

FOCUS ON: OVERCOMING OBESITY



**A REPORT FROM
THE NEW YORK STATE DEPARTMENT
OF LAW
HEALTH CARE BUREAU**



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FOCUS ON: OVERCOMING OBESITY

“FOCUS ON: OVERCOMING OBESITY” is the second in a series of reports by the Attorney General aimed at raising public awareness about the day-to-day problems New York consumers face in accessing health care. Each edition of “FOCUS ON” will spotlight a problem with the health care system that has been brought to the Attorney General’s attention through consumer complaints to his Health Care Helpline, 1-800-771-7755.¹

“FOCUS ON” will also provide useful tips to help consumers advocate effectively for their health care rights.

EXECUTIVE SUMMARY

The impact of obesity on the health of Americans is a significant and growing concern. Millions of Americans are overweight, and a substantial number of these individuals are considered severely, or "morbidly" obese. However, most health insurance plans do not consider obesity to be an illness and therefore do not cover the cost of treating obesity, although most plans will cover the costs of treating the ailments associated with obesity (e.g., diabetes, hypertension). A small, but growing, number of plans do consider obesity to be an illness and will pay for the medical procedures designed to address the core issue of excessive body fat (e.g., nutritional counseling, bariatric surgery). The health plans that do cover procedures such as gastric bypass surgery to treat obesity require consumers and providers to meet rigorous coverage guidelines to prove that the surgery is medically necessary. In sum, for severely obese individuals, coverage for weight reduction

treatments is frequently non-existent and, where it exists, can be difficult to obtain.

America, Obesity, and Bariatric Surgery

Nearly one in every six Americans, about 60 million people, is obese.² Obesity is defined by the Centers for Disease Control and Prevention and The National Institute of Health Science as an excessively high amount of body fat in relation to lean body mass or a Body Mass Index (BMI) of 30 or more.³ Of these individuals, 9 million are at least 100 pounds overweight or have a BMI exceeding 40, making them severely or "morbidly" obese.⁴ Severe obesity quadrupled among American adults between 1986 and 2000.⁵

A 2002 report by the National Center for Chronic Disease Prevention and Health Promotion, a division of the Centers for Disease Control, revealed that 57 percent of New Yorkers are overweight (meaning a BMI of 25-29.9) or obese and that the obesity rate among New York State adults doubled between 1990 and 2002. The report also stated that 28 percent of New York high school students are overweight or at risk of becoming overweight.⁶

✓ Check your BMI at
www.cdc.gov/nccdphp/dnpa/bmi/calc-bmi.htm.

The individual and societal benefits of overcoming obesity are obvious: direct medical expenditures of between \$92 billion and \$117 billion were laid at the doorstep of obesity in 2002⁷ and obesity increases the risk of illness from about 30 serious medical conditions.⁸

Generally, the morbidly obese are candidates for surgical approaches to treating obesity, such as gastric bypass, gastric banding or gastroplasty (all of which entail surgery to constrict the size of the stomach and are often collectively referred to as bariatric surgery). However, they face two major obstacles in having such surgery covered by their health plans: 1) many health plans do not cover treatments for obesity because they do not consider obesity to be an illness or disease⁹ and 2) health plans that do offer coverage for obesity treatments usually impose strict and rigorous pre-treatment requirements and guidelines that must be met by the patient and medical provider before treatment will be covered by the plan.

Is Obesity a Disease or Illness?

To date, most health plans have answered this question with a resounding “no” and, because such plans only cover medically necessary care to treat an illness, disease or injury, they have excluded obesity treatments from coverage.¹⁰

As the number of obese persons in the United States has increased, the availability of health care coverage for the treatment of obesity has become an increasingly important issue. For example, Medicare is re-evaluating whether it will consider obesity to be a

disease and therefore cover obesity treatments.¹¹ If Medicare does determine that obesity is a disease, private health plans may do the same, causing a relatively swift increase in coverage for obesity treatments.

However, right now, most insured obese consumers do not have access to coverage for treatments targeted specifically at their obesity. Instead, they must rely on and maximize the coverage they do have for treatment of the collateral diseases that can result from or be affected by obesity (e.g., nutritional counseling for diabetes, physical therapy for joint or back disorders, drug therapy for hypertension).

Jumping Through the Hoops: Rigorous Guidelines for Coverage

Some plans do treat obesity as an illness or disease. For those obese New Yorkers whose plans do treat obesity as an illness and do cover surgical and other obesity treatments, a primary obstacle in accessing coverage for such treatment is obtaining and fulfilling the health plans' clinical guidelines and pre-surgery requirements for the treatments.

Case History: Ms. B, with a 30-year history of weight problems, was denied authorization by her health plan for a gastric-bypass operation, despite a referral from her primary care physician to a surgical specialist, evidence of prior failed attempts to lose weight, and documentation showing a commitment to a diet and exercise program. Only

by personal perseverance, substantial involvement by her doctors, and assistance from a mediator in the Attorney General's Health Care Bureau was she able to obtain approval for the surgery from her health plan, and then only if she could document six months of pre-surgical participation in a supervised diet and exercise program. Ultimately, Mrs. B met all the requirements of her plan, and the successful surgery was covered by her plan.

In the cases handled by the Attorney General's Health Care Helpline, the primary reason health plans give for denying coverage for obesity treatment is that the patient or provider has not met, or has failed to provide adequate documentation demonstrating that she has met, the prerequisites for such coverage. Some consumers have complained about plan guidelines that are confusing, are not fully disclosed at the outset of the approval process or change during the course of their treatment.

Case History: *Ms. W's request for coverage of gastric bypass surgery was denied by her health plan although she believed that she had met all of her plan's requirements for such coverage. She had received letters of medical necessity from her primary care physician, her bariatric surgeon, a nutritionist, and a psychiatrist; and she had maintained a diet regimen and attended a two-hour seminar on the upcoming procedure, all of which was completed within the six months preceding the anticipated surgery. In denying her request, the health plan stated that the*

information provided was insufficient because its clinical guidelines had changed within the previous six months. Ms. W appealed the plan's denial decision while attempting to again satisfy the plan's requirements, even though her medical records clearly indicated that she had complied with all the previous requirements. Ms. W's appeal is pending.

In an effort to clarify and standardize the processes plans use to evaluate coverage for obesity treatment and to educate consumers and providers about the use of bariatric surgery, the Health Plan Association of New York's Obesity Surgery Project developed "best practice" guidelines for all aspects of bariatric surgery including patient selection, surgeon qualifications and training, and equipment needs for facilities that offer the surgery.¹² With regard to patient selection criteria, the Obesity Surgery Project finds common ground with many medical providers in noting that bariatric surgery is a major operation that is only appropriate when other, more conventional weight loss programs, including diet, exercise, and/or medications, have failed.¹³ For example, the American Society of Bariatric Surgery agrees that it is "accepted practice" to require that the potential candidate for surgical treatment has made "good-faith attempts to achieve weight loss by dietary means" including, but not limited to, drug therapy, diet, behavior modification and exercise.¹⁴

The Obesity Surgery Project sets as an absolute requirement for patient surgery:

- a BMI of 40 or greater, or
- a BMI of 35 or greater with life-threatening or disabling co-morbid conditions, such as diabetes mellitus, hypertension, other serious cardiopulmonary condition, or severe sleep apnea.

In addition, 10 other considerations ranging from the patient's level of motivation to general tolerance for surgery come into play.¹⁵ A preparatory regimen for bariatric surgery may entail meeting with a nutritionist, following a reduced calorie diet, participating in behavior modification programs, and following an exercise program,¹⁶ which should continue for at least a few months prior to surgery¹⁷ and be completed within the preceding two years of the date of the scheduled procedure.¹⁸

Supplemental factors used to determine whether an individual is a proper bariatric surgery candidate¹⁹ include the candidate's ability to participate in treatment and long-term follow-up, as well as the ability to comply with the many post-surgical lifestyle changes that are required.²⁰

These criteria are important for several reasons. First, given the seriousness of the procedure, they ensure that a candidate is well-informed, not suffering from another disease that might impair judgment, and is committed to permanent weight loss.²¹ Second, preliminary studies suggest that the higher a patient's motivation and ability to manage the post-operative requirements of dietary modification and behavioral therapy, the more

successful bariatric surgery is in solving the individual's obesity, weight-related health problems, and in improving overall health.²²

The Informed Consumer

***Case History:** Ms. P, a 21-year-old women with a BMI over 50, appeared to be an appropriate candidate for bariatric surgery but was denied coverage because her health plan concluded that the procedure was not medically necessary. This young woman and her family investigated the denial and, using her right to appeal, requested a more comprehensive and detailed explanation of why coverage was denied. The plan disclosed that Ms. P had not seen a particular doctor long enough to satisfy the plan's guidelines. The plan required her to continue with her current doctor for six to twelve more months and document the failure of non-surgical treatment before authorizing her surgery. Ms. P intends to continue seeing her doctor and following the other aspects of her pre-surgical regimen so that in a few months she can reapply for authorization. Even though her surgery has been delayed, her investigation and appeals helped ensure that within a relatively short time she will be eligible to receive her treatment.*

As Ms. P's case shows, a consumer seeking to have bariatric surgery should make sure that he or she has satisfied or tried to satisfy all of the health plans' requirements before applying for pre-authorization and that all necessary documentation is sent to the health plan.²³ Furthermore, while much of the responsibility is on consumers to see the correct doctors, get the proper referrals to specialists, and to participate in diet regimens, health plans must empower consumers on how to successfully gain approval -- providing clear information and clinical guidelines.

The number and types of treatments for obesity are burgeoning, and coverage for these treatments is likely to expand, to meet the rapidly increasing prevalence of obesity in America. This is why the New York Health Plan Association Obesity Surgery Project's efforts to standardize guidelines and provide guidance to consumers, providers and plans are so necessary and useful. Equally important is a consumer who perseveres in meeting plan guidelines and is not afraid to question inappropriate guidelines or appeal denials of care that she and her doctor believe are improper.

CONSUMER TIPS

- ▶ Request your health plan's clinical review criteria or coverage guidelines for obesity treatment. These criteria are used by the plan to determine when care is medically necessary and, therefore, covered. In New York, most plans are required to give you these criteria upon request.²⁴ If you cannot satisfy the exact requirements of your plan, discuss with your doctor and your plan possible substitute requirements you can meet.
- ▶ Keep detailed and accurate records and forward all your documentation to your health plan at the time you request authorization. The initial approach to your plan is important and can make obtaining approval easier and less time-consuming. Key information is your BMI, weight history, and any other health conditions you have. Additionally, a letter of medical necessity from your primary care physician should be included as well as any records from specialists.
- ▶ Maintain records of correspondence, including names of health plan representatives; times of calls; substance of conversations; and copies of papers, letters, and other documents relating to your request for authorization. A complete record will help if you need to appeal a denial.
- ▶ Appeal denials. If you or your doctor think that your request has been wrongly denied by the plan, you should use your appeal rights to challenge the denial.²⁵ Perseverance is

important. Many people do not appeal, but those who do often obtain favorable results.

There are resources available to guide you in filing your appeal, including the Attorney General's Web site (www.oag.ny.gov) and by calling the Attorney General's Health Care Bureau at 1-800-771-7755 (option 3).

The Consumer's Guide to New York's Managed Care Bill of Rights, published at (www.citizenactionny.org/reports/MC_consumer_guide.pdf) is another helpful resource.

Other sources for information, support, and advocacy tips include:

www.obesity.org (American Obesity Association)

www.asbs.org (American Society of Bariatric Surgery)

www.nih.gov (National Institutes of Health) (search under obesity)

ENDNOTES

1. The HCB Helpline provides assistance and information to New York health care consumers. Helpline Intake Specialists and Mediators provide helpful information and referrals, investigate individual complaints and attempt to resolve disputes so that each consumer obtains access to the health care to which the consumer is entitled.
2. American Obesity Association at www.obesity.org/subs/fastfacts/obesity_US.shtml.
3. Centers for Disease Control and Prevention, Defining Overweight or Obesity, at www.cdc.gov/nccdphp/dnpa/obesity/defining.htm. Another measure of obesity that is used by The National Institute of Health Science is that an individual who has a weight-to-height ratio 120 percent greater than the median is obese. NIHS Definition of Obesity at www.medicine.uiowa.edu/pa/sresrch/Smith/Smith/tsld002.htm. BMI is a common measure expressing the ratio of weight-to-height.
4. American Obesity Association at www.obesity.org/subs/fastfacts/obesity_US.shtml.
5. Rogan Kersh and James A. Morone, “Obesity, Tobacco, and the New Politics of Public Health,” Miller Center for Public Affairs, University of Virginia, at www.americanpoliticaldevelopment.org/townsquare/print_res/in_progress/rogan.pdf.

6. Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Nutrition and Physical Activity, Overweight and Obesity State Programs, New York, *at*
www.cdc.gov/nccdphp/dnpa/obesity/state_programs/new_york.htm.
Individuals with a BMI of 25-29.9 are considered overweight.
7. Kersh and Morone, “Obesity, Tobacco.”
8. American Obesity Association *at*
www.obesity.org/subs/fastfacts/obesity_US.shtml.
9. In addition, some plans do not cover obesity treatments because they believe the treatments are unsafe or not of proven benefit given the risks of surgery or because the procedures are too expensive. *See* Vanessa Fuhrmans, “Medicare Mulls Coverage Shift on Obesity,” Wall Street Journal, D1, November 3, 2004.
10. Vanessa Fuhrmans, “Medicine Mulls Coverage Shift on Obesity,” Wall Street Journal, D1, November 3, 2004.
11. Sarah Lueck, “Health Officials Set to Expand Medicare’s Coverage of Obesity,” Wall Street Journal, D4, July 15, 2004. *See also*, Vanessa Fuhrmans, “Medicine Mulls Coverage Shift on Obesity,” Wall Street Journal, D1, November 3, 2004.
12. New York Health Plan Association, Obesity Surgery Workgroup, Surgical Management of Obesity, Consensus Guideline, May 2004 *at*
www.nyhpa.org/pdf/Obesity_Layout.pdf.
13. Bariatric Surgery Primer, “Food For Thought,” New York Health Plan

Association, May 2004, page 5 at www.nypa.org/pdf/BariatricSurgeryPrimer.pdf.

14. American Society of Bariatric Surgery, RATIONALE FOR THE SURGICAL TREATMENT OF MORBID OBESITY, (updated 2001) at www.asbs.org/html/rationale/rationale.html.
15. For a complete list of patient requirement guidelines, see New York Health Plan Association, Obesity Surgery Workgroup at 4 of Consensus Guideline.
16. National Guideline Clearinghouse, Guidelines for the Clinical Application of Laparoscopic Bariatric Surgery, at www.guideline.gov (search laparoscopic). American Society of Bariatric Surgery, patient selection criteria at www.asbs.org.
17. Bariatric Surgery Primer at 9. See also National Guideline Clearinghouse, Guidelines for the Clinical Application of Laparoscopic Bariatric Surgery at www.guideline.gov (search laparoscopic).
18. Bariatric Surgery Primer at 4.
19. National Guideline Clearinghouse, Guidelines for the Clinical Application of Laparoscopic Bariatric Surgery at www.guideline.gov (search laparoscopic).
20. Bariatric Surgery Primer at 5.

21. *See*, Surgical Management of Obesity Consensus Guideline (New York Health Plan Association, New York, N.Y.) May 2004 at 4; *See also* The National Heart, Lung, and Blood Institute Clinical Practice Guideline, available at www.nhlbi.nih.gov/guidelines/obesity/prctgd.
22. There is a recent focus on the impact to overall health of surgery and other obesity treatments. This health point was emphasized by the Department of Health and Human Services in the announcement of its decision to reconsider whether to classify obesity as a disease, saying that whether treatments will be covered under Medicare will in part depend on the impact those treatments have on patients' general health. *See* Lueck, "Health Officials Set to Expand Medicare's Coverage of Obesity," *Wall Street Journal*, D4, July 15, 2004 and Vanessa Fuhrmans, "Medicare Mulls Coverage Shift on Obesity," *Wall Street Journal*, D1, November 3, 2004.
- 23.. "So You Want To Get Insurance To Cover Your Obesity Surgery," Obesity Law and Advocacy Center, at www.obesitylaw.com/insurancearticle.htm.
24. Public Health Law § 4408(2)(j).
25. Henry Gilgoff, "Official: If Denied, Appeal," *Newsday*, July 21, 2004 at www.newsday.com/business/yourmoney/ny-biz-bzcovside0718,0,2501068.story.