

Vermont Department of Banking, Insurance, Securities and Health Care Administration

Insurance Division Bulletin No. 153 Banking Division Bulletin No. 30 Health Care Division Bulletin No. 124

Notice of the Enactment of Act 41, An Act Related to Prohibiting Discrimination on the Basis of Gender Identity

This Bulletin provides notice to affected companies of the enactment of Act 41, An Act Related to Prohibiting Discrimination on the Basis of Gender Identity.¹

Act 41 is intended to prohibit discrimination on the basis of gender identity. “Gender identity” under the law means “an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender identity, regardless of the individual’s assigned sex at birth.” 1 V.S.A. § 144.²

The prohibition against discrimination applies to Vermont financial institutions, including but not limited to Vermont banks, credit unions, savings and loan associations, and licensed lenders. 8 V.S.A. § 10403

With respect to insurance companies, including health insurance companies, “gender identity” is included in the list of classifications concerning which “unfair discrimination” is prohibited with regard to (1) underwriting standards and practices or eligibility requirements, (2) rates (unless in accordance with reasonable actuarial data or cost experience), (3) inquiring as to an applicant’s gender identity, and (4) using gender identity in the underwriting process or in the determination of insurability. 8 V.S.A. § 4727(7).

During the Vermont Legislature’s consideration of this act, the Department responded in writing to several insurance-related questions posed by legislators.³ A summary of the Department’s guidance to legislators is set forth below:

¹ This Bulletin is intended for general notification purposes only. Affected companies and individuals should review the actual language of the statutory provisions.

² In addition to anti-discrimination provisions relating to financial institutions and the business of insurance, the act also prohibits discrimination related to gender identity in many other areas, including but not limited to the following: employment practices, collective bargaining, retail sales, public accommodations, housing, and education.

³ DiStabile, P, Department of Banking, Insurance, Securities and Health Care Administration.

Memorandum to Representative William J. Lippert and Members of the House Judiciary Committee:
Questions relating to insurance and S.51, An Act Related to Prohibiting Discrimination on the Basis of Gender Identity. April 26, 2007.

Health benefit coverage in general: Does the legislation impose new coverage requirements for health insurance policies?

Answer: With respect to the question of coverage for medical costs related to gender transition, the legislature specifically declared its intent in the Act: “It is the intent of the general assembly that this act shall not require the offer or coverage for additional health benefits under any insurance policy or certificate, subscriber contract, or employee health benefit plan. This act shall not be interpreted to reduce any rights to health benefits that may be available under other law.” Act 41, Sec. 18a.

Specific health benefit claims: Does the bill affect the ability of insurers to use gender identity status to deny otherwise covered benefits for the treatment of injuries and conditions that are medically unrelated to the individual’s gender identity status? For example, would the bill permit an insurer to deny coverage for a prostate condition if an insured is transitioning to female gender identity?

Answer: With respect to specific claims coverage issues, it is currently a violation of Vermont insurance laws to arbitrarily deny a claim for a medically necessary covered benefit for which an insurer is otherwise liable under an insurance contract. The bill does not change current law.

Insurance applications and underwriting: Does the bill prevent insurers from asking applicants to specify sex/gender on an application for insurance, or to modify existing application processes?

Answer: BISHCA will read 8 V.S.A. § 4724(7)(C)(i) of the legislation in conjunction with 8 V.S.A. § 4724(7)(B), which permits the application of fair and actuarially appropriate underwriting and rating standards and eligibility requirements and practices. BISHCA understands the intent of subdivision (C)(i) to prohibit only those inquiries and investigations undertaken or used for unfairly discriminatory and other legally impermissible purposes, so the bill would not prevent insurers from asking applicants to specify sex/gender on an application for insurance, or require them to modify existing application processes or underwriting practices, provided those are undertaken and used for a lawful purpose.

Misrepresentation: Does the bill complicate coverage or rating issues or create issues related to misrepresentation for applicants or insureds who indicate a gender identity other than assigned sex at birth?

Answer: BISHCA would not expect the bill to create new issues in these areas for insurers and their customers. There is a well-developed body of existing law regarding misrepresentation and fraud in insurance. If necessary, such issues can be resolved through existing industry and regulatory mechanisms.

Questions concerning this Bulletin should be directed to:

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Dated at Montpelier, Vermont, this 23rd day of July, 2007.

s/pjt
Paulette J. Thabault, Commissioner