

Court Orders Claims Reprocessing for TPA Activities That Violated ACA Section 1557

EBIA Weekly (January 18, 2024)

C.P. v. Blue Cross Blue Shield of Ill., 2023 WL 8777349 (W.D. Wash. 2023)

A federal trial court has awarded injunctive and other relief—including claims reprocessing—in a class action lawsuit in which it previously held that an insurer acting as a third-party claims administrator (TPA) for self-insured health plans violated Affordable Care Act (ACA) Section 1557 by administering 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. HHS regulations issued in 2020 repealed significant portions of previous regulations and narrowed their scope so that entities not “principally engaged in the business of providing healthcare” (such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. The insurer in this case did not receive federal financial assistance for its administration of self-insured plans but did receive such assistance in connection with other products (e.g., Medicare supplemental coverage).

The insurer had argued that under the 2020 regulations, Section 1557 did not apply to its TPA activities because those actions were not health care activities and because the insurer did not receive any federal financial assistance for them. However, the court rejected those arguments, explaining that the 2020 regulations are clearly contrary to the statute and appear to be arbitrary, capricious, and contrary to law. The court has now awarded classwide relief under the ACA, including reprocessing of affected claims and a permanent injunction prohibiting the insurer from applying the gender-affirming care exclusion in the future. The court also denied the insurer’s request for a stay of enforcement pending appeal of the decision.

EBIA Comment: Court decisions continue to demonstrate the uncertainty surrounding the scope of Section 1557 as applied to employer-sponsored health plans. As we wait for the Section 1557 regulations proposed in 2022 to be finalized, this court has already rejected the 2020 regulations based on a plain reading of the statute’s text. 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 Section XXI.M.1 (“Interaction of Title VII and 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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