeries would be approximately \$300,000, which represents only 0.008% of the State's share of annual Medicaid spending, which is approximately \$3.9 billion.<sup>1</sup>

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<sup>1</sup> The total annual Wisconsin Medicaid expenditures are approximately \$9.7 billion, including the federal contribution, which comprises approximately 59.6 percent of the total. *Flack v. Wis. Dep't of Health Servs.*, No. 18-CV-309-WMC, 2018 WL 3574875, at \*3 (W.D. Wis. July 25, 2018); Williams Report at 3.

7. Further, the State's expert failed to account for the short- and long-term cost savings associated with covering gender-confirming surgeries under Wisconsin Medicaid. It is my opinion that coverage of these services would provide significant benefits for transgender individuals on Wisconsin Medicaid, including reductions in gender dysphoria, depression, anxiety, suicidality, substance abuse, HIV transmission and acquisition, and physical and sexual assault, as well as improvements in socioeconomic status. Reducing these social, psychological, and physical health harms is anticipated to offset the cost of providing gender-confirming surgeries to eligible Medicaid beneficiaries in Wisconsin, ultimately producing savings for the State.

#### **Evaluating the Estimated Costs of Covering Gender-Confirming Surgeries**

8. The Williams Report estimated that 63 of Wisconsin's 1.2 million Medicaid beneficiaries (0.005%) will undergo some form of gender-confirming surgery in a given year.<sup>2</sup> Drawing on an expected cost to the State per surgical patient of \$5,998, the Williams Report estimated that the total cost of treating transgender surgical patients under Wisconsin Medicaid would be approximately \$300,000 a year. That figure represents only 0.008% of Wisconsin's annual Medicaid expenses.<sup>3</sup> For the reasons explained below, even this minimal cost impact is likely overstated because Williams did not account for the short- and long-term cost savings associated with covering medically-necessary, gender-confirming care.

9. Exclusionary state Medicaid policies not only create inequitable access to needed care for transgender Medicaid recipients but, as documented in my initial declaration, such

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<sup>2</sup> Although his report is not clear, I assume for purposes of my analysis that this estimate refers to the number of beneficiaries who would obtain surgery if they had Medicaid coverage to do so.

<sup>3</sup> The State's share of the \$9.7 billion annual Wisconsin Medicaid expenditures is 40.6% (the other 59.4% is covered by the federal contribution). Williams Report at 3. Accordingly, the State pays approximately \$3.9 billion annually in Wisconsin Medicaid expenses. The State's cost estimate for covering gender-confirming surgery is \$300,000, which equals approximately 0.008% of the State's portion of the Wisconsin Medicaid budget.

policies have the potential to place affected transgender individuals at risk for a variety of negative physical and mental health outcomes (Cole, O'boyle, Emory, & Meyer III, 1997; Haas, Rodgers, & Herman, 2014; White Hughto & Reisner, 2018). Consistent with data provided in other estimates of the costs of providing insurance coverage for gender-confirming surgical care (e.g., Exhibits C, D, E), eliminating coverage exclusions for gender-confirming surgical care under Wisconsin Medicaid would lead to significant cost savings for the Wisconsin Medicaid program via reductions in the morbidity and mortality-related costs of being denied access to medically-necessary care.

10. Indeed, a recent national study analyzed the cost-effectiveness of insurance coverage for medically necessary transition-related treatments and services for gender dysphoria, including surgery (Padula, Heru, & Campbell, 2016) (attached as Exhibit E). In addition to calculating the direct financial costs of gender-confirming medical care, the study accounted for cost savings associated with reductions in negative health outcomes, including HIV, depression, suicidality, drug abuse, and mortality. The study found that while insurance coverage for medically-necessary services came at a greater cost than no health benefits, there was also greater effectiveness. Specifically, providing insurance coverage for gender-confirming medical care was deemed cost-effective, relative to no health benefit for gender-confirming care, over a 5- and 10-year period. These estimates demonstrate that the removal of transgender exclusions is affordable and cost-effective.

11. **Mental Health.** Denying access to medically-necessary, gender-confirming therapies has the potential to exacerbate gender dysphoria and lead to intense emotional suffering, anxiety, depression, self-harm, and suicidality (Bauer, Scheim, Pyne, Travers, & Hammond, 2015; Cole et al., 1997; Haas et al., 2014; Rotondi et al., 2013; White Hughto &

Reisner, 2018). Conversely, utilization of gender-confirming medical therapies is associated with improvements in psychological functioning and quality of life among transgender individuals (Murad et al., 2010; White Hughto & Reisner, 2016).

12. Examining the cost impact of suicidality alone, the Centers for Disease Control and Prevention (CDC) reports that suicide and suicide attempts cost society about \$70 billion annually in medical and work loss costs (Centers for Disease Control, 2018). The CDC also estimates that the average medical costs of a single suicide completion was \$2,596 and a suicide attempt was \$7,234 in 2010 (Centers for Disease Control, 2012). Notably, these values represent the low end of estimated costs as they only include acute care and hospitalization costs and are not inclusive of medical costs following a suicide attempt such as mental health treatment. Given that 41% of U.S. transgender individuals in a national study had attempted suicide in their lifetime (Grant et al., 2011), and longitudinal research documents a 24% reduction in suicide attempts among transgender patients who received gender-confirmation surgery (De Cuypere et al., 2006), providing access to gender-confirming surgical care under Medicaid would likely lead to reductions in Wisconsin Medicaid expenditures associated with suicidality.

13. **Substance Use.** Research documents a disproportionately high prevalence of substance use among transgender individuals relative to the general population (James et al., 2016) and research shows that transgender individuals frequently engage in substance use as a means of coping with gender dysphoria and the mental health harms of stigma (Reisner et al., 2015; White Hughto, Reisner, & Pachankis, 2015). Tobacco, alcohol, and illicit drug use in the U.S. cost an estimated \$230 billion in annual healthcare-related costs (e.g., substance use-related injuries and deaths, prevention, and treatment) alone – a value that increases to \$740 billion

when the costs of crime and lost work productivity are included (National Institute of Drug Abuse, 2017).

14. Several studies have demonstrated lower levels of substance use among transgender individuals who have received gender-confirming treatments (i.e., hormones and/or surgery) relative to those who have not obtained such care (Cole et al., 1997; Rehman, Lazar, Benet, Schaefer, & Melman, 1999; Wilson, Chen, Arayasirikul, Wenzel, & Raymond, 2015). Thus, covering gender-confirming surgeries under Medicaid would likely result in the Wisconsin Medicaid program spending less on costs related to substance use (See National Institute of Drug Abuse, 2017).

15. **Physical and Sexual Assault.** Transgender individuals also experience high levels of physical and sexual assault due to the stigma of having a gender non-conforming expression or identity (James et al., 2016; Stotzer, 2009; White Hughto et al., 2015). Individuals who have accessed gender-confirming surgeries have been shown to be more visually gender conforming (Spiegel, 2011; Transgender Law Center, 2016), and visual gender conformity is associated with a lower prevalence of physical and sexual assault (Jauk, 2013; Sperber, Landers, & Lawrence, 2005). Examining intimate partner violence alone, the National Center for Injury Prevention and Control estimated that the mean cost of medical care for those who sought treatment after a physical assault by an intimate partner was \$2,665 per incident in 1996 (McLean & Bocinski, 2017). For individuals seeking mental health services related to a single act of partner violence, the mean cost was \$1,017 per incident in 1996 (National Center for Injury Prevention and Control, 2003). Moreover, the increased annual costs for victims may continue for up to 15 years after the cessation of abuse (Rivara et al., 2007).

16. While greater gender conformity would not necessarily prevent a transgender individual from being abused by an intimate partner, gender-confirming treatments (i.e., hormones and surgery) have been linked to reduced gender dysphoria, improved body image, and greater self-esteem (Murad et al., 2010; Nelson, Whallett, & McGregor, 2009; Sineath et al., 2016), and individuals with greater self-worth may be less vulnerable to entering into and staying in abusive relationships (Kim & Gray, 2008). Additionally, with greater visual gender conformity as a result of access to gender-confirming surgery, the physical and mental health costs of violent harassment, hate crimes, and related health systems costs are likely to decrease (Jauk, 2013). Thus, increased access to gender-confirming surgeries would likely reduce the costs to the Wisconsin Medicaid program associated with stigma-related violence for transgender Wisconsin Medicaid beneficiaries who access such surgeries.

17. **HIV/AIDS.** Transgender people have significantly higher rates of HIV than the general population. Much of the burden of HIV in the transgender community is carried by transgender women who have an estimated 21.7% laboratory-confirmed HIV prevalence (meta-analysis) and a 34.2-fold increased odds of HIV relative to the U.S. population (Baral et al., 2013). The prevalence of HIV is particularly high for low-income transgender individuals and those of color (Herbst et al., 2008). Biomedical advances such as daily medications to prevent and treat HIV (i.e., Pre-Exposure Prophylaxis (“PrEP”) and antiretroviral therapies (“ART”), respectively) have the ability to prevent HIV acquisition and transmission (Cohen et al., 2011; Grant et al., 2010). However, these medications require optimal adherence in order for them to be effective in curbing the spread of HIV (Bartlett, 2002; Grant et al., 2010; Paterson et al., 2000; Singh et al., 1999). Notably, research shows that engagement in gender-confirming medical care (i.e., hormones and/or surgery) has been linked to greater engagement in HIV prevention and

treatment services, as well as better adherence to medications (Deutsch et al., 2015; Radix, Sevelius, & Deutsch, 2016; Reisner et al., 2017; Sevelius, Patouhas, Keatley, & Johnson, 2013). The Wisconsin Medicaid program spent \$45,228,025 in 2013 on 1,900 enrollees with HIV/AIDS, which equated to \$23,804 per enrollee (Kaiser Family Foundation, 2014). Given the enormous costs associated with the HIV epidemic, preventing new infections and reducing HIV-related morbidity and mortality through increased engagement in gender-confirming surgery and HIV-related medical care would likely lead to cost savings for the Wisconsin Medicaid program.

18. **Socioeconomic Status.** Many transgender individuals face employment discrimination as a result of their gender non-conforming identity or expression (James et al., 2016; White Hughto et al., 2015), which can lead to unemployment, low income, and Medicaid eligibility (Herman, 2011). In fact, a 2017 report estimated that the costs of job loss due to discrimination among transgender individuals in Massachusetts was \$3 million dollars annually for Medicaid and Commonwealth Care, a state-funded program that provides subsidized premiums for low-income Massachusetts residents to purchase private health insurance coverage (Herman, 2011).

19. Lack of employment and financial resources may lead transgender individuals to engage in illicit activities such as sex work in order to meet basic needs, as well as to obtain the money to undergo gender-confirming treatments (Garofalo, Deleon, Osmer, Doll, & Harper, 2006; James et al., 2016). In addition to the known health risks associated with sex work (e.g., HIV infection, violence) (James et al., 2016; Nemoto, Bodeker, & Iwamoto, 2011), such activities also carry social costs for transgender individuals, such as arrest and incarceration (Grant et al., 2011; James et al., 2016). To that end, a 2016 study found that the aggregate

economic and social cost of incarceration in the U.S. exceeded \$1 trillion dollars annually (Pettus-Davis, Brown, Veeh, & Renn, 2016).

20. Research finds that transgender patients who received hormonal and surgical treatment have higher socioeconomic status and are more likely to be employed following treatments than individuals without such care (Beckwith, Reisner, Zaslow, Mayer, & Keuroghlian, 2017). Moreover, a 5-year longitudinal study demonstrated improvements in socioeconomic status and employment following gender-confirming treatments (Bodlund & Kullgren, 1996). Improvements in socioeconomic status may be explained by reduced employment discrimination on account of better visual gender conformity (Begun & Kattari, 2016; James et al., 2016). Transgender individuals who feel more affirmed in their gender identity following surgery may also be more likely to pursue employment opportunities due to lessened fears of stigma-based rejection (Gagné & Tewksbury, 1998; James et al., 2016). Access to gender-confirming surgery for Medicaid beneficiaries may, therefore, lead to social and economic benefits for transgender patients, the Wisconsin Medicaid program, and the broader public, including reductions in unemployment, sex work, and related criminal justice and health system costs. Improved socioeconomic status could also lead to fewer transgender individuals needing Wisconsin Medicaid coverage following appropriate gender-confirming treatments for gender dysphoria.

#### **Number of People Affected by the Challenged Exclusion**

21. Before concluding, I want to provide additional detail on the estimated size of the transgender Wisconsin Medicaid population included in my original declaration. Hughto Dec. ¶ 49. In my declaration, I estimated that “at least 5,000 Wisconsin Medicaid recipients are transgender adults who may be affected by the surgical exclusion at some point in their lives.”

While I provided some of the background data in my earlier declaration, I fully explain how I arrived at that estimate here.

22. There are approximately 1.2 million adult Medicaid beneficiaries in the state of Wisconsin. National estimates using CDC surveillance data indicate that approximately 0.43% of the Wisconsin adult population identifies as transgender (Flores, Herman, Gates, & Brown, 2016). Applying that proportion to the Wisconsin Medicaid population, it is estimated that 5,160 transgender adults in the state are on Medicaid. Given that approximately 97% of transgender adults in a nation-wide study indicated a desire for some form of gender-affirming surgery in their lifetime (Grant et al., 2011), for which a gender dysphoria diagnosis is typically a prerequisite, I estimate that approximately 5,000 transgender adults are currently affected by the Medicaid exclusions that deny transgender people access to medically-necessary, gender-affirming care.<sup>4</sup> This estimate does not include transgender individuals not currently on Wisconsin Medicaid who may later enroll and need treatments for gender dysphoria in the future.

### **Conclusion**

23. Based on the evidence presented above, it is my professional opinion that removal of Wisconsin's categorical exclusion of Medicaid coverage for gender-confirming surgeries would have a relatively minimal economic impact on the Wisconsin Medicaid budget. Specifically, the State's own expert, Mr. Williams, estimated that the direct costs to the State of covering gender-confirming surgery for the treatment of gender dysphoria would be a tiny

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<sup>4</sup> Existing estimates regarding the prevalence of gender dysphoria in the U.S. (American Psychiatric Association, 2013; Zucker, 2017) likely underestimate the size of the population. These estimates capture the number of transgender people who have been diagnosed with gender dysphoria *and* received hormone treatment and surgery at specialty clinics, resulting in a likely sizable underestimate of the size of the transgender population with a diagnosis of gender dysphoria since many people with the diagnosis have not or cannot obtain these treatments.

percentage of the overall Wisconsin Medicaid budget. Further, Williams did not account for any savings associated with providing coverage for gender-confirming surgeries. Enabling coverage for gender-confirming surgeries under Medicaid will provide significant benefits for transgender people via anticipated reductions in gender dysphoria, depression, anxiety, suicidality, substance abuse, HIV transmission and acquisition, and physical and sexual assault, as well as improvements in socioeconomic status for many transgender individuals. Reducing these social, psychological, and physical health harms by covering gender-confirming surgery is, therefore, anticipated to yield long-term cost savings for the State Medicaid program. Accordingly, even assuming Mr. Williams' annual cost estimate of \$300,000 is accurate, the overall annual cost impact to the Wisconsin Medicaid program is likely to be even lower than \$300,000.

24. Weighing the estimated direct costs against the potential savings from improved health outcomes described above, it is my professional opinion that the elimination of the Medicaid exclusion for gender-confirming surgeries will result in minimal short-term costs and ultimately lead to longer-term cost savings for the Wisconsin Medicaid program.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17 day of October 2018.

  
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Jaclyn White Hughto, PhD, MPH