



Illinois Department of Insurance

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TO: All Insurers
FROM: Andrew Boron, Director *AB*
DATE: July 28, 2014
RE: Company Bulletin 2014-10
Healthcare for Transgender Individuals

The purpose of this Bulletin is to provide Illinois-licensed insurance companies guidance regarding compliance with the nondiscrimination provisions applicable to transgender persons found in the Affordable Care Act, the Illinois Human Rights Act, and the Illinois Mental Health Parity Act. Together these laws prohibit discrimination against transgender persons because of their actual or perceived gender identity or health conditions. This prohibition extends to the availability of health insurance coverage, the provision of Essential Health Benefits, and the requirements for certification as a Qualified Health Plan.

The Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (together known as the Affordable Care Act (ACA)) and its implementing regulations prohibit discrimination in benefit design for plans offering the Essential Health Benefits (EHB) on the basis of gender identity and health conditions. 45 C.F.R. 156.125(b); 45 C.F.R. 156.200(e). In 2014, non-grandfathered small group and individual plans sold inside and outside of Illinois' federally-run Health Insurance Marketplace (Marketplace) will be subject to an EHB standard setting the minimum for what plans must cover. This standard is regulated by the state. Therefore the Illinois Department of Insurance (DOI) is responsible for implementing and enforcing the antidiscrimination protections applicable to EHB-based plans. Additionally, the ACA prohibits discrimination on the basis of gender identity and nonconformity with sex stereotypes in any health care program that receives federal financial assistance or is created under Title I of the ACA. 42 U.S.C. § 18116; Letter from Leon Rodriguez, Dir. of the Office for Civil Rights, U.S. Dep't. of Health & Human Servs. (Jul. 12, 2012) (OCR Transaction No. 12-000800), *available at* <http://www.scribd.com/doc/101981113/Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services>. Finally, the ACA and its implementing regulations prohibit discrimination on the basis of gender identity with respect to Qualified Health Plans sold through Illinois' Marketplace. 42 U.S.C. § 18116; 45 CFR 156.200(e).

The Illinois Human Rights Act (IHRA) similarly prohibits discrimination on the basis of "actual or perceived ... gender-related identity, whether or not traditionally associated with the person's designated sex at birth," 775 ILCS 5/1-103(O-1). The IHRA's non-discrimination mandate applies to the denial of "the full and equal enjoyment of the . . . goods, and services of any public place of accommodation," *id.* at 5/5-102(A), which includes the provision of insurance. *Id.* at 5/5-101(A)(6). The Illinois Insurance Code requires that an "insurer that amends, delivers, issues, or renews a group policy of accident and health insurance in this

State providing coverage for hospital or medical treatment and for the treatment of mental . . . conditions" provide no more restrictive limitations on treatment for mental conditions, such as gender dysphoria or

gender identity disorder, than “the predominant treatment limitations applied to substantially all hospital and medical benefits covered by the policy and that there are no separate treatment limitations that are applicable only with respect to mental ... condition benefits.” 215 ILCS 5/370c.1. However, sex change surgery may be excluded from excepted benefit policies and grandfathered health plans. 50 Ill. Adm. Code 2007.60(e)(13).

New policy filings or amended policy filings should comply with the nondiscrimination provisions in the ACA and Illinois law applicable to transgender Illinoisans that are cited above.

STANDARDIZED TRANSGENDER NONDISCRIMINATION FORM

All individual and small group plans required to provide Essential Health Benefits (EHBs), including Qualified Health Plans (QHPs), must not, discriminate on the basis of race, color, national origin, disability, age, sex, *gender identity* or sexual orientation. 45 CFR 156.200(e)(emphasis added); 45 CFR 125(b) (requiring plans providing Essential Health Benefits to comply with 45 CFR 156.200(e)); 775 ILCS 5-1-103(O-1) (prohibiting discrimination on the basis of gender-related identity); 215 ILCS 5/370c-1 (requiring equity in treatment for mental health conditions compared to medical conditions). The following insurance policy provisions or practices accordingly run the risk of being contrary to law or public policy under section 143(1) of the Illinois Insurance Code [215 ILCS 5/143(1)]:

Surgical Treatment Coverage Discrimination

Provisions that exclude from, limit, charge a higher rate, or deny a claim for coverage for the surgical treatments for gender dysphoria *that are provided to non-transgender persons* for other medical conditions, such as mastectomy and/or breast reconstruction after cancer.

Provisions that exclude from, limit, charge a higher rate, or deny a claim for coverage for emergency room care for complications from surgery for gender dysphoria, *if the company provides coverage for emergency room care for complications from surgery for other medical conditions*.

Non-Surgical Treatment Coverage Discrimination

Provisions that exclude from, limit, charge a higher rate, or deny a claim for coverage for hormone therapy for gender transition *if that treatment is provided for other medical conditions*, such as endocrine disorders or for women with menopausal symptoms.

Provisions that deny a transgender person coverage or benefits for sex-specific treatment, including but not limited to obstetrics and gynecology care, prostate exams, and mammograms, *because of their gender identity*.

Discriminatory Exclusionary Clauses

Exclusionary clauses or language that has the effect of *targeting transgender persons* or persons with gender dysphoria such as:

“Any treatment or procedure designed to alter an individual’s physical characteristics to those of the opposite sex.”

“Sex transformations and related services.”

“Sex change: Any treatment, drug, service, or supply related to changing sex or sexual characteristics.”

However, sex change surgery may be excluded from excepted benefit policies and grandfathered health plans. 50 Ill. Adm. Code 2007.60(e)(13).