




Illinois Department of Insurance

JB PRITZKER
Governor

ROBERT H. MURIEL
Director

MEMORANDUM

TO: All Health Insurance Issuers

FROM: Robert H. Muriel, Director of Insurance 

DATE: June 15, 2020

RE: Company Bulletin 2020-16 Health Insurance Coverage for Transgender, Nonbinary, and Gender Nonconforming Individuals, and for Individuals of All Sexual Orientations

On June 12, 2020, the federal Centers for Medicare and Medicaid Services (CMS) announced the filing of a Final Rule concerning Nondiscrimination in Health and Health Education Programs or Activities.¹ This Final Rule rescinds existing protections against discrimination on the basis of gender identity or sexual orientation in the provision of health insurance coverage. In light of these developments, the Department of Insurance (Department) issues this Bulletin to remind Illinois-licensed insurance companies that they must comply with the following Illinois laws that prohibit discrimination based on actual or perceived gender identity or sexual orientation: the Illinois Human Rights Act (IHRA), 775 ILCS 5/1-103(O-1) and (Q), the Illinois Insurance Code, 215 ILCS 5/236, 5/364, and 5/424, the Illinois Mental Health Parity Act, 215 ILCS 5/370c.1, and the Illinois Administrative Code, 50 Ill. Adm. Code 2603. Together, these laws and regulations prohibit discrimination in the offering and provision of health insurance coverage based on actual or perceived gender identity or health conditions, or based on sexual orientation.

The IHRA prohibits unlawful discrimination on the basis of sex and sexual orientation, which includes “actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth.” 775 ILCS 5/1-103(O-1) and (Q). The IHRA’s non-discrimination mandate applies to the denial of “the full and equal enjoyment of the ... goods, services of any public place of accommodation,” 775 ILCS 5/5-102(A), which includes the provision of services in an insurance office. 775 ILCS 5/5-101(A)(6).

The Illinois Insurance Code requires that every insurer that amends, delivers, issues, or renews a group or individual policy of accident and health insurance or a qualified health plan offered through the ACA Health Insurance Marketplace providing coverage for hospital or medical treatment and for the treatment of mental conditions ensure that any limitations applicable to mental or emotional disorders or conditions, such as gender dysphoria, are no more restrictive than “the predominant treatment

¹ See “Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority,” RIN 0945-AA11, available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-11758.pdf> (to be published in the Federal Register on June 19, 2020).

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 ... benefits.” 215 ILCS 5/370c.1(a)(2). Gender affirming surgery may be excluded from individual excepted benefit policies and individual grandfathered health plans. 50 Ill. Adm. Code 2007.60(e)(13). However, those policies remain subject to the Illinois Insurance Code’s general prohibition against discriminating among individuals who are in the same class of risk in the issuance of policies, rates, benefits, terms and conditions, or “in any other manner whatsoever.” *See* 215 ILCS 5/364 and 5/424(1).

Part 2603, which applies to all life or accident and health insurance companies, HMOs, Voluntary Health Services Plans, and fraternal benefit societies that are duly authorized to transact business in Illinois, clarifies that longstanding Illinois non-discrimination laws apply to matters relating to gender identity and sexual orientation in health insurance coverage. 50 Ill. Adm. Code 2603. No company shall refuse to issue any contract of insurance or decline to renew a contract because of the sex, sexual orientation or marital status of the insured or prospective insured. 50 Ill. Adm. Code 2603.30. Further, no group health insurance plans may discriminate on the basis of an insured’s or prospective insured’s actual or perceived gender identity or on the basis that the insured or prospective insured is a transgender person. 50 Ill. Adm. Code 2603.35. These regulations specifically prohibit the following discriminatory conduct:

- 1) discriminatory exclusionary clauses;
- 2) provisions that exclude from, limit, charge a higher rate for, or deny a claim for coverage of hospital and medical benefits for gender dysphoria if benefits covered by the policy are provided for other medical conditions;
- 3) cancelling, limiting or refusing to issue or renew an insurance policy on the basis of an insured's or prospective insured's actual or perceived gender identity, or for the reason that the insured or prospective insured is a transgender person;
- 4) designating an insured's or prospective insured's actual or perceived gender identity, or the fact that an insured or prospective insured is a transgender person, as a preexisting condition for which coverage will be denied or limited;
- 5) provisions that exclude from, limit, charge a higher rate for, or deny a claim for coverage for the surgical treatments for gender dysphoria;
- 6) denying or limiting coverage, or denying a claim, for services due to an insured's actual or perceived gender identity or for the reason that the insured is a transgender person, including, but not limited to, health care services that are ordinarily or exclusively available to individuals of one sex when the denial or limitation is due only to the fact that the insured is enrolled as belonging to the other sex or has undergone, or is in the process of undergoing, gender transition.

The Department has initiated a rulemaking to expand the scope of its protections against discrimination based on gender identity to apply to both group and individual health insurance coverage, other than grandfathered or excepted benefit policies. The Department has also proposed expanding the list of discriminatory practices, and proposed adding discrimination in premium rates on the basis of gender

identity to Section 2603.40. Nothing in the rulemaking will prohibit a company from determining whether a health care service is medically necessary.

The Department will continue to enforce Illinois law through market conduct exams and otherwise address issues as they may arise through consumer complaints, external reviews, and other sources of information. The Department will take action against a health insurance issuer for any failure to adhere to all statutory and regulatory prohibitions against discrimination. Nothing in this Bulletin, nor state or federal law prohibits companies from providing greater protections for transgender, nonbinary, and gender nonconforming individuals, or individuals of all sexual orientations.

Illinois law remains unchanged despite the recently finalized federal rule changes regarding Section 1557 of the Affordable Care Act. This federal rule removes certain federal protections against discrimination based on gender identity or sexual orientation in the provision of health insurance coverage. The final federal rule changes are expected to take effect August 18, 2020. The Department will continue to monitor developments regarding the impacts of the reversal of the federal rule and pursue all options available to protect against all forms of gender-related and sexual orientation discrimination in the provision of health insurance coverage under Illinois law.

Questions regarding this Bulletin should be directed to DOI.communications@illinois.gov.