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Transgender Health Benefits May Be Required Under New Guidance



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New ACA regulations issued by the Office of Civil Rights (OCR) at the U.S. Department of Health and Human Services may require employer group health plans to provide coverage for transgender surgery and other transgender health benefits. This new requirement takes effect as of the first day of the first plan year beginning on or after January 1, 2017.

The new regulations prohibit discrimination on the basis of race, color, national origin, sex, age or disability under a health program or activity receiving federal funds. As part of this ban on discrimination, blanket exclusions in group health plans for all care relating to gender dysphoria or gender transition will no longer be permitted. Rather, transgender surgery and other transgender health benefits must be

provided on a nondiscriminatory basis. For example, if a group health plan provides coverage for a hysterectomy for a female participant experiencing medical issues during menopause, then it would also be appropriate to cover a hysterectomy for a participant whose physician recommends it to treat gender dysphoria.

Not all employer group health plans are subject to the new regulations. Employer group health plans which must comply include:

- Plans sponsored by hospitals, home health agencies, nursing homes and other health care providers receiving funds under Medicare Part A or Medicaid;

- Fully insured group health plans (sponsored by any employer) where the insurer is offering coverage on an exchange; and
- Self-funded group health plans (sponsored by any employer) administered by an insurer offering coverage on an exchange.

In the regulations, OCR explains that while it has jurisdiction over an insurer offering coverage on an exchange (even with respect to its business of administering self-funded plans), it does not have jurisdiction over employer-sponsors of self-funded

group health plans. However, OCR indicates that if such a self-funded plan is discriminatory, it may refer the matter to EEOC to pursue an employment discrimination claim against the employer sponsoring the plan.

Employers should review their group health plans to determine what the plan excludes and provides relative to transgender health benefits and make appropriate changes in the event the employer's plan is subject to these new requirements.



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Miller Johnson launched our Health Care Reform Team in 2010 to be a professional resource and provide guidance to our clients regarding health care reform legislation. Because of the complexity and ambiguity of the Patient Protection and Affordable Care Act (PPACA) and Health Care and Education Affordability Reconciliation Act of 2010 (HCEARA) signed into law in March 2010, the changes were expected to span eight years in implementation.

Mary V. Bauman, chair of the Health Care Reform Team, said “Our clients deserved to have a more comprehensive and cohesive group serving them since this has a tremendous impact on them financially and strategically.”

Miller Johnson's web site Health Care Reform Team pages host documentation and activity. There are almost 100 articles written covering all the regulations and issues that are important to employers. Visitors to the Health Care Reform Team page of the Practice Areas section at www.millerjohnson.com will find a valuable source of information and resources.



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These are some of the Miller Johnson attorneys available to answer your questions and provide assistance on issues related to Health Care Reform (Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act):

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