



Summary of Findings: 2021 Marketplace Plan Compliance with Section 1557

In its fifth year of conducting this analysis, Out2Enroll collected and reviewed 1,386 silver marketplace plan options from 176 insurers in the 36 states that use HealthCare.gov. The goal of this analysis was a preliminary assessment of the degree of compliance with Section 1557 of the Affordable Care Act for the 2021 plan year. Out2Enroll concludes that the Trump administration's attempt to roll back explicit nondiscrimination protections for transgender people appears to have had an impact, albeit slight, as more insurers than in prior years included discriminatory benefit designs in their 2021 products. This report summarizes the methodology used and the results of this analysis.

Findings

- **For the fifth year in a row, the vast majority of insurers did not use transgender-specific exclusions, but there were more exclusions observed than in recent years.** Most insurers (93% studied) did not include transgender-specific exclusions in their 2021 silver marketplace plans. However, some marketplace plans continue to include exclusions that limit access to medically necessary treatment for gender dysphoria. For 2021, several insurers—Alliant Plans in Georgia, Bright Health in its plans in 8 states, MercyCare in Illinois, and UnitedHealthcare in its plans in 3 states—continued to have discriminatory transgender-specific exclusions. The language of these exclusions varied but all were categorical exclusions of treatment for gender dysphoria, including, for instance, hormone therapy, mental health services, and surgical procedures.

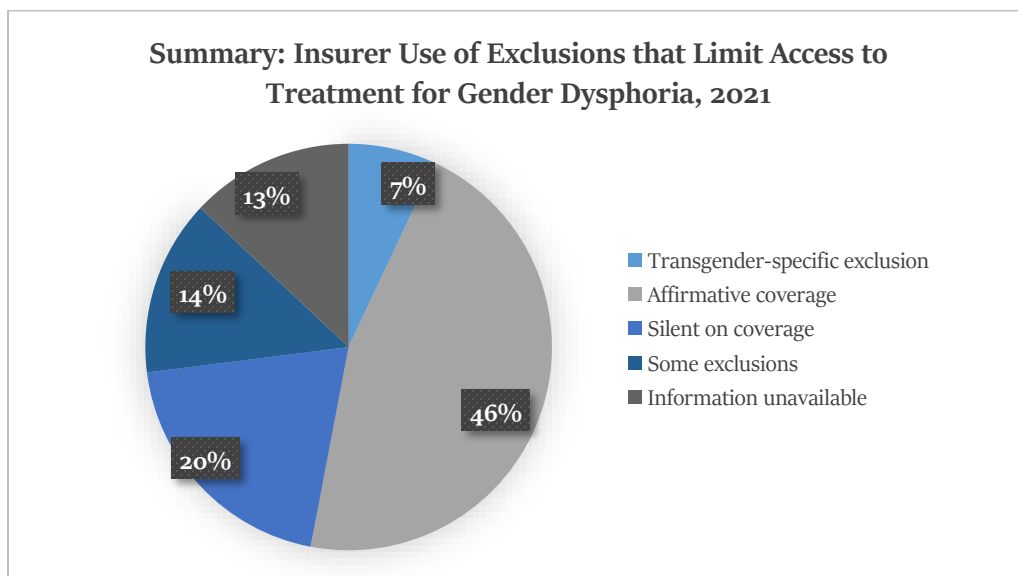
These plans accounted for 7% of the total number of insurers reviewed and is a significant increase relative to prior years (when only 3% of the total number of insurers used similar exclusions in the 2020 plan year). Out2Enroll suspects this doubling in the number of insurers that are using such exclusions is related to the Trump administration's recent efforts to roll back explicit nondiscrimination protections in regulations to implement Section 1557 of the Affordable Care Act. While most insurers did not adopt discriminatory transgender-specific exclusions in response to this regulatory rollback, a handful did. Plans offered by Bright Health, for instance, imposed broad transgender-specific exclusions in all but one of its states for 2021 even though Bright Health plans from prior years were categorized as "silent," meaning the company purposefully included a transgender-specific exclusion.

- **Insurers continue to affirmatively state that some or all medically necessary treatment for gender dysphoria is covered.** Consistent with the 2020 plan year, nearly half of insurers (46% studied) incorporated plan language that stated that all or some medically necessary treatment for gender dysphoria would be covered by the plan. This is up significantly from the 2017 plan year when Out2Enroll began this annual analysis and only 18% of insurers included affirmative coverage language. Until this year, this percentage had increased every year, with more insurers including affirmative coverage language each year.

Affirmative coverage language varies significantly by insurer. Some insurers included extensive information on the coverage of gender dysphoria while others noted simply that the plan covers medically necessary treatment of gender dysphoria. Even more troubling, some affirmative coverage is in the context of an exclusion: treatment for gender dysphoria is automatically excluded *unless* the care is medically necessary. This suggests a continued presumption among insurers that this type of care is not covered except under narrow circumstances. As such, Out2Enroll is increasingly concerned that the full scope of coverage for the treatment of gender dysphoria—including by plans with affirmative coverage language—remains unclear and that insurers may be continuing to use discriminatory benefit design through restrictive medical necessity criteria, utilization management criteria, and other underlying coverage policies that may not be publicly available for review.

An additional 20% of insurers were silent about the coverage of treatment for gender dysphoria: these insurers did not affirmatively state that such care is covered but also did not have other broad, explicit exclusions that could deny access to medically necessary care. Where a plan is silent, transgender consumers should expect that their medically necessary health care needs will be covered in accordance with plan rules and protocols (but clear, affirmative coverage language is a best practice that Out2Enroll urges more insurers to adopt).

- **Far fewer insurers had exclusions that would limit access to medically necessary treatment for gender dysphoria.** Consistent with prior years, 14% of insurers did not include transgender-specific exclusions but completely excluded a procedure commonly used to treat gender dysphoria or incorporated potentially overbroad definitions of excluded “cosmetic” care. This approach, especially in the absence of affirmative coverage for the treatment of gender dysphoria, continues to be troubling for transgender consumers (but is far lower than the 56% of insurers with partial exclusions that Out2Enroll observed in 2017).
- **Consumers continue to find it challenging to obtain and review certificates of coverage.** Although plan documents were more available than in prior years, Out2Enroll could not access plan documents from 23 insurers (13% studied) to assess their coverage of treatment for gender dysphoria. This lack of access will continue to present challenges to transgender consumers when assessing coverage options.



Historical Trends

This is Out2Enroll’s fifth year of conducting an analysis of silver marketplace plan options for discriminatory benefit design. This information is summarized in the table below for comparison purposes.

In general, insurers have made significant progress since these analyses were begun in 2016 (ahead of the 2017 plan year). Insurers have largely eliminated categorical transgender-specific exclusions, which were explicitly banned in a 2016 regulation to implement Section 1557 of the Affordable Care Act. In no year have more than 10% of insurers included transgender-specific exclusions in their marketplace plans sold through HealthCare.gov.

Even more telling, insurers have significantly increased their use of affirmative coverage language, with about half of the market now consistently including language that confirms that medically necessary treatment for gender dysphoria is covered. This data shows that the use of affirmative coverage language continues to be the industry

standard to not only ensure that transgender enrollees do not face discrimination but to confirm that the treatment of gender dysphoria will be covered.

Plan Year	Analysis Information			Results				
	No. of States	No. of Insurers	No. of Plans	Broad Exclusions	Affirmative Coverage	Some Exclusions	Silent	Unavailable
2017	16	81	866	5%	18%	56%	N/A	21%
2018	18	71	548	10%	28%	24%	23%	15%
2019	38	129	622	6%	41%	25%	18%	10%
2020	38	161	1,057	3%	47%	12%	25%	13%
2021	36	176	1,386	7%	46%	14%	20%	13%

Recommendations for Insurers and Policymakers

Although gaps remain in the nondiscriminatory coverage of medically necessary treatment for gender dysphoria, insurers that offer marketplace plans continue to make significant progress. To better ensure that transgender people do not face discrimination and have access to medically necessary treatment, Out2Enroll makes the following recommendations:

- Insurers should (i) clearly and affirmatively state in their plan documents that all medically necessary treatment for gender dysphoria is covered; and (ii) identify underlying coverage policies, medical necessity criteria, and other utilization management tools that could limit access to treatment for gender dysphoria.
- State and federal insurance regulators should (i) encourage the use of affirmative coverage language; and (ii) closely review plan documents (including underlying coverage policies) to ensure compliance with state and federal gender identity nondiscrimination requirements.

Methodology

In November 2020, Out2Enroll reviewed 2021 silver plans sold through HealthCare.gov in 36 states. Plans were identified using the 2021 Plan Attributes PUF files, which include plan- and insurer-level information for certified qualified health plans from states participating in the federally facilitated marketplace. Out2Enroll limited its review to silver plans because these plans have historically been the most popular. Out2Enroll excluded dental-only plans, SHOP plans, cost-sharing reduction variation plans, off-marketplace plans, and child-only plans from its review. Once identified, Out2Enroll located each plan’s Summary of Benefits and Coverage and Certificate of Coverage to assess whether the plan included 1) an exclusion with a transgender-specific reference; 2) an exclusion with a procedure commonly used in treatment for gender dysphoria; or 3) an exclusion for cosmetic or reconstructive services that would affect access to treatment. In total, Out2Enroll analyzed a record number of 1,386 silver marketplace plan options from 176 insurers in 36 states. This information was compiled into state-specific guides for transgender consumers and is available at: out2enroll.org/2021-cocs.

STATE-LEVEL SUMMARY OF INSURER APPROACHES TO TRANS EXCLUSIONS, 2021

State	Affirmative Coverage	Broad Exclusion	Some Exclusions	Silent	Unavailable
AK	Premera Blue Cross		Moda Health Plan		
AL		Bright Health		Blue Cross Blue Shield of Alabama	
AR	Ambetter, Blue Cross Blue Shield of Arkansas, Health Advantage				
AZ	Ambetter, Cigna, Oscar	Bright Health, UnitedHealthcare		Blue Cross Blue Shield of Arizona	
DE				Highmark	
FL	AdventHealth, Ambetter, Blue Cross Blue Shield of Florida, Bright Health, Cigna, Florida Health Care Plans, Health First, Molina, Oscar				AvMed
GA	Ambetter, Oscar	Alliant	Anthem, CareSource	Kaiser Permanente	
HI	Hawaii Medical Service Association			Kaiser Permanente	
IA	Medica, Oscar			Wellmark	
IL	Ambetter, Cigna, Health Alliance	Bright Health, MercyCare		Blue Cross Blue Shield of Illinois	Quartz, WellFirst
IN			Ambetter, Anthem, CareSource		
KS	Ambetter, Cigna, Medica, Oscar				Blue Cross Blue Shield of Kansas
KY			Anthem, CareSource		
LA				Christus Health Plan	Blue Cross Blue Shield of Louisiana, Vantage
ME	Harvard Pilgrim Health Care		Anthem		Community Health Options
MI	Blue Cross Blue Shield of Michigan, McLaren, Molina, Oscar, Priority Health		Total Health Care	Ambetter	Physicians Health Plan Michigan
MO	Ambetter, Cigna, Medica, Oscar		Anthem		Blue KC, Cox Health Plans, WellFirst
MS	Ambetter, Molina				
MT	Montana Health Co-Op, Pacific Source			Blue Cross Blue Shield of Montana	
NC	Blue Cross Blue Shield of North Carolina, Cigna, Oscar	Bright Health	UnitedHealthcare	Ambetter	
ND	Blue Cross Blue Shield of North Dakota, Medica		Sanford Health		
NE	Medica	Bright Health			
NH	Ambetter, Harvard Pilgrim Health Care		Anthem		
NM	Blue Cross Blue Shield of New Mexico, Friday Health Plans, Molina, True Health			Ambetter	

OH	Ambetter, Molina, Oscar, SummaCare		Anthem, CareSource		AultCare Health Plans, Medical Mutual, Paramount
OK	Medica, Oscar	Bright Health, UnitedHealthcare		Blue Cross Blue Shield of Oklahoma	CommunityCare
OR	BridgeSpan Health, Kaiser Permanente, Moda Health Plan, Pacific Source, Providence Health Plan, Regence				
SC	Molina	Bright Health	Blue Cross Blue Shield of South Carolina	Ambetter	
SD				Sanford Health	Avera
TN	Cigna, Oscar	Bright Health, UnitedHealthcare		Ambetter, Blue Cross Blue Shield of Tennessee	
TX	Ambetter, Friday Health Plans, Molina, Oscar		Community Health Choice	Blue Cross Blue Shield of Texas, Christus Health Plan, First Care Health Plans, Scott and White	Sendero Health Plan
UT	Molina			BridgeSpan, Cigna, Regence, SelectHealth	University of Utah Health Plans
VA	CareFirst, Oscar		Anthem, Piedmont Community Health Plan	Cigna, Kaiser Permanente, UnitedHealthcare	Optima
WI	Aspirus Health Plan, Medica, Molina		Anthem, Group Health Cooperative, Network Health	Children's Community Health Plan, Common Ground, HealthPartners, MercyCare, Security Health Plan, WPS Health Plan	Dean Health Plan, Prevea, Quartz
WV	Highmark		CareSource		
WY	Mountain Health			Blue Cross Blue Shield of Wyoming	