

From: Logan Wren W
To: [ETF SMB Board Feedback](#)
Subject: For Consideration at the Upcoming GIB Meeting
Date: Thursday, April 19, 2018 2:16:36 AM
Attachments: [Trans-Ex Document.pdf](#)

Note: I submit this correspondence as well as the attached document for the consideration of the Group Insurance Board at its upcoming meeting on May 16th, 2018. I authorize all information included in this email to be made available to the public record.

To the Group Insurance Board,

In a prior correspondence, I encouraged the Board to reconsider the exclusion listed in the Uniform Benefits on, "Procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment." As a transgender woman, psychiatrist, and resident physician subject to the decisions of the GIB, I could offer arguments as to why this would be morally and medically appropriate.

However, there are financial reasons to remove the exclusion. In 2016, the ETF noted the GIB would remain "... at risk by maintaining benefit designs that would be considered discriminatory on the basis of sex and gender identity under Title VII of the Civil Rights Act of 1964..."

The board is now a listed defendant in a case over precisely this matter.

In light of this, I ask the board to consider a recent ruling by the US Court of Appeals for the 6th Circuit stating, "Discrimination against employees, either because of their failure to conform to sex stereotypes or their transgender and transitioning status, is illegal under Title VII."

I'd also request the board consider a more recent statement from the US District Court of the Southern District of Texas stating, "...these very recent circuit cases are persuasive. They consistently recognize transgender status and orientation as protected classes under Title VII, applying the long-recognized protections against gender- or sex-based stereotyping." I'd request the board consider the even more recent ruling from the US District Court of the Western District of Washington, "...that, because transgender people have long been subjected to systemic oppression and forced to live in silence, they are a protected class." I'd remind the board that protected classes are defined as groups protected from employment discrimination, by law, as enforced by the EEOC, which, per the organization's own words, "...interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on gender identity or sexual orientation."

I'll close this correspondence on a more personal note, by putting a final question to each of

you: Michael Farrell, Stacey Rolston, Herschel Day, Charles Grapentine, Waylon Hurlburt, Theodore Neitzke, Jennifer Stegall, Francis Sullivan, Nancy Thompson, J.P. Wieske, and Bob Zieglbauer.

When the future reflects on the hard won rights of transgender people, what will they say you did?

Sincerely,
Wren W. Logan

Trans-Exclusionary Healthcare: Who's to Blame & How to Take Back Our Rights

Wren W. Logan | April 18, 2018

All insurance providers (Quartz, Dean, etc.) offering coverage in the State of Wisconsin Group Health Insurance Program are required to abide by a [Certificate of Coverage](#)¹ as established by the [Group Insurance Board](#).² Every version of this Certificate of Coverage, for years, has included a specific exclusion on, "Procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment." There are no plans currently available to state employees that do not exclude these services.

A couple years ago, this almost changed.

On May 18th, 2016, the Department of Health and Human Services (HHS) issued a final rule on [Section 1557](#) of the Affordable Care Act (ACA).³ Section 1557 was a part of the ACA that specifically prohibited, "... discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities." The final rule clarified "sex" as including gender identity, pulling from assessments of [Title IX of the Education Amendments of 1972](#)⁴ and Title VII of the Civil Rights Act of 1964. Put simply, Section 1557 made it so any organization using federal money to deliver health services or insurance could not discriminate against transgender people.

The Wisconsin Group Insurance Board (GIB) and Department of Employee Trust Funds (ETF) realized this posed a problem for them. Included in the wording of Section 1557 was a prohibition on, "... explicit, categorical (or automatic) exclusion or limitation of coverage for all health services related to gender transition." At risk of losing funding and facing legal backlash, the [ETF recommended](#) the GIB remove the specific exclusion on transition related healthcare services.⁵ Among their noted concerns was a fear that they were, "... at risk by maintaining benefit designs that would be considered **discriminatory on the basis of sex and gender identity under Title VII of the Civil Rights Act of 1964 and [Equal Employment Opportunity Commission] EEOC regulations.**" On July 12th, 2016, the [GIB approved these changes](#), and the exclusion was to be removed on January 1st, 2017.⁶

This should have been the end of it, but there were some who would not tolerate this progress.

On August 10th, 2016, the [Wisconsin Department of Justice](#) (DOJ) contacted the Group Insurance Board, urging a reconsideration of their decision.⁷ In a statement mockingly referring to gender identity in quotation marks throughout, they explained how transgender individuals were not protected by either Title IX or Title VII because neither of these explicitly contained the phrase "gender identity".

They argued that the ETF could reinstate the exclusion under the pretense of gender affirming surgeries being too expensive, further suggesting ETF could point toward, "... research suggesting that such procedures (especially sex transformation surgeries) may in fact harm patients." Interestingly, they did not mention what research they were referring to. Most importantly, they explained how they were [currently involved in a lawsuit against HHS](#), attempting to block the portions of Section 1557 that protected transgender rights.⁸

The very next day, [ETF responded](#).⁹ They maintained their initial recommendations, noting a reinstatement of the exclusions would put them at risk for lawsuits, citing two lawsuits already brought against the GIB by the EEOC for denial of benefits in relation to transgender services. They further noted, "The cost of removing the Uniform Benefits exclusion related to benefits and services in connection with gender reassignment or sexual transformation is anticipated to be **low**." They later noted that it, "... **would not increase premiums.**"

On [December 13th, 2016](#), the GIB discussed the opinions of the DOJ and ETF during their meeting.¹⁰ It was added to the agenda at the behest of a board member who'd noted the DOJ had sent a representative to the meeting specifically to discuss the matter. The DOJ representative informed the GIB that the DOJ's memorandum was, "... authored by the DOJ at the request of the governor's office for the benefit of the board." He went on to further state the DOJ was recommending the GIB not remove the exclusion.

On [December 30th, 2016](#), the GIB agreed to reinstate an exclusion on coverage of transition related healthcare if the DOJ could win their case and block the portions of section 1557 of the ACA protecting transgender rights.¹¹ Almost the entirety of the GIB was in agreement.

On [December 31st, 2016](#), Federal District Judge Reed O'Connor issued a preliminary injunction in favor of the eight states and three private healthcare providers suing to remove protections for transgender individuals. HHS was told they could not legally enforce any, "... prohibition against discrimination on the basis of gender identity..."¹² A large part of this decision was the belief that Section 1557 would force healthcare providers to act against deeply held religious beliefs by forcing them to offer gender affirming treatment. As such, Judge O'Connor was of the opinion it would violate the Religious Freedom Restoration Act.

A preliminary injunction is not a final injunction.

On January 1st, 2017, when the exclusion was to be removed, nothing changed.

On [January 30th, 2017](#), the GIB elected to reinstate the exclusion.¹²

On February 1st, 2017, the exclusion went back into effect.

But, it's not over.

At a [February 8th, 2017](#) meeting of the GIB, a member expressed concern at the possibility of the preliminary injunction on Section 1557 being lifted. He was assured this would not happen.¹⁴

On April 7th, 2017, Alina Boyden and Dr. Shannon Andrews [filed a lawsuit against ETF and GIB](#), arguing the exclusion on transition related healthcare for transgender individuals was a violation of Title VII.¹⁵ **Their case is ongoing, and no final ruling has been issued as of today.**

Since then, much has happened...

On September 27th, 2017, [Judge Barry Ted Moskowitz of the US District Court for the Southern District of California](#) stated in a ruling, "Because Title VII, and by extension Title IX, recognize that **discrimination on the basis of transgender identity is discrimination on the basis of sex**, the Court interprets the ACA to afford the same protections."¹⁶

On March 7th, 2018, [Circuit Judges Moore, White, and Donald of the United States Court of Appeals for the Sixth Circuit](#) ruled, "**Discrimination against employees, either because of their failure to conform to sex stereotypes or their transgender and transitioning status, is illegal under Title VII.**"¹⁷

On April 4th, 2018, in the case of Nicole Wittmer vs. Phillips 66 Company, [Chief US District Judge Lee H. Rosenthal](#) stated, "...these very recent circuit cases are persuasive. They consistently recognize transgender status and orientation as protected classes under Title VII, applying the long-recognized protections against gender- or sex-based stereotyping. Applying these recent cases, the court assumes that **Wittmer's status as a transgender woman places her under the protections of Title VII.**"¹⁸

Many of these cases have been the result of individuals filing complaints with the [Equal Employment Opportunities Commission \(EEOC\)](#) and then proceeding to file charges.¹⁹

The Wisconsin Department of Employee Trust funds was prescient in their concerns when they noted, back in 2016, that the Group Insurance Board would be "... at risk by maintaining benefit designs that would be considered discriminatory on the basis of sex and gender identity under Title VII of the Civil Rights Act of 1964..."

If your employer has discriminated against you because of your gender identity, your Title VII rights have been violated. Contact the EEOC. File a complaint. File a charge.



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