

Health Plan Exclusion of Gender-Affirming Surgery for Transgender Minors Violates ACA Section 1557, Despite Supreme Court's *Skrmetti* Decision

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L.B. v. Premera Blue Cross, 2025 WL 2326966 (W.D. Wash. 2025)

A federal trial court has held that a health plan's exclusion of coverage for gender-affirming mastectomies or breast reductions for female to male transgender or non-binary/gender neutral minors, while covering such procedures for boys with gynecomastia, violated Affordable Care Act Section 1557, despite the U.S. Supreme Court's recent ruling in *United States v. Skrmetti*. The trial court issued a decision in this case in April 2025, but before the judgment was finalized, the Supreme Court issued its *Skrmetti* decision. At that time, the court allowed the parties—and the U.S. Department of Justice—to submit arguments regarding the effect (if any) of the Supreme Court ruling. In *Skrmetti*, the Supreme Court upheld a state law banning puberty blockers and hormone therapy for transgender teenagers, concluding that the law did not violate the U.S. Constitution's Equal Protection Clause. The Court subjected the law to only the lowest level of scrutiny because it determined that the ban does not draw classifications based on sex—rather, it prohibits such treatments for certain medical uses with respect to all minors, regardless of sex or gender.

Considering the arguments of the parties, the trial court concluded that *Skrmetti* did not affect its previous decision. The court explained that *Skrmetti* involved a fundamentally different type of claim than the Section 1557 claim raised in this case and that it concerned statutory language bearing no resemblance to the challenged exclusion. Additionally, *Skrmetti* supported the court's earlier ruling in that it reiterated the “but-for” causation standard used by the Supreme Court in its *Bostock* decision to determine that firing employees based on sexual orientation or gender identity constitutes illegal discrimination on the basis of sex. Thus, the court reiterated that sex was the but-for cause of the plan's denial of mastectomy coverage for female to male youth: “change the juvenile's sex, and she becomes an adolescent boy whose request for a gender-affirming mastectomy is not subject to any age restriction in ascertaining whether it is ‘medically necessary’ [and thus covered by the plan].” Concluding that the plan's inconsistent justifications and unwritten “secret exceptions” for coverage undermined any rational basis for the exclusion, the court reaffirmed its decision.

EBIA Comment: Plan exclusions of coverage for gender-affirming care continue to be frequent targets of litigation. Plan sponsors, insurers, and TPAs should be cautious of plan provisions that are likely to invite costly legal challenges. 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 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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