

## **Q&A: What the Law Says About Health Insurance and Transgender Care**

### **Why did Anthony Bopp challenge his health insurance plan?**

Anthony Bopp, a transgender man, takes testosterone prescribed to him by his doctor. To ensure the safety and effectiveness of the testosterone, Bopp regularly receives blood tests that measure his testosterone, hematocrit and liver enzyme levels.

For years, Bopp's policy, through Sound Health & Wellness Trust, covered these routine lab tests. In September 2014, after learning that Bopp is transgender, it denied coverage of a testosterone test based on the plan's exclusion clause for sex reassignment surgery.

### **Health insurance plans exclude all kinds of things. How is this different?**

Bopp gets health insurance through his employer. The denial of coverage was based on the health plan's exclusion clause for sex reassignment surgery. The exclusion clause in Bopp's health plan violates Title VII of the Civil Rights Act, which prohibits discrimination in employment. Because sex reassignment surgery is something that only transgender people would need, health plans that exclude sex reassignment surgery discriminate based on sex in violation of Title VII.

In addition, the health plan's denial of a routine blood test was discrimination based on sex because such blood tests are otherwise covered by the plan for other individuals.

Bopp, represented by the ACLU of Washington, challenged the plan's denial of coverage as discriminatory.

### **What was the response from Bopp's health insurance plan?**

In an October 21 letter to Bopp, Sound Health & Wellness Trust said it will no longer exclude services related to gender dysphoria, the serious medical diagnosis for when a person's gender identity does not correspond to his or her assigned sex at birth. Without the necessary treatment, gender dysphoria can cause severe psychological distress, including anxiety and suicide.

### **What does this mean for transgender people?**

Now that Sound Health & Wellness Trust has dropped its exclusion clause, Bopp and other transgender enrollees of the plan can access benefits consistently without discrimination. Transgender health services may include mental health care, hormone therapy, and gender confirmation surgery.

### **What about other health insurance plans? Do they cover transgender health services?**

For public employees of Washington State, the Public Employee Benefits Board (PEBB) offers coverage for surgical and nonsurgical transition-related care, including hormones and gender confirmation surgery.

Under Medicare, coverage for surgical and nonsurgical transition-related care is available.

Under Apple Health, Washington's Medicaid program, coverage is available for surgical and nonsurgical transition-related care, including hormones and gender confirmation surgery.

In June 2014, Washington's Office of Insurance Commissioner (OIC) stated that transgender discrimination in private health insurance plans is illegal under the Washington Law Against Discrimination (WLAD) and the federal Affordable Care Act. As a result, most private health insurance plans sold in Washington State must provide health care coverage to transgender policyholders on terms equal to coverage provided to non-transgender policyholders.

Private health plans that are "self-funded" like Bopp's are not subject to the OIC's directive requiring equality in health insurance coverage for transgender individuals. Such plans are governed exclusively by the federal Employee Retirement Income Security Act (ERISA). The ACLU believes that denials of coverage for transgender people violate Title VII and Section 1557, the nondiscrimination provisions of the federal Affordable Care Act.

Title VII prohibits sex discrimination in employment. Section 1557 of the ACA prohibits sex discrimination in health care and applies to health insurance bought through the federal and state exchanges. Title VII does not explicitly prohibit discrimination based on gender identity as the WLAD does; however, recent Title VII decisions and EEOC guidance have made clear that discrimination based on sex under Title VII includes transgender discrimination. The Department of Health and Human Services (HHS) recently proposed regulations to implement Section 1557 that make clear that the prohibition against discrimination based on sex under Section 1557 includes transgender discrimination.

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