



## **OREGON INSURANCE DIVISION BULLETIN INS 2012-1**

**TO:** All Insurers Transacting Insurance in Oregon

**RE:** Application of Senate Bill 2 (2007 Legislative Session) to Gender Identity Issues in the Transaction and Regulation of Insurance in Oregon

The purpose of this bulletin is to provide guidance to insurers about how the Insurance Division of the Department of Consumer and Business Services (division) expects insurers and other licensees to conform to provisions of the Oregon Equality Act (Senate Bill 2, 2007 Legislative Session) (SB 2) in the transaction of insurance in Oregon when a transaction or activity relates to gender identity. Although most of this bulletin pertains to health insurance issues, the principles set forth are equally applicable to other kinds of insurance to the extent equality of treatment and nondiscrimination is required. The division has received questions related to coverage and treatment of conditions related to gender identity or gender dysphoria.<sup>1</sup>

For clarity, it is necessary to understand a number of terms used in this bulletin and in discussions related to gender identity.

First, the Legislative Assembly defined “sexual orientation” as, “an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or *gender identity*, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.” (Emphasis added) ORS 174.100. This definition is applicable to all of the Oregon Revised Statutes including the Insurance Code and those that prohibit discrimination by any person or governmental entity against a person based on religion, age, race, color, sex, sexual orientation, national origin, alienage, marital status or age. See e.g., ORS 30.860 and 659A.006.

In general, “actual gender identity” means a person’s internal sense of being male, female, a gender different from the gender assigned to the person at birth, a transgender person or neither male or female. “Perceived gender identity” means an observer’s impression of another’s internal gender identity including the observer’s impression that the other person is male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

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<sup>1</sup>The Oregon Equality Act (Senate Bill 2, 2007 Legislative Session) uses the term, “gender identity” when addressing the civil right and prohibition against discrimination set forth in that Act. However, the emerging term of art and the term that will likely be used in the revised DSM-5 when discussing treatment is “gender dysphoria” so for purposes of this bulletin we use, “GI/GD” to encompass both terms.

A “transgender person” is a person who has, or has been diagnosed with, GI/GD, who has received or requires health care services, including counseling, related to gender transition, who adopts the dress, appearance, or behavior of the opposite sex, or who otherwise identifies himself or herself as a gender different from the gender assigned to that person at birth.

Finally, “gender transition” means the process of changing one's outward appearance, including physical sex characteristics, to accord with the person’s actual gender identity.<sup>2</sup>

As noted, SB 2 defines “sexual orientation” and adds sexual orientation to several statutes that prohibit discrimination. The bill prohibits any discrimination based on an individual’s sexual orientation with regard to employment, housing, public accommodations, public services, public education, adult foster homes and foster parenting, among other things and declares that the opportunity to obtain employment, housing and use public accommodations free of discrimination based on sexual orientation, religion, age, race, color, sex, national origin, or marital status, is a civil right. The bill allows only a narrow exception for churches or other religious institutions to take actions based on sexual orientation including gender identity, with respect to employment, housing or the use of public accommodations. This exception is not applicable to the transaction of insurance.

When SB 2 was enacted, the division did not embark on a full-scale rewrite of the Insurance Code or the rules adopted to implement the Code. In 2008, the division set forth guidelines for incorporating the provisions of a companion bill establishing a registration process for domestic partnerships, (House Bill 2007) into existing law. This bulletin now provides similar clarification of how the Legislative Assembly policy against discrimination based on gender identity impacts insurance regulation. Rather than a full-scale rewrite of the Insurance Code or the division’s rules, the division relies on the language of SB 2 that prohibits any person or governmental entity from discriminating based on gender identity. The division views the prohibition as applicable to all provisions of the Insurance Code and the associated division rules. Just as with the recognition of registered domestic partnerships in House Bill 2007 (2007 Legislative Session), the provisions of the Insurance Code must be read and construed in a manner that aligns with the legislative intent and stated policy expressed in SB 2. The division expects insurers to apply the nondiscrimination provisions of SB 2 in a similar manner.

## Discussion

Keeping this background in mind, this bulletin sets out principles the division applies when addressing questions related to GI/GD and insurance. The commissioner will continue to apply these principles to questions related to GI/GD and the transaction of insurance.

Principle #1: An insurer may not discriminate on the basis of an insured's or prospective insured's actual or perceived gender identity, or on the basis that the insured or prospective insured is a transgender person.

The division would find an insurer has discriminated if an insurer does any of the following:

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<sup>2</sup> These terms are adopted from California regulation §2561.1.

- (1) Denies, cancels, limits or refuses to issue or renew an insurance policy on the basis of an insured's or prospective insured's actual or perceived gender identity;
- (2) Demands or requires a payment or premium that is based in whole or in part on an insured's or prospective insured's actual or perceived gender identity;
- (3) Designates GI/GD as a preexisting condition for which coverage will be denied or limited; or
- (4) Excludes all "Gender Identity Disorders."

Principle #2: A health insurer may not deny or limit coverage or deny a claim for a procedure provided for GI/GD if the same procedure is allowed in the treatment of another non-GI/GD-related condition.

The public policy set forth in SB 2 prohibits an insurer from denying coverage for any treatment solely on the basis that the treatment is related to gender reassignment or is treatment for GI/GD. If the treatment consists of a service provided for the treatment of other conditions or illnesses such as hormone therapy, hysterectomy, mastectomy or vocal training, and the treatment was deemed medically necessary, then the insurer could not deny coverage because in this instance it was for gender transition or treatment of GI/GD.

For example, if an insurer provided coverage for breast reduction surgery to alleviate back pain, the insurer could not deny breast reduction surgery for gender reassignment purposes so long as the treatment is deemed medically necessary.<sup>3</sup> This places an insured who is seeking coverage of a condition related to GI/GD on equal footing with any other person by basing the decision about coverage on medical necessity, not on GI/GD and assures the person equal access to opportunities to challenge an insurer's decision related to coverage, such as mandatory appeal processes. In cases in which coverage is denied because the carrier does not consider it medically necessary, a number of appeals are available to the insured that allow the insured and the insured's provider to demonstrate the treatment is medically necessary. For an individual involved in gender reassignment or GI/GD treatment, the same "medically necessary" standard should apply, which would then make available to the individual the same appeal processes as for any claim denial.

Principle #3: Although a health insurer may categorically exclude coverage for a particular condition or treatment, the insurer may not base such exclusion on gender identity.

Senate Bill 2 was intended to assure that all Oregonians would be provided equality in treatment and does not mandate any particular treatment. But the bill does require an insurer to provide coverage for a treatment or a condition or illness related to GI/GD on the same basis as coverage is provided for any other health condition.

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<sup>3</sup> The division does not address the determination of medical necessity in this bulletin. However, the division does note that a number of medical professional organizations have addressed the issue. *See*, "Health Care for Transgender Individuals," Committee Opinion of the Committee on Health Care for Underserved Women, The American College of Obstetricians and Gynecologists, December 2011; Resolution #114, American Medical Association House of Delegates, "Removing Barriers to Care for Transgender Patients," Received 04/14/08; "Position Statement on Access to Care for Transgender and Gender Variant Individuals," Official Position of the American Psychiatric Association, approved May 2012; "APA Policy Statement: Transgender, Gender Identity & Gender Expression Nondiscrimination," adopted by the American Psychological Association Council of Representatives, August 2008.

An insurer may exclude any service that is not mandated by legislative action. However, an insurer may not exclude such services because the service is provided for the treatment of GI/GD. This kind of exclusion runs counter to SB 2. An insurer may categorically exclude treatment of sexual disorders or dysfunctions, but the exclusion must apply across the board. The insurer cannot exclude only sexual disorders or dysfunctions if they are related to GI/GD. This ability to exclude obviously does not allow exclusion of any service or treatment mandated by the Legislative Assembly such as mandates related to mammograms, pelvic examinations, Pap smear examinations, breast exams and mastectomy-related services if those treatments were connected to a sexual disorder or dysfunction.

An insurer cannot simply exclude “Gender Identity Disorders” or “Treatment for Gender Identity Disorder” because this is on its face discrimination based on sexual orientation. The insurer may exclude specific procedures that may be used in treating GI/GD, but the exclusion must apply to all insureds equally and may not be excluded because it is for GI/GD. For example, an insurer may exclude all cosmetic surgery but cannot allow such surgery in some instances while denying the same surgical procedure as “cosmetic” in connection with GI/GD.

Principle #4: The mandated coverage for mental health services must include mental health counseling and treatment related to GI/GD.

The current mental health parity rules of the division were adopted in 2006, prior to enactment of SB 2. The rules define “mental or nervous conditions” as used in ORS 743A.168 as “[a]ll disorders listed in the ‘Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR, Fourth Edition’ except for:...(iv) Diagnostic codes 302.85, 302.6, 302.9; Gender Identity Disorders in Adults. This exception does not extend to children and adolescents 18 years of age or younger....”. OAR 836-053-1404. Under this rule, treatment related to GI/GD is required only for those 18 years of age or younger. The division finds that this rule on its face conflicts with the public policy expressed in Senate Bill 2 to the extent it excludes mental health treatment related to GI/GD for persons over the age of 18 solely on the basis of gender identity. If possible, the division must interpret the rule in a manner that complies with the requirements of SB 2. If the rule cannot be construed in a manner that is consistent with SB 2, the rule is invalid and cannot be enforced. Although the rule anticipates that mental health counseling services mandated by ORS 743A.168 would include counseling and treatment for mental or nervous conditions that may in fact be caused by or related to GI/GD such as depression, for those over 18, the rule requires insurers to provide treatment for GI/GD-related illness such as depression only if the treatment is based on a Diagnostic code used for depression and not the GI/GD-related conditions identified under Diagnostic codes 302.85, 302.6 or 302.9.

With the passage of SB 2, the division must interpret OAR 836-053-1404 to require mental health treatment of GI/GD identified under Diagnostic codes 302.85, 302.6 or 302.9 for all ages. To deny coverage under those codes would clearly be discrimination based solely on gender identity and thus prohibited under SB 2.

To address this problem, the division is adopting immediately a temporary rule to remove the limitation and will open a permanent rulemaking to review this rule to remove the exclusion for those over age 18 and make any other changes necessary as a result of legislation adopted since Senate Bill 1 (relating to mental health parity) was adopted in 2005.

Principle #5: The perceived gender identity of a person should not prevent appropriate treatment.

With specific exceptions, the Insurance Code does not mandate that insurers provide any particular coverage.<sup>4</sup> The extent of coverage, deductibles and copayments offered by an insurer are not regulated. The exceptions to this are the insurance mandates such as those codified in ORS Chapter 743A. The mandates set forth in ORS Chapter 743A have been specifically enacted by Oregon's Legislative Assembly to require insurers to include certain coverage in health policies. These mandates include a variety of conditions or treatments, such as treatment for alcohol and drug addiction (ORS 743A.164, 743A.168), provision of orthotic devices (ORS 743A.144), certain minimum screenings for breast cancer (ORS 743A.108) and prostate screening examinations (ORS 743A.120).

Any health care services that are ordinarily or exclusively available to individuals of one sex may not be denied based on the perceived gender identity of a person when the denial or limitation is due only to the fact that the insured is enrolled as belonging to the other sex or has undergone, or is in the process of undergoing, gender transition.

If a treatment is determined to be medically necessary and the coverage is one that is provided under the policy, the gender of the patient is usually irrelevant. However, some mandates are particular in requiring coverage for either male or female patients. See e.g., ORS 743A.104 (coverage for pelvic and Pap smear examinations required for women annually for women 18 to 64 years of age), ORS 743A.108 (coverage required for physical examinations of breast for women) and ORS 743A.120 (coverage required for biennial prostate screening examinations for men 50 years or older). We note that a statute of general construction states, "It shall be the policy of the State of Oregon that all statutes, rules and orders enacted, adopted or amended after October 3, 1979, be written in sex-neutral terms unless it is necessary for the purpose of the statute, rule or order that it be expressed in terms of a particular gender." ORS 174.129. In light of this standard and the gender-specific language in these particular statutes, we conclude that although the legislature intended these mandates to only apply to the sexes indicated in the mandates, with the passage of SB 2, the mandates should not be construed to limit the coverage provided to the perceived or self-identified gender identity. The division will interpret the policy set forth in SB 2 to require an insurer to cover any sex-specific mandated coverage, if medically necessary, regardless of whether a person is biologically or self-identified as the sex identified in the statute. In other words, we would view the Pap smear mandate (ORS 743A.104) as applicable to a biological female who self-identifies as male, and we would view the prostate screening mandate (ORS 743A.120) as applicable to a biological male who self-identifies as female.

Principle #6: The Insurance Division expects insurers' forms to comply with the policy expressed in SB 2 as it is incorporated into insurance regulation with this bulletin.

As with implementation of HB 2007, the division has not required insurers to file new forms. However, the division does interpret its statutes and laws in light of SB 2 and will not allow actions by the regulated insurance community that violate the clear public policy expressed in SB 2 even if forms have been allowed since the passage of SB 2. The division expects all new forms

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<sup>4</sup> In 2014, all coverage included in the Essential Health Benefit Plan selected for Oregon will be mandated under the provisions of state and federal law.

to comply and in some instances, may require endorsement or revision of an existing form. For example, the division will not allow an insurer to include provisions in contracts that violate the SB 2 policy. An obvious example would be that of a form submitted for approval that included exclusions based on treating gender identity as a preexisting condition. The division would disapprove this both because it is unjust, unfair and inequitable under ORS 742.005 and because it violates the policy and intent of SB 2.<sup>5</sup>

If you have any questions about this bulletin, you may contact:

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This bulletin takes effect immediately.

Dated this 19th day of December 2012 at Salem, Oregon.

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Louis D. Savage, Insurance Commissioner  
Oregon Insurance Division

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<sup>5</sup> Additional information explaining the basis of this bulletin can be found in the attached Appendix.

**APPENDIX**  
**To**  
**OREGON INSURANCE DIVISION BULLETIN INS 2012-1**

The purpose of Bulletin 2012-1 is to provide guidance to insurers about how the Insurance Division of the Department of Consumer and Business Services (division) expects insurers and other licensees to conform to provisions of the Oregon Equality Act (Senate Bill 2, 2007 Legislative Session) (SB 2) in the transaction of insurance in Oregon when a transaction or activity relates to gender identity. Although most of this bulletin pertains to health insurance issues, the principles set forth are equally applicable to other kinds of insurance to the extent equality of treatment and nondiscrimination is required. The division has received questions related to coverage and treatment of conditions related to gender identity or gender dysphoria.<sup>6</sup>

This appendix provides additional information to support the division's bulletin and the principles set forth in Bulletin 2012-1.

Terms used in Bulletin 2012-1:

1. "Sexual orientation" as defined by SB 2 means "an individual's actual or perceived heterosexuality, homosexuality, bisexuality or *gender identity*, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth." (Emphasis added) ORS 174.100. This definition is applicable to all of the Oregon Revised Statutes including the Insurance Code and those that prohibit discrimination by any person or governmental entity against a person based on religion, age, race, color, sex, sexual orientation, national origin, alienage, marital status or age. *See e.g.*, ORS 30.860 and 659A.006.
2. "Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned to the person at birth, a transgender person or neither male or female.
3. "Perceived gender identity" means an observer's impression of another's internal gender identity including the observer's impression that the other person is male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.
4. A "transgender person" is a person who has, or has been diagnosed with, GI/GD, who has received or requires health care services, including counseling, related to gender transition, who adopts the dress, appearance, or behavior of the opposite sex, or who otherwise identifies himself or herself as a gender different from the gender assigned to that person at birth.
5. "Gender transition" means the process of changing one's outward appearance, including physical sex characteristics, to accord with the person's actual gender identity.<sup>7</sup>

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<sup>6</sup>The Oregon Equality Act (Senate Bill 2, 2007 Legislative Session) uses the term, "gender identity" when addressing the civil right and prohibition against discrimination set forth in that Act. However, the emerging term of art and the term that will likely be used in the revised DSM-5 when discussing treatment is "gender dysphoria" so for purposes of this bulletin we use, "GI/GD" to encompass both terms.

<sup>7</sup> These terms are adapted from California regulation §2561.1.

As noted in the bulletin, SB 2 defines “sexual orientation” and adds sexual orientation to several statutes that prohibit discrimination. The bill prohibits any discrimination based on an individual’s sexual orientation with regard to employment, housing, public accommodations, public services, public education, adult foster homes and foster parenting, among other things and declares that the opportunity to obtain employment, housing and use public accommodations free of discrimination based on sexual orientation, religion, age, race, color, sex, national origin, or marital status, is a civil right. The bill allows only a narrow exception for churches or other religious institutions to take actions based on sexual orientation including gender identity, with respect to employment, housing or the use of public accommodations. This exception is not applicable to the transaction of insurance.

#### Applicability of SB 2 to Transaction of Insurance

The Insurance Division interprets the unlawful discrimination policy set forth in SB 2 as applying to the transaction of insurance in Oregon in two ways. First, the language of ORS 659A.003 states a clear public policy of the state of Oregon. Although the provisions of ORS chapter 659A that prohibit unlawful discrimination do address employment situations, the scope of the chapter and the policies set forth in the chapter are not limited to employment:

**659A.003 Purpose of ORS chapter 659A.** The purpose of this chapter is to encourage the fullest utilization of the available workforce by removing arbitrary standards of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability as a barrier to employment of the inhabitants of this state, **and to ensure the human dignity of all people within this state and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of unlawful discrimination of any kind based on race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status.** To accomplish this purpose, the Legislative Assembly intends by this chapter to provide:

(1) **A program of public education calculated to eliminate attitudes upon which practices of unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status are based.**

(2) An adequate remedy for persons aggrieved by certain acts of unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, disability or familial status, or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of unlawful discrimination through a procedure involving investigation, conference, conciliation and persuasion, to encourage the use in good faith of the machinery by all parties to a complaint of unlawful discrimination and to discourage unilateral action that makes moot the outcome of final administrative or judicial determination on the merits of the complaint. (Emphasis added.)

In ORS 659A.006 (1), the legislature declares that it is the public policy of the State of Oregon:

**...that practices of unlawful discrimination against any of its inhabitants because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status are a matter of state concern and that this discrimination not only threatens the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.** (Emphasis added.)



This statute goes on to state that the opportunity to obtain employment or housing and to use places of public accommodation without unlawful discrimination is recognized as and declared to be a civil right. Although many of the provisions of ORS chapter 659A address specific instances in which discrimination is forbidden, the policy itself as stated in ORS 659A.006 (1) is broad and serves to inform the Insurance Division when the division must make a determination of whether an action of an insurer or other person authorized to transact insurance or a provision of an insurance contract is allowed and when that discrimination is unlawful and unfair.

One statute, ORS 659A.403, prohibits discrimination in any place of public accommodation, which is defined as “any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise,” (ORS 659A.400). The statute provides in part:

**659A.403** (1) Except as provided in subsection (2) of this section, all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older.

Shortly after adoption of ORS 659A.400 (formerly ORS 30.675) and 659A.403 (formerly ORS 30.670), the Oregon Supreme Court considered whether insurance was a “public accommodation” as used in those provisions. Although testimony before the Legislative Assembly appeared to support this interpretation, the Court concluded that based on the construction of the statutes and other rules of statutory construction, the argument supporting the inclusion of insurance as a public accommodation based on testimony presented to the Legislative Assembly was not persuasive. *Thompson v. IDS Life Insurance Company*, 274 Or. 649, 549 P2d 510 (1976). However later cases leave some doubt about whether future decisions would conclude financial and insurance institutions are public accommodations. Often the courts in dicta refer to insurance and financial institutions as examples of businesses that provide services or products to the public that are public accommodations, but the question has not been squarely addressed since *Thompson*. (See for example, *Lahmann v. Grand Aerie of Fraternal Order of Eagles*, 180 Or. App. 420, 43 P3rd 1130 (2002), *Schwenk v. Boy Scouts of America*, 275 Or. 327, 551 P2d. 465 (1976). In more recent decisions related to public accommodations, the courts have applied a simpler test to determine whether an entity is a public accommodation. In these later cases, the court asks two questions: 1) Does the entity engage in business (e.g., selling a product or service); and 2) Does the entity offer the product or service to the public (i.e., is the entity private)? The test has been applied by Oregon courts to include numerous types of businesses or commercial enterprises that offer goods or services to the public, *Lloyd Lions Club v. Int. Assoc. of Lions Clubs*, 81 Or.App. 151, 153, 724 P.2d 882, 887 (1987). Under this test, we believe a company engaged in the business of transacting insurance would fall within the specific prohibition set forth in ORS 659A.400. Furthermore, recent changes in federal law have allowed insurance companies to provide banking services, essentially equating them to other financial institutions which are considered public accommodations in many instances. Any argument that insurance is not a public accommodation in view of the recent developments in the industry and under the current Oregon judicial test would probably fail.

Even if insurance as a public accommodation is disregarded, the division concludes insurance must abide by the nondiscrimination policy of SB 2 for a second reason.

The second reason the division interprets SB 2 to apply to insurance transactions is due to language found in the Insurance Code. Two statutes address unfair discrimination in insurance. The first pertains to grounds for disapproval of policy forms:

**742.005 The Director of the Department of Consumer and Business Services shall disapprove any form requiring the director's approval:**

(1) If the director finds it does not comply with the law;

...

**(4) If the director finds it contains provisions which are unjust, unfair or inequitable;** (Emphasis added.)

The second provision is found in the Insurance Code statutes that regulate insurance trade practices:

**746.015 (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life, or between risks of essentially the same degree of hazard, in the availability of insurance, in the application of rates for insurance, in the dividends or other benefits payable under insurance policies, or in any other terms or conditions of insurance policies.**

In order to be acceptable, discrimination by an insurer must be based on sound actuarial principles or related to actual or reasonably anticipated experience. Because of the strong public policy expressed by the Legislative Assembly, the Insurance Division concludes that discrimination based solely on gender identity, like discrimination based solely on sex or race, is prohibited.

In determining whether a policy form or action of an insurer is unfair or an action of an insurer is unfairly discriminatory, the division would consider the provisions of SB 2 and the clear statement of policy set forth in the bill. Although insurers may adopt rates based on statistical evidence of varying risk, the insurer cannot discriminate based on race, gender, sexual identity or any other protected class.

When SB 2 was enacted, the division did not embark on a full-scale rewrite of the Insurance Code or the rules adopted to implement the Code. In 2008, the division set forth guidelines for incorporating the provisions of a companion bill establishing a registration process for domestic partnerships, (House Bill 2007) into existing law. This bulletin now provides similar clarification of how the Legislative Assembly policy against discrimination based on gender identity impacts insurance regulation. Rather than a full-scale rewrite of the Insurance Code or the division's rules, the division relies on the clear language of the bill that prohibits any person or governmental entity from discriminating based on gender identity. The division views the prohibition as applicable to all provisions of the Insurance Code and the associated division rules. Just as with the recognition of registered domestic partnerships in House Bill 2007 (2007 Legislative Session), the provisions of the Insurance Code must be read and construed in a manner that aligns with the legislative intent and stated policy expressed in SB 2.

The division expects insurers to apply the nondiscrimination provisions of SB 2 in a similar manner. As with implementation of HB 2007, the division has not required insurers to file new forms. However, the division does interpret its statutes and laws in light of SB 2 and will not allow actions by the regulated insurance community that violate the clear public policy expressed

in SB 2. The division will address SB 2 issues in rulemaking as rules are reviewed or adopted and in enforcement on a case-by-case basis as necessary. The division expects all new forms to comply and in some instances, may require endorsement or revision of an existing form. For example, the division will not allow an insurer to include provisions in contracts that violate the SB 2. An obvious example would be that of a form submitted for approval that included exclusions based on treating gender identity as a preexisting condition. The division would disapprove this both because it is inequitable under ORS 742.005 and because it violates the policy and intent of SB 2.