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## **Insurance Bulletin 174**

### *Guidance Regarding Prohibited Discrimination on the Basis of Gender Identity Including Medically Necessary Gender Dysphoria Surgery and Related Health Care*

**Revised: June 12, 2019**

Withdrawing and Superseding Insurance Division Bulletin No. 153, Banking Division Bulletin No. 30, and Health Care Division Bulletin No. HCA-124

In 2007, the General Assembly passed Act 41 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. Various entities under the jurisdiction of the Department of Financial Regulation (DFR) are subject to the prohibitions contained in Act 41. This includes Vermont financial institutions, (Vermont banks, credit unions, savings and loan associations, and licensed lender 8 V.S.A. § 10403) and insurance companies.

For insurance companies, including health insurance companies and non-ERISA employer group plans, “gender identity” is included in the list of classifications for which “unfair discrimination” is prohibited pursuant to 8 V.S.A. § 4724. For those regulated entities also subject to DFR’s Rule H-2009-3, the application of medical necessity remains an important and controlling standard of care and legal requirement for treatment related to gender dysphoria including transition and related health conditions.

Insurance companies, health insurance companies, nonprofit hospital services corporations, nonprofit medical services corporations, non-ERISA employer group plans and managed care organizations shall not exclude coverage for medically necessary treatment including gender affirmation surgery for gender dysphoria and related health conditions. In addition, insurers may not deny coverage of gender affirmation surgery as not medically necessary on the basis of



age without other clinical factors or circumstances supporting the decision. Insurance companies will not be expected to re-file existing policies but will be expected to implement those plans in a manner consistent with this Bulletin. As of the effective date of this Bulletin, new insurance policy forms filed by insurers will be disapproved by DFR if they exclude such coverage. This application of the law also covers form filings for plans to be offered through Vermont's Health Benefit Exchange beginning January 1, 2014. Section 1557(a) under the federal Affordable Care Act (ACA) prohibits discrimination on the basis of gender identity and sex stereotyping in any health program receiving federal funds or by an entity established under the ACA including exchanges. The U.S. Department of Health and Human Services and The Centers for Medicare and Medicaid Services indicate that guidance on this topic will be published in the future.

DFR is committed to ensuring that Vermonters do not face discrimination in accessing medically necessary health care benefits, including those based on gender identity and gender dysphoria. This is both a simple question of fairness and a matter addressed by existing insurance law and DFR regulation.

This Bulletin is DFR's interpretation of existing insurance law or general statement of policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.



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Michael S. Pieciak, Commissioner

June 12, 2019

Date

