

Memorandum

June 18, 2020

To: All entities transacting insurance business in Oregon

From: Tashia Sizemore, Life and Health Program manager

RE: Nondiscrimination of gender identity in insurance

Unfair discrimination is prohibited under the Oregon insurance code to protect the insurance-buying public.¹ Oregon law prohibits an insurer from discriminating on the basis of a person's gender identity, or on the basis the person is transgender. The Oregon Division of Financial Regulation reminds all insurers that unfair discrimination exists if an insurer does any of the following:

- Denies, cancels, limits, or refuses to issue or renew any insurance policy on the basis of a person's actual or perceived gender identity.
- Imposes additional requirements related to a person's gender identity that a person must meet or comply with in order to obtain an insurance policy.
- Demands or requires a payment or premium that is based in whole or in part on the insurer's perceived gender identity of a person rather than the gender identity of the person.

For health insurance, the division's bulletin on nondiscrimination related to transgender people in the transaction of insurance in Oregon clarifies the Oregon insurance code and the expectations the division has for health insurance coverage issued to transgender people.² This includes guidelines for coverage of gender-affirming treatment and mental health services for gender dysphoria. Health insurers should provide consumers with clear information about coverage of gender-affirming treatment and expectations for determining the medical necessity of such treatment, including the process for appealing a denial based on medical necessity.

In addition to the obligations imposed on health insurers under the bulletin, insurers are reminded that, effective Jan. 1, 2020, Senate Bill 250 prohibits discrimination by health benefit

¹ ORS 742.005 and ORS 746.015(1).

² Division of Financial Regulation, Bulletin 2016-1. <https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2016-01.pdf>

plans on the basis of actual or perceived race, color, national origin, sex, sexual orientation, gender identity, age, or disability.³

Health insurers are advised that the division is reviewing the recent regulations adopted by the federal government under Section 1557 of the Affordable Care Act⁴ in light of the *Bostock* decision⁵ from the U.S. Supreme Court. The division does not expect these developments to change coverage or insurer practices in Oregon.

The division may update its guidance on these issues as more information becomes available.

Questions about the memorandum should be directed to Tashia Sizemore, Life and Health Program manager, at tashia.sizemore@oregon.gov or 971-283-0102.

³ Or 2019 Laws, Chapter 285; see also ORS 742.005 and ORS 746.015(1).

⁴ "Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority," available at the following URL: <https://www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority>

⁵ Available at the following URL: https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf