



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Health Insurance Companies, All Licensed Insurance Producers, and Other Licensees and Interested Parties

FROM: Insurance Commissioner Ricardo Lara

DATE: June 15, 2020

RE: Compliance with Health Insurance Antidiscrimination Protections in California Law

On June 12, 2020, the federal Centers for Medicare and Medicaid Services released a final rule, "Nondiscrimination in Health and Education Programs or Activities, Delegation of Authority" (RIN 0945-AA11). The final rule is scheduled to be published in the Federal Register on June 19, 2020, and becomes effective 60 days thereafter.

The final rule, in part, eliminates existing federal protections against discrimination on the basis of sex. This federal action will have a disparate negative impact on women, persons in the LGBTQ+ community, persons with disabilities, and persons whose primary language is other than English. To the extent a person's health coverage is subject to federal regulation, this final federal rule will impair the ability of people in these groups to access health care, and facilitates invidious discrimination.

The purpose of this Notice is to remind California health insurers that the above-referenced federal rule does not preempt state law. Health insurance regulated by the California Department of Insurance (Department) remains subject to California's antidiscrimination law. Consequently, health insurers must continue to comply with the existing antidiscrimination standards in California law, beyond the minimum requirements of federal law. The antidiscrimination requirements found in state law include, but are not limited to, the following:

- 1) A prohibition against failing or refusing to accept an application for insurance or issuing insurance to an applicant, and issuing or canceling insurance "under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation." (Cal. Ins. Code § 10140.)
- 2) A prohibition against employing marketing practices or benefit designs in non-grandfathered individual and small employer health insurance coverage that discriminate based on "race, color, national origin, present or predicted disability, age, sex, gender identity, sexual orientation, expected length of life, degree of medical dependency, quality

of life, or other health conditions.” (Cal. Ins. Code §§ 10753.05 (h)(3), 10965.5(a)(3).)

- 3) A prohibition against discriminating based on an insured or prospective insured person’s actual or perceived gender identity, or on the basis that the insured or prospective insured is a transgender person, including discrimination in the following:
 - a. Denying, cancelling, limiting or refusing to issue or renew an insurance policy.
 - b. Premium rating.
 - c. Designating gender identity or transgender identity as a pre-existing condition for the purpose of denying or limiting coverage.
 - d. Denying or limiting coverage or denying a claim for the following services due to gender identity or because the insured is a transgender person:
 - i. Health care services related to gender transition if coverage is available under the policy for such services when not related to gender transition, including but not limited to reconstructive surgery.
 - ii. Health care services ordinarily or exclusively available to individuals of one sex when the denial or limitation is due only to the fact that the insured person is enrolled as belonging to the other sex or has undergone, or is in the process of undergoing, gender transition.

(Cal. Ins. Code §§ 10140, 10140.2, 10123.88; Cal. Code Regs. tit. 10, § 2561.2.)

- 4) The coverage parity requirements for mental health and substance use disorder services, pursuant to the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008. (Cal. Ins. Code § 10144.4.)
- 5) The Language Assistance Program requirements, including how insured persons and providers will be informed of the availability of language assistance services. (Ins. Code §§ 10133.8, 10133.9, 10133.11 Cal. Code Regs. tit. 10, § 2538.3.)
- 6) Antidiscrimination and language and disability assistance services notification requirements, including a that “[a]n insurer does not discriminate on the basis of race, color, national origin, ancestry, religion, sex, marital status, gender, gender identity, sexual orientation, age, or disability.” (Cal. Ins. Code § 10133.11.)

The California Department of Insurance will vigorously enforce these and other existing provisions of California law to protect Californians against wrongful discrimination.

Please direct questions regarding this Notice to Bruce Hinze, Senior Health Policy Attorney, at Bruce.Hinze@insurance.ca.gov.

Persons who believe they have been subject to unlawful discrimination should contact the Department’s Consumer Complaint Center at 1-800-927-4357, or submit a complaint through the Department’s website at www.insurance.ca.gov.