Posted to www.sots.ct.gov on 9/22/2014.
Public comment period ends 10/22/2014.

Form NOI-1 (NEW 7/2013)
State of Connecticut
Office of the Secretary of the State

Instructions: **(1)** Save a copy of this document to your computer; **(2)** Review the detailed *Instruction Page* provided for important specific directions and legal disclaimer; **(3)** To enter data, use the Tab key to move between fields, or click-and-highlight an entire **<text field>**; **(4)** When complete, submit to your agency's legal counsel for review and approval; **(5)** After approval by counsel, submit as an email attachment in Word or text-searchable PDF format to regulations.sots@ct.gov.

Notice of Intent to Amend Regulations

In accordance with the provisions of Section 4-168**(a)** of the *General Statutes of the State of Connecticut (CGS)*, as amended, the **Department of Social Services** hereby gives notice that it proposes to **amend** regulations concerning **the Treatment of Gender Dysphoria**, under the authority of **Section 17b-262 of the General Statutes of Connecticut**. Full text or a description of the proposed regulations, a statement of the purposes for which they are proposed, and information concerning when, where and how interested parties may present views on and obtain copies of the proposed regulations, and of any small business impact and regulatory flexibility analyses required pursuant to CGS section 4-168a, is provided below.

1. Description of the proposed regulations.
(Or, check here ☐ if full text of the proposed regulations is appended to this notice in lieu of description.)

The Department of Social Services (the "department") proposes to amend several regulations to repeal the prohibition on payment for sexual reassignment surgery and related services and procedures. In particular, the department will amend sections 17b-262-342 (physicians services); 17b-262-456 (psychiatrists' services); and 17b-262-612 (nurse practitioner services) of the Regulations of Connecticut State Agencies. The department also proposes to amend Sections 171.4E.II (medical clinics) and 150.1E.II (hospital inpatient services) of its Medical Services Policy Manual, to repeal the prohibition on payment for sexual reassignment surgery and related services and procedures.

The regulation also makes some technical changes to the regulations being amended, including changes in formatting and punctuation and updates to terminology.

2. Statement of purpose.

This regulation will bring the department's Medicaid coverage regulations into line with current medical practice. In particular, the regulation will eliminate the provision in various regulations and medical services policies that prohibits payment for sexual reassignment surgery and related services and procedures. These coverage exclusions were originally based upon the view that such surgeries and related procedures and services were experimental or unproven in nature. The medical community now recognizes a variety of surgeries and treatments for "gender identity disorder" or "gender dysphoria". These diagnoses are recognized in the Diagnostic and Statistical Manual of Mental Disorders (DSM-4) and the forthcoming DSM-5.

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This regulation is necessary to enable the department to cover the full complement of services for clients with a diagnosis of gender dysphoria or gender identity disorder. The exclusion of such services is no longer reasonable. There now exists a body of scientific evidence that demonstrates: broad agreement that gender dysphoria is diagnosable; the safety and efficacy of the surgeries when medically necessary; and broad consensus that the services should longer be considered experimental. The regulation will also remove any potential conflict between the department's coverage policy and the state prohibition against discrimination based on "gender identity or expression" as enacted in Public Act 11-55.

3. Procedure(s) for submitting comments.

All written comments regarding these regulations must be submitted within thirty days of the publication of this notice in the Connecticut Law Journal to the Department of Social Services, Office of Legal Counsel, Regulations and Administrative Hearings, 55 Farmington Avenue, Hartford, Connecticut, 06105, Attention: Brenda Parrella, Director, or via email: brenda.parrella@ct.gov. A hearing will be scheduled on the proposed regulation if requested by fifteen persons, by a governmental subdivision or agency or by an association having not less than fifteen members, if notice of the request is received by the Department within fourteen days after the date of publication of this notice in the Connecticut Law Journal. When submitting correspondence, please reference "Regulation Number 14-05 – Services for Gender Dysphoria."

4. Deadline for submitting comments.

Check here ☒ if comments must be submitted no later than 30 days following posting of this notice to the Secretary of the State's regulations webpage, **or** indicate a different closing date here:

5. Procedure(s) for obtaining copies of the proposed regulations, the small business impact and regulatory flexibility analyses, if required pursuant to CGS section 4-168a, and the fiscal note:

A copy of the complete text of this regulation is available, at no cost, upon request from the Office of Legal Counsel, Regulations and Administrative Hearings, Department of Social Services, 55 Farmington Avenue, Hartford, Connecticut 06105; email: patricia.mccooey@ct.gov. A copy of the complete text of this regulation is also available online at http://www.ct.gov/dss; select "Publications," then select "Policies and Regulations," then select "Notices of Intent, Operational Policies, and Proposed Regulations," then select "14-05."

6. Other relevant or statutorily required information (provide cites), if any.

7. If box in Number 1 above is checked, insert full text of the proposed regulations below.

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REGS-1 Rev. 09/2013
(Title page)

For permanent regulations
First NOTICED ON AND AFTER JULY 1, 2013

IMPORTANT: Use this form (**REGS-1**) to submit permanent regulations to the Legislative Regulation Review Committee.
For *emergency regulations,* use form REGS-1-E instead.
For *non-substantive technical amendments and repeals* proposed without prior notice or hearing as permitted by subsection (g) of CGS 4-168, as amended by PA 13-247 and PA 13-274, use form REGS-1**-T** instead.

Please read the additional instructions on the back of the last page (Certification Page) before completing this form. Failure to comply with the instructions may cause disapproval of proposed regulations.

State of Connecticut

REGULATION

of the

NAME OF AGENCY:

Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION:

Coverage of Services for the Treatment of Gender Dysphoria

Section 1. Section 17b-262-342 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 17b-262-342. Goods and services not covered

The department shall not pay for the following goods or services or goods or services related to the following:

[(1) Transsexual surgery or for a procedure that is performed as part of the process of preparing an individual for transsexual surgery, such as hormone therapy and electrolysis;]

[(2) immunizations,] (1) Immunizations, biological products and other products available to providers free of charge;

[(3) examinations] (2) Examinations and laboratory tests for preventable diseases that are furnished free of charge;

[(4) information] (3) Information or services provided to a client by a provider electronically or over the telephone;

[(5) cosmetic surgery] (4) Cosmetic surgery;

[(6) an] (5) An office visit for the sole purpose of the client obtaining a prescription where the provider previously determined the need for the prescription;

[(7) cancelled] (6) Cancelled services and appointments not kept;

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[(8) services] (7) Services provided in a general hospital if the department determines the admission does not, or retrospectively did not, comply with the department's utilization review requirements in section 17-134d-80 of the Regulations of Connecticut State Agencies;

[(9) infertility] (8) Infertility treatment;

[(10) sterilizations] (9) Sterilizations performed on mentally incompetent individuals or institutionalized individuals;

[(11) more] (10) More than one visit per day to the same provider by a client;

[(12) services] (11) Services to treat obesity other than those described in section 17b-262-341(9) of the Regulations of Connecticut State Agencies; and

[(13) any] (12) Any procedures or services of an unproven, educational, social, research, experimental or cosmetic nature; any diagnostic, therapeutic or treatment services in excess of those deemed medically necessary by the department to treat the client's condition; or services not directly related to the client's diagnosis, symptoms or medical history.

Sec. 2. Subsection (c) of section 17b-262-456 of the Regulations of Connecticut State Agencies is amended to read as follows:

The department shall not pay for the following psychiatric services:

(1) [information] Information or services furnished by the provider to the client over the telephone;

(2) [concurrent] Concurrent services for the same client involving the same services or procedure;

(3) [office] Office visits to obtain a prescription, the need for which has already been ascertained; and

(4) [procedures performed in the process of preparing an individual for transsexual surgery; and

(5) cancelled] Cancelled office visits or appointments not kept.

Sec. 3. Section 17b-262-612 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 17b-262-612. Services Not Covered

The department shall not pay for the following:

(a) [any] Any procedures or services of an unproven, educational, social, research, experimental[,] or cosmetic nature; for any diagnostic, therapeutic[,] or treatment procedures in excess of those deemed medically necessary [and medically appropriate] by the department to treat the client's condition; or for services not directly related to the client's diagnosis, symptoms[,] or medical history;

(b) [any] Any examinations, laboratory tests, biological products, immunizations[,] or other products which are furnished free of charge;

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(c) [information] Information or services provided to a client by a provider over the telephone;

(d) [an] An office visit for the sole purpose of the client obtaining a prescription where the need for the prescription has already been determined;

(e) [cancelled] Cancelled office visits and appointments not kept;

(f) [cosmetic] Cosmetic surgery;

(g) [services] Services provided in an acute care hospital if the department determines the admission does not, or retrospectively did not, fit the department's utilization review requirements pursuant to section 17-134d-80 of the Regulations of Connecticut State Agencies;

(h) [services] Services provided by the admitting provider in an acute care hospital shall not be made or may be recouped if it is determined by the department's utilization review, either prospectively or retrospectively, that the admission did not fulfill the accepted professional criteria for medical necessity, [medical appropriateness,] appropriateness of setting[,] or quality of care;

(i) [a] A laboratory charge for laboratory services performed by a laboratory outside of the nurse practitioner's office. [--the] The laboratory shall bill the department for services rendered when a nurse practitioner refers a client to a private laboratory; and

(j) [the] The following routine laboratory tests which shall be included in the fee for an office visit and shall not be billed on the same date of service: urinalysis without microscopy, hemoglobin determination[,] and urine glucose. [; and

(k) transsexual surgery or for a procedure which is performed as part of the process of preparing an individual for transsexual surgery, such as hormone treatment and electrolysis.]

Sec. 4. Section 150.1.E.II of the Department of Social Services' Medical Services Policy Manual is amended to read as follows:

(a) Diagnostic, therapeutic or treatment procedures[,] and inpatient hospital stays for experimental, cosmetic, research, social or educational purposes;

(b) Any services or items furnished for which the provider does not usually charge;

(c) The day of discharge or transfer;

(d) Leave of Absence (LOA) or Pass with Medical Permission.

(e) Leave of Absence (LOA) or Pass with and without Medical permission when the Title XIX patient is out of the hospital at the time of the census count (12 midnight);

(f) Emergency room services provided on the same day as inpatient admission;

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(g) Hospital inpatient stay is not covered when the following procedures or services are performed:

(1) Tuboplasty and sterilization reversal;

(2) Implantation of nuclear-powered pacemaker;

(3) Nuclear-powered pacemakers;

(4) Inpatient charges related to autopsy;

(5) All services or procedures of a plastic or cosmetic nature performed for reconstructive purposes, including but not limited to the following: lipectomy, hair transplant, rhinoplasty, dermabrasion[,] or chemabrasion.

[(6) Transsexual surgical procedures for gender change or reassignment or treatment preparatory to transsexual procedures (e.g., hormone therapy and electrolysis).]

[(7)] (6) The [Department] department will not pay for a hospital stay, medical services or procedures in the treatment of obesity, including gastric stapling. Although obesity is not itself an illness it may be caused by illnesses such as hypothyroidism, Cushing's disease and hypothalamic lesions. In addition, obesity can aggravate a number of cardiac and respiratory diseases as well as diabetes and hypertension. Services in connection with the treatment of obesity could be covered services when such services are an integral and necessary part of course of treatment for one of these illnesses.

(h) With the exception of a CT Scan no Title XIX reimbursement will be made to a hospital for medical services provided to an inpatient outside of the per diem daily rate.

(i) The [Department] department will not pay for drugs included in the Drug Efficiency Study Implementation (DESI) Program that the Food and Drug Administration has proposed to withdraw from the market in a notice of opportunity for hearing. The Drug Efficiency Study Implementation (DESI) Program prohibition against payment includes all generically equivalent drug products and drugs that are less than effective. The [Department] department will notify providers regarding which drugs will not be reimbursed as a result of the DESI program.

(j) New services in hospitals and services previously unauthorized for payment, [must] shall obtain approval or they are a non-covered service. (Refer to F.III.e. for prior authorization instructions.)

(k) Admissions and day(s)-of-care that do not meet established requirements for medically necessary acute care inpatient hospital services.

(l) Claims involving non-covered services:

(1) Non-covered services only. If the hospital stay was for a non-covered service only, then no charges will be paid by Medicaid.

(2) Covered and non-covered services. If the hospital stay is a

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combination of services, some of which are covered and some which are not covered by Medicaid, the Department will pay for the covered services only. The non-covered services will not be paid.

(m) Weekend admittances (Friday[/] or Saturday) or discharges (Sunday[/] or Monday) unless they are medically necessary. Admissions and discharges on these restricted days must have medical necessity recorded by the attending or performing physician in the patient's medical record.

Sec. 5. Section 171.4E.III of the Department of Social Services' Medical Services Policy Manual is amended to read as follows:

[a. Transsexual surgery or a procedure which is performed as part of the process of preparing an individual for transsexual surgery, such as hormone therapy and electrolysis]
[b.] (a) Treatment of obesity;

[c.] (b) Any immunizations, biological products and other products available to the clinic free of charge from the Connecticut State Department of Public Health;

[d.] (c) Any examinations and laboratory tests for preventable diseases which are furnished free of charge by the Connecticut State Department of Public Health;

[e.] (d) Information provided to a patient over the telephone;

[f.] (e) Cosmetic surgery;

[g.] (f) A visit for the sole purpose of a patient obtaining a prescription where the need for the prescription has already been determined;

[h.] (g) Canceled visits or for appointments not kept; and

[i.] (h) Services which are provided in a skilled nursing facility, intermediate care facility or intermediate care facility for the [mentally retarded] intellectually disabled which are deemed routine services for patients in such facilities are not covered. These services include, but are not limited to, occupational therapy services, physical therapy services, audiological services, speech services, respiratory therapy services[,] and primary care services.

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Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

A. The problems, issues or circumstances that the regulation proposes to address.

This regulation repeals current language in the Department of Social Service's regulations and Medical Services Policy Manual that excludes coverage for sexual reassignment surgery and related services and procedures. These coverage exclusions were originally based upon the view that such surgeries and related procedures and services were experimental or unproven in nature. The medical community now recognizes a variety of surgeries and treatments for the diagnoses of "gender identity disorder" or "gender dysphoria".

B. The main provisions of the regulation include:

The regulation repeals coverage exclusions in the Medicaid payment regulations for physician services, nurse practitioner services and psychiatrist services. The regulation also repeals the coverage exclusion in the hospital and clinic medical services policy manuals. The regulation also makes a number of technical changes to the existing regulation, including punctuation corrections and changes to conform to current statutory wording.

C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or laws.

No other laws or regulations will be affected.

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Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

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REGS-1 Rev. 09/2013

(Certification page—see Instructions on back)

CERTIFICATION

This certification statement must be completed in full.

I hereby certify that the above Regulation(s)

1) is/are *(check all that apply)* ☐ **adopted** ☐ **amended** ☐ **repealed** by this agency pursuant to the following authority(ies): *(complete all that apply)*

a. ***Connecticut General Statutes* section(s) _____.**

b. **Public Act Number(s) _____.**
(Provide public act number(s) if the authorizing act has not yet been codified in the Connecticut General Statutes.)

And I further certify

2) that **Notice of Intent** to adopt, amend or repeal said regulation(s) was electronically submitted to the Secretary of the State on _____, and posted to the Secretary's regulations website on _____; *(Insert dates notice was (a) emailed to the Secretary of the State and (b) posted on the Secretary's website, if notice and posting were required by CGS 4-168, as amended by PA 13-247 and PA 13-274.)*

3) and that a public hearing regarding the proposed regulation(s) was held on _____ **or** ☐ that no public hearing was held; *(Insert date(s) of mandatory public hearing(s) held pursuant to CGS 4-168(a), as amended, or other applicable statute, and/or voluntary hearing, **or** if no hearing was held, check the box for that statement.)*

4) and that notice of **Decision to Take Action** on said regulations was electronically submitted to the Secretary of the State on _____, and posted to the Secretary's regulations website on _____; *(Insert dates notice was (a) emailed to the Secretary of the State and (b) posted on the Secretary's website, if notice and posting were required by CGS 4-168, as amended by PA 13-247 and PA 13-274.)*

5) and that said regulation(s) is/are **EFFECTIVE** *(check one, and complete as applicable)*

☐ When posted online by the Secretary of the State.

OR ☐ on *(insert date)* _____.

6) SIGNED ***(Head of Board, Agency or Commission)***	OFFICIAL TITLE, DULY AUTHORIZED	DATE

APPROVED *by the* ***Attorney General*** *as to legal sufficiency in accordance with CGS Section 4-169, as amended.*

DATE	SIGNED *(Attorney General or AG's designated representative)*	OFFICIAL TITLE, DULY AUTHORIZED

Proposed regulations are ***DEEMED APPROVED*** *by the Attorney General in accordance with CGS Section 4-169, as amended, if the Attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.*

(For Regulation Review Committee Use ONLY)

APPROVED ☐ in WHOLE **or** WITH ☐ technical corrections ☐ deletions ☐ substitute pages

☐ DEEMED APPROVED, *pursuant CGS 4-170(c), as amended.*

☐ Rejected without Prejudice ☐ Disapproved, *pursuant to CGS 4-170(c), as amended.*

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED *(Administrator, Legislative Regulation Review Committee)*

In accordance with CGS Section 4-172, as amended by PA 13-247 and PA 13-274, one certified paper copy and one electronic copy with agency head certification statement received on the date(s) specified below.

DATE	SIGNED *(Secretary of the State)*	BY

(For Secretary of the State Use ONLY)

Date Posted to SOTS Regulations Website:

Date Electronic Copy Forwarded to the Commission on Official Legal Publications:

SOTS file stamp:

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GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Section 4-168, as amended by PA 13-247, section 28, and PA 13-274, and CGS Section 4-170.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in [brackets]. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The *Certification Statement* portion of this form must be completed, including all applicable information regarding notice submission and website posting date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: http://www.cga.ct.gov/rr/ .
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the Certification Statement page)

1. a) Indicate whether the regulation contains newly adopted sections, amendments to existing sections, and/or repeals of existing sections. ***Check all cases that apply.***

   b) Indicate the specific legal authority that permits or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.

2. An agency must electronically submit notice of its intent to adopt the regulation to the Secretary of the State at regulations.sots@ct.gov for posting on the Secretary's regulations website. Enter both the date notice of intent was submitted to the Secretary of the State *and* the date the notice was posted on the Secretary's website. *For emergency regulations, use Form Regs-1-E instead of this form. For non-substantive technical amendments and repeals adopted without prior notice or hearing as permitted by subsection **(g)** of CGS 4-168, use Form REGS-1-**T** instead of this form.*

3. CGS 4-168(a), as amended by PA 13-247 and PA 13-274, prescribes requirements for holding a public hearing on proposed regulations. Enter the date(s) of all hearing(s) held under that section, if any, also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law; and enter the date(s) of any public hearing(s) the agency elected to hold voluntarily. If no public hearing was held, mark (X) the check box.

4. **NEW REQUIREMENT**: CGS 4-168(d), as amended by PA 13-247 and PA 13-274, prescribes requirements electronically submitting notice of decision to take action (proceed with adoption) of a proposed regulation for posting to the Secretary's regulations webpage. Enter both the date notice of decision was submitted to the Secretary of the State *and* the date the notice was posted on the Secretary's website.

5. As applicable, enter the specific effective date of the regulation; or indicate that it is effective upon posting online by the Secretary of the State. ***Please note the important information below.***

   Permanent regulations adopted after July 1, 2013 are effective upon posting online by the Secretary of the State (SOTS), or at a *later* date specified by the agency, or at a *later* date if required by statute. See CGS 4-172(b). An effective date may not precede the date of posting online by SOTS, and it may not precede the effective date of the public act requiring or permitting the regulation.

6. Submit the original proposed regulation to your agency commissioner for signature.