



Future of ACA



New Website



## Court Blocks Requirement to Provide Coverage of Transgender Health Benefits



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In previous *Client Alerts*, (Transgender Health Benefits May Be Required Under New Guidance and New ACA Nondiscrimination Requirements Don't Discriminate in Their Applicability: Are You Covered?), we explained that new regulations issued by the Office of Civil Rights (a division within the Department of Health and Human Services) may require certain group health plans to provide coverage of transgender health benefits (i.e., gender reassignment surgery and related services, such as counseling and hormone therapy).

### Injunction

On December 31, 2016, a federal district court blocked this requirement by prohibiting the Office of Civil Rights (OCR) from enforcing the portions of these regulations that relate to interpreting discrimination “on the basis of sex” to include discrimination

on the basis of gender identity. According to the OCR regulations, discrimination based on gender identity is a form of prohibited discrimination on the basis of sex. As a result, a group health plan—which is subject to these regulations—is discriminatory, if the plan maintains a “categorical exclusion” of gender transition-related services (such as excluding gender reassignment surgery and related services). These types of exclusions were required to be removed by the first day of the first plan year beginning on or after January 1, 2017.

The injunction applies nationwide. So, it applies to all group health plans that are subject to the regulations, regardless of where the plan sponsor is located. But, the injunction is specific: it **only** applies to the portions of the regulations that relate to the interpretation of discrimination “on

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the basis of sex” to include gender identity. In other words, it doesn’t apply to the administrative notice and grievance procedure requirements of the new Section 1557 regulations.

As a result of this injunction, it appears that, for the time-being, group health plans may continue to maintain an exclusion of gender transition-related services. However, we explained in our previous Affordable Care Act (ACA) *Client Alerts*, such an exclusion may provide the basis for an employment discrimination charge. The injunction does **not** prohibit the EEOC or an individual employee from bringing an employment-related discrimination charge against an employer-plan sponsor that maintains a plan that categorically excludes gender reassignment surgery and related services.

## Next Steps

Employer-plan sponsors that continue to exclude gender reassignment services should pay close attention to any developments related to the injunction (especially in light of the incoming Trump administration) and carefully consider the risks of employment-related discrimination charges.

*If you have any questions about this article, please contact the author or a member of the Health Care Reform Team.*



## The Future of the ACA

There has been much speculation about the Affordable Care Act’s future as we transition to new leadership in Washington DC. You can be certain that our team of attorneys remain dedicated to providing the latest changes and regulations on the ACA. These updates are shared in our newsletter, through workshops and webinars, so be sure to check the Health Care Reform Team section of our website.

### Upcoming webinar

**Post-Election - What does this mean for Employer’s Health Care Strategies?**

**January 12, 2017**

*This webinar is being recorded for future viewing.*

### ***Did you see Miller Johnson’s new website?***

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