

NOTICES

Notice Regarding Nondiscrimination; Notice 2016-05

[46 Pa.B. 2251]

[Saturday, April 30, 2016]

Questions have been raised regarding the Insurance Department's (Department) expectations concerning health insurance policy form language relating to nondiscrimination. Both State and Federal law prohibit discrimination against individuals in the terms, conditions and benefits covered by a policy. Section 626 of The Insurance Company Law of 1921 (40 P.S. § 761) and section 5(a)(7)(i) of the Unfair Insurance Practices Act (40 P.S. § 1171.5(a)(7)(ii)) prohibit discrimination generally among individuals "of the same class." Section 1557 of the Affordable Care Act, as explained by the proposed rule promulgated by the Department of Health and Human Services, Office of Civil Rights (OCR Proposed Rule) published at 80 FR 54172 (September 8, 2015), more specifically prohibits discrimination on the basis of "race, color, national origin, sex, age or disability," where "on the basis of sex" includes "sex stereotyping" and "gender identity," and may also include "sexual orientation." The OCR Proposed Rule proposes to add regulatory language in 45 CFR Part 92 (relating to nondiscrimination on the basis of race, color, national origin, sex, age, or disability in health programs or activities receiving Federal financial assistance and health programs or activities administered by the Department of Health and Human Services or entities established under Title I of the Patient Protection and Affordable Care Act), including 45 CFR 92.206—92.303.

As recently announced by Governor Tom Wolf, it is the policy of the Commonwealth to treat all residents of this Commonwealth with dignity and respect, regardless of race, gender, creed, color, sexual orientation or gender identity or expression, and discrimination on any grounds should be prohibited. Accordingly, and consistent with that announcement, the Department by this notice informs its regulated entities that it expects that all health insurance policy forms under its jurisdiction will not contain any discriminatory terms, conditions or benefit provisions contrary to these State and Federal laws, including the OCR Proposed Rule, and further, that all health insurance policy forms affirmatively will include nondiscriminatory terms, conditions and benefit provisions consistent with these State and Federal laws, including the OCR Proposed Rule. Thus, it is anticipated that a policy will not exclude services based on gender identity and will not contain a categorical exclusion of coverage for all health services related to gender transition, as described in the OCR Proposed Rule, and also will affirmatively provide that medically necessary covered services will be available to a policyholder regardless of their gender identity.

The Department provides the following guidance to insurance entities seeking to demonstrate compliance with these State and Federal laws, including the OCR Proposed Rule, relative to

policies within the Department's jurisdiction offered, issued or renewed in this Commonwealth. The Department will accept as evidence demonstrating compliance a notice, as proposed in the OCR Proposed in Rule in 45 CFR 92.8 (relating to notice requirement), in each individual policy and outline of coverage (for individual policies), and in each group master policy and certificate of coverage (for group policies), that is "sufficiently conspicuous and visible to beneficiaries, enrollees, applicants or members of the public that they are able to become aware of the content of the notice." The Department views a notice containing the language provided in the text and Appendix A of the OCR Proposed Rule as constituting a suitable notice, such as, by way of illustration:

"[Insert Insurer's name] complies with applicable federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex, including sex stereotypes and gender identity. Coverage for medically necessary health services is made available on the same terms for all individuals, regardless of sex assigned at birth, gender identity, or recorded gender. [Insert Insurer's name] will not deny or limit coverage to any health service based on the fact that an individual's sex assigned at birth, gender identity, or recorded gender is different from the one to which such health service is ordinarily available. [Insert Insurer's name] will not deny or limit coverage for a specific health service related to gender transition if such denial or limitation results in discriminating against a transgender individual."

Questions concerning this notice may be directed to Bureau of Life, Accident and Health, Office of Insurance Product Regulation, 1326 Strawberry Square, Harrisburg, PA 17120, rateform@pa.gov.

TERESA D. MILLER,
Insurance Commissioner

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