



# The Affordable Care Act:

## Progress Toward Eliminating Insurance Discrimination Against Transgender People

Andrew Cray and Kellan Baker    May 30, 2013

The Affordable Care Act will transform how transgender people get the health care needed to live healthy and authentic lives. The centerpiece of the law is the newly created Health Insurance Marketplaces—starting in 2014, every state will have a Marketplace where people can compare plans and buy affordable coverage that meets their needs. There are three central parts of the law that will significantly improve access to health care (including transition-related care) for transgender people:

### Section 1557 nondiscrimination

Section 1557 of the Affordable Care Act applies nondiscrimination protections to all health programs that receive federal funding.

These nondiscrimination protections will apply to federally funded clinics, doctors who see Medicare patients, and possibly to federally funded health benefits programs like Medicare and Medicaid.

### Essential Health Benefits

In 2014 all small-group and individual market plans will be required to cover a comprehensive package of services, which must include 10 categories of benefits, including hospitalization, mental health care, and prescription drugs.

Plans offering the Essential Health Benefits are prohibited from discriminating in benefits design on the basis of health condition and gender identity.

### Health Insurance Marketplaces

In the fall of 2013, people will be able to shop for coverage in state- or federally run Health Insurance Marketplaces.

Plans sold through the Marketplaces are required to meet federal non-discrimination standards.

Many people will be able to get federal assistance to pay the premiums for plans sold through the Marketplaces, making coverage more affordable.

---

### Section 1557 nondiscrimination

- This part of the law casts the widest umbrella—its nondiscrimination protections apply to health programs and activities receiving federal funds, and to entities and programs established under Title I of the law. This includes Health Insurance Marketplaces and Qualified Health Plans sold through those Marketplaces.
- Section 1557 provides protections based on race, color, national origin, age, disability, and sex.

- The federal Department of Health and Human Services, or HHS, has clarified that the “sex” protections in Section 1557 prohibit discrimination on the basis of gender identity and sex stereotyping.
- HHS will formalize their interpretation of the law through regulations.
- To file a complaint regarding gender identity or sex stereotyping discrimination, please see <http://www.hhs.gov/ocr/civilrights/complaints/index.html>

---

## Essential Health Benefits

- Essential Health Benefits standards cast the second-widest net—all new individual and small-group plans, both inside and outside of the Health Insurance Marketplaces, will be required to cover services from 10 categories:
  1. Ambulatory patient services
  2. Emergency services
  3. Hospitalization
  4. Maternity and newborn care
  5. Mental health and substance use disorder services, including behavioral health treatment
  6. Prescription drugs
  7. Rehabilitative and habilitative services and devices
  8. Laboratory services
  9. Preventive and wellness services and chronic disease management
  10. Pediatric services, including oral and vision care
- Each state has selected a “base-benchmark” plan from a list provided by HHS, which gives a preliminary definition of the specific services in these categories that have to be covered.
- Federal regulations prohibit discrimination in coverage on a variety of factors, including “health condition” and gender identity. States will be required to adjust their “base benchmark” to remove discrimination on these bases, and in states with federally run Marketplaces, federal regulators will be monitoring and enforcing these standards. These protections are a strong start toward equal coverage for transgender people.

---

## Health Insurance Marketplaces and Qualified Health Plans

- Narrower, but still significant, protections for transgender people will be included in Health Insurance Marketplaces, and the insurance plans sold through them, called Qualified Health Plans. An estimated 20 million people will buy coverage through Marketplaces.
- Federal regulations prohibit both the Marketplaces and Qualified Health Plans from discriminating against individuals on the basis of gender identity.

---

## Trickle-down effects to states

Many states are using health care reform as a time to clarify state laws related to insurance nondiscrimination.

States setting up their own Marketplaces, or partnering with the federal government, will be setting policies for health plans that want to participate. All states are responsible for enforcing Essential Health Benefits standards.

### **Questions? Email:**

*Kellan Baker, Associate Director of the LGBT Research and Communications Project at the Center for American Progress, at [kbaker@americanprogress.org](mailto:kbaker@americanprogress.org).*

*Andrew Cray, Policy Analyst for the LGBT Research and Communications Project at the Center for American Progress, at [acray@americanprogress.org](mailto:acray@americanprogress.org).*