Ninth Circuit Orders Trial Court to Reconsider Ruling That TPA Violated ACA Section 1557 by Administering Gender-Affirming Care Exclusions

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Pritchard v. Blue Cross Blue Shield of Ill., 2025 WL 3202338 (9th Cir. 2025)

Available at ***https://cdn.ca9.uscourts.gov/datastore/opinions/2025/11/17/23-4331.pdf***

The Ninth Circuit has vacated a trial court's ruling that an insurer acting as a third-party claims administrator (TPA) for self-insured health plans violated Affordable Care Act (ACA) Section 1557 when it administered discriminatory plan exclusions of coverage for gender-affirming care. As background, Section 1557 prohibits discrimination in certain health programs and activities on the basis of race, color, national origin, sex, age, or disability. According to 2020 HHS regulations, entities not "principally engaged in the business of providing healthcare" (such as most health insurers) are regulated "only to the extent" that they receive federal financial assistance. While this insurer did not receive federal financial assistance for its administration of self-insured plans, it did receive such assistance in connection with other products (e.g., Medicare supplement coverage). The insurer argued that Section 1557 did not apply to its TPA activities because those actions were not health care activities and it did not receive federal financial assistance for them. However, the trial court rejected those arguments and awarded class-wide relief, including reprocessing of affected claims and a permanent injunction prohibiting the insurer from applying the gender-affirming care exclusions.

On appeal, the Ninth Circuit ruled that the trial court correctly concluded that the TPA's provision of health insurance is a health program or activity, part of which is receiving federal financial assistance, and that TPAs can be liable for violating Section 1557 even when implementing plan terms drafted by a plan sponsor. However, the Ninth Circuit ordered the trial court to reconsider its ruling that the gender-affirming care exclusions were discriminatory in light of the U.S. Supreme Court's *Skrmetti* decision. (*Skrmetti* upheld a state's ban on gender-affirming care for transgender teenagers, reasoning that the ban did not draw classifications based on sex—rather, it prohibited such treatments for certain medical uses with respect to all minors, regardless of sex or gender.) Although the trial court's reasoning was undercut by *Skrmetti*, the Ninth Circuit noted that there may be factual distinctions in this case that distinguish it from *Skrmetti*, such as whether an individual was denied care for a diagnosis other than gender dysphoria or whether discrimination based on a gender dysphoria diagnosis is a pretext for "invidious discrimination" based on transgender status.

EBIA Comment: The Ninth Circuit's decision highlights the unsettled landscape of Section 1557's application to employer-sponsored health plans and TPAs. It is also part of a wave of litigation over health plan exclusions of coverage for gender-affirming care. As the regulations remain in flux and courts grapple with their interpretation, plan sponsors and TPAs should closely monitor developments and remain mindful that factual nuances may determine liability. For more information, see EBIA's Health Care Reform manual at Section XXXIV.A ("Section 1557 Nondiscrimination: Grounds Prohibited Under Federal Laws") and EBIA's Group Health Plan Mandates manual at Sections XXI.D.5 ("Health Plan Exclusions of Gender-Affirming Care") and XXI.M.1 ("Interaction of Title

VII and Affordable Care Act Section 1557"). See also EBIA's Self-Insured Health Plans manual at Section XIII.D.5 ("Section 1557 Nondiscrimination: Nondiscrimination in Health Programs and Activities").

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