

REGULATORY INTELLIGENCE

U.S. health-coverage barriers persist for transgender people despite law protections

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Insurance coverage barriers continue to obstruct access to healthcare for transgender people in the United States, even after the Biden administration said it would apply the Affordable Care Act's anti-discrimination provisions to issues of gender identity and sexual orientation. A patchwork of state initiatives, ranging from categorical restrictions on coverage to mandates for coverage, complicate the issue for consumers and insurers.

A recent court ruling in Iowa upholding the state's nondiscrimination provisions and paving the way for coverage for gender-transitioning surgery in its Medicaid program may help reinforce health coverage protections in more parts of the country, experts and advocates said. It could also bolster similar lawsuits seeking to ensure Medicaid-program coverage for low-income transgender Americans.

Advocates are also pushing for states to add more explicit guidance for coverage of care related to gender transition in private insurance and federal-state administered Medicaid plans. The aim is to prevent coverage denials rooted in continuing debates over which treatments are "medically necessary" or conform to accepted standards of medicine.

The [Affordable Care Act's](#) Section 1557 bars healthcare discrimination based on sex, but its interpretation has varied as administrations have sparred over its inclusion of individuals who identify as transgender or non-binary. The U.S. Department of Health and Human Services under former President Donald Trump said it would treat gender discrimination based on the biological sex assigned at birth -- either male or female -- and not enforce protections against discrimination based on gender identity or cases where individuals identified differently from the sex assigned to them at birth.

The health agency reversed that stance in May and is working on new rules to clarify the provision.

About 11.3 percent of U.S. LGBT adults identified as transgender individuals, a Gallup survey showed in February this year. Gallup estimated transgender individuals represent about 0.6 percent of the U.S. adult population.

Patchwork of state laws

Despite the ACA protections, healthcare coverage for transgender people is usually regulated by individual states - the main regulators of health insurance in the United States.

Twenty-seven states and four U.S. territories lack any explicit insurance protections for transgender people, according to data from Movement Advancement Project (MAP), a nonprofit think tank. Arkansas specifically permits insurers to refuse gender-confirmation care, such as surgeries to alter the physical appearance in line with the patient's gender identity.

An [Ohio law that took effect in September](#), seen as hostile to the coverage needs of transgender people, allows providers to deny care and insurers to refuse payment when the services violate their "conscience as informed by the moral, ethical, or religious beliefs or principles held by the practitioner, institution, or payer." Transgender people in such jurisdictions often depend on insurers to voluntarily comply with the ACA's provisions, or they attempt to relocate to a state with stronger protections or forego care altogether, experts said.

The number of insurance plans with blanket exclusions for coverage of gender-identity related care has decreased over the last five years and is expected to continue to fall, as a result of the HHS' updated interpretation of the ACA's Section 1557 protections.

However, many policy gaps need to be filled to address the existing barriers to coverage of gender-transitioning surgeries and complementary care, advocates said.

"Unfortunately, there are still plans that include exclusions that limit access to medically necessary treatment," said Sharita Gruberg, vice president for the LGBTQ+ Research and Communications Project at the Center for American Progress. "There is definitely a serious lag between what the law says and what insurers are actually covering."

About 46 percent of transgender individuals surveyed said they had faced an insurance denial in 2020 for gender-affirming care, a [study](#) by the policy institute showed. For transgender people of color, the rate of denial was higher at 56 percent.

Those denied claims can appeal to the insurer, complain to the state regulator, call for an independent medical review or sue the insurer. Often insurance denials are reversed after the consumer seeks a review at some level but the process is time-consuming



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and lack of awareness about these options and inability to afford high-cost treatments leads to many individuals foregoing medically necessary care, experts said.

Health insurance industry group America's Health Insurance Plans has said insurers have largely covered medically necessary care and preventive services for transgender individuals since Section 1557 went into effect in 2017. However, "some markets may still be catching up," it said.

"Exact coverage and benefits will vary depending on the provider, the individual, their health plan, and local market dynamics," said David Allen, spokesperson for the group.

State laws lack guidance on "medically necessary" care

States that prohibit exclusions for coverage of transgender healthcare, in private insurance and Medicaid programs, require insurers to cover care for transgender people as they would for cisgender individuals – those whose gender identity matches the one they were assigned at birth.

These laws, however, sometimes lack explicit language over what medical treatment and services must be covered, leading to denials, as "cosmetic treatments," for gender-confirming procedures that have nonetheless been classified as "medically necessary, life-saving treatment" for transgender people.

Treatment for gender dysphoria -- a condition where a person experiences physical and psychological distress due to a mismatch between their biological sex and the gender they identify with – could require gender-transitioning surgery and hormonal therapy accompanied by counseling and multiple procedures, such as breast reconstruction or facial feminization surgeries.

Transgender individuals have reported being denied treatments such as voice and hormone therapy or fertility preservation, among other treatments, experts said. Some transgender people have reported being denied coverage for preventive care such as prostate exams or mammograms because the insurer's record did not classify them as eligible for the treatment based on their gender.

In general, associations and experts support gender-confirming surgeries for individuals with gender dysphoria. The World Professional Association for Transgender Health (WPATH) [states](#) that based on "clinical and peer-reviewed evidence that gender-affirming/confirming treatments and surgical procedures ... have proven to be beneficial and effective in the treatment of an individual with transsexualism or gender dysphoria." These surgeries "play an undisputed role in contributing toward favorable outcomes."

Similarly, a [study](#) published by the American Psychiatric Association found that transgender people who received gender-confirming surgery had significantly less need for mental health treatment over time. The study's authors said their findings supported the "decision to provide gender-affirming surgeries to transgender individuals who seek them."

State insurance-regulator bulletins that clarify the scope of coverage can go a long way in reducing coverage denials, said Sasha Buchert, senior attorney at Lambda Legal, an LGBTQ rights advocate. "Having the state come along and categorically clarify that that's not going to be the practice they're going to tolerate has been really helpful. So places where they don't have bulletins are what I would point to as the most concerning."

Colorado has [sought](#) to improve protections by requiring, under its essential health benefits (EHB) benchmark marketplace insurance plan, coverage of all gender-affirming care for people who need it.

The Washington state legislature passed the Gender Affirming Treatment Act earlier this year [preventing](#) insurers from imposing "cosmetic"-based exclusions for commonly prescribed gender-affirming treatments. The bill is effective for policies issued on or after January 1, 2022.

Medicaid program exclusions

The federal-state Medicaid program plays a crucial role in healthcare access for transgender people, who are more likely than the population as a whole to live below the poverty line.

"It's hard for trans folks to find employment altogether and much less meaningful employment that covers that provides good health care coverage. So, a lot of trans people disproportionately turn to Medicaid for their coverage," Buchert said. "When states opt not to expand Medicaid offered by the ACA ... a lot of folks have a hard time getting covered even under Medicaid in those in those places."

States receiving federal funds for their Medicaid expansion programs are mandated to comply with Section 1557, but data from MAP shows 10 states explicitly exclude gender-confirming care under their state Medicaid programs. About a dozen states have rejected Affordable Care Act provisions enabling them to expand their Medicaid programs.

An Iowa court ruled last month that a state law preventing its Medicaid program from covering gender-confirming surgery violated the Iowa Civil Rights Act and the state's constitution. Advocates for transgender people's rights hope related cases in other states like West Virginia, Arizona and Wisconsin will see a similar outcome.

"Ideally, the [other] states would look at what happened in Iowa and affirmatively brings their own Medicaid coverage rules into compliance. But in the event that that does not happen, I feel pretty confident that the courts will find that the ACA prohibits those kinds of blanket bans," Gruberg said.



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Taylor Brown, lead counsel on a similar case in Georgia brought by the American Civil Liberties Union (ACLU) also said the Iowa court ruling could be a “good sign.” However, she expressed concern that claims denials for transgender people continue to be seen even in states that allow for coverage of transition-related treatment.

Rights advocates are looking to bring a wave of new cases to address these exclusions for coverage of secondary care, Brown said.

“Although we see Medicaid programs expanding coverage to include gender-affirming health care, there are still exclusions within those coverage provisions,” Brown said.

(By Antonita Madonna. Additional reporting by Melissa Berry of Regulatory Intelligence)

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