



## Summary of Findings: 2022 Marketplace Plan Compliance with Section 1557

In its sixth year of conducting this analysis, Out2Enroll collected and reviewed 3,748 silver marketplace plan options from 203 insurers in the 33 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 2022 plan year. This report summarizes the methodology used and the results of this analysis.

### Findings

- **For the sixth 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 (94% studied) did not include transgender-specific exclusions in their 2022 silver marketplace plans. However, some marketplace plans continue to include exclusions that limit access to medically necessary treatment for gender dysphoria. For 2022, several insurers—U.S. Health and Life in Kansas, WellFirst Health in Missouri, Community First in Texas, Sendero Health Plans in Texas, and UnitedHealthcare in its plans in 8 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.

Many of these insurers have had these exclusions in place for years, suggesting that federal and state officials must do more oversight when reviewing and approving policies for sale. This is especially true in the states where federal officials enforce Section 1557: Missouri, Oklahoma, Texas, and Wyoming. Further, UnitedHealthcare continues to use broad exclusions in most (although not all) of its plans, including as it expands its footprint in offering marketplace coverage.

These plans accounted for 6% of the total number of insurers reviewed and is consistent with 2021 data (which was a significant increase relative to prior years). While some insurers (such as Bright Health) removed their broad exclusions for 2022, Out2Enroll remains concerned that more insurers are using such exclusions in response to the Trump administration's efforts to roll back explicit nondiscrimination protections in regulations to implement Section 1557 of the Affordable Care Act in 2020. While most insurers did not adopt discriminatory transgender-specific exclusions in response to this regulatory rollback, a dozen did.

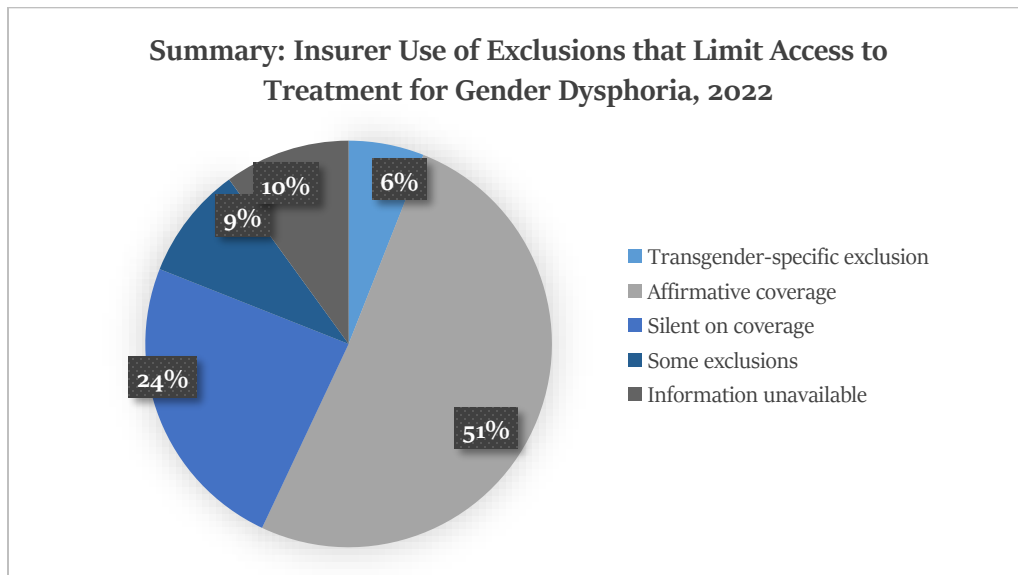
- **Insurers continue to affirmatively state that some or all medically necessary treatment for gender dysphoria is covered.** In an increase from the 2021 plan year, more than half of insurers (51% studied) incorporated plan language that stated that all or some medically necessary treatment for gender 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. This percentage has consistently increased since 2017, 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 24% 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, 9% 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 21 insurers (10% 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 sixth 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 just more than 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
<a href="#">2017</a>	16	81	866	5%	18%	56%	N/A	21%
<a href="#">2018</a>	18	71	548	10%	28%	24%	23%	15%
<a href="#">2019</a>	38	129	622	6%	41%	25%	18%	10%
<a href="#">2020</a>	38	161	1,057	3%	47%	12%	25%	13%
<a href="#">2021</a>	36	176	1,386	7%	46%	14%	20%	13%
<a href="#">2022</a>	33	203	3,748	6%	51%	9%	24%	10%

### Recommendations for Insurers and Policymakers

Out2Enroll’s recommendations remain the same as in prior years. 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 2021, Out2Enroll reviewed 2022 silver plans sold through HealthCare.gov in 33 states. Plans were identified using the 2022 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 3,748 silver marketplace plan options from 203 insurers in 33 states. This information was compiled into state-specific guides for transgender consumers and is available at: <https://out2enroll.org/2022-cocs/>.

**STATE-LEVEL SUMMARY OF INSURER APPROACHES TO TRANS EXCLUSIONS, 2022**

<b>State</b>	<b>Affirmative Coverage</b>	<b>Broad Exclusion</b>	<b>Some Exclusions</b>	<b>Silent</b>	<b>Unavailable</b>
<b>AK</b>					Moda Health Plan, Premera Blue Cross
<b>AL</b>	Bright Health	UnitedHealthcare		Blue Cross Blue Shield of Alabama	
<b>AR</b>	Ambetter, Blue Cross Blue Shield of Arkansas, Health Advantage, Oscar, QC Life and Health				
<b>AZ</b>	Ambetter, Banner Health, Bright Health, Cigna, Medica, Oscar	UnitedHealthcare		Blue Cross Blue Shield of Arizona	
<b>DE</b>				Highmark	
<b>FL</b>	Aetna, Ambetter, AvMed, Bright Health, Cigna, Blue Cross Blue Shield of Florida, Florida Health Care Plans, Health First, Molina, Oscar			UnitedHealthcare	Capital Health Plan
<b>GA</b>	Aetna, Ambetter, Bright Health, Cigna, Friday Health Plans, Oscar	UnitedHealthcare	Anthem, CareSource	Kaiser Permanente	Alliant Health Plans
<b>HI</b>	Hawaii Medical Service Association			Kaiser Permanente	
<b>IA</b>	Medica, Oscar			Wellmark	
<b>IL</b>	Ambetter, Bright Health, Cigna, Health Alliance, Molina, Oscar		MercyCare, Quartz, UnitedHealthcare	Blue Cross Blue Shield of Illinois, WellFirst Health	
<b>IN</b>			Anthem, CareSource	Ambetter, US Health and Life	
<b>KS</b>	Ambetter, Cigna, Medica, Oscar	US Health and Life		Blue Cross Blue Shield of Kansas	
<b>LA</b>		UnitedHealthcare		Ambetter, Christus Health Plan	Blue Cross Blue Shield of Louisiana, Vantage
<b>MI</b>	Blue Cross Blue Shield of Michigan, Molina, Oscar, Physicians Health Plan Michigan			Ambetter, UnitedHealthcare, US Health and Life	McLaren, Priority Health
<b>MO</b>	Aetna, Ambetter, Cigna, Medica, Oscar	WellFirst	Anthem	Blue KC	Cox Health Plans
<b>MS</b>	Ambetter, Cigna, Molina				Vantage
<b>MT</b>	Montana Health Co-Op, Pacific Source			Blue Cross Blue Shield of Montana	
<b>NC</b>	Aetna, Blue Cross Blue Shield of North Carolina, Bright Health, Cigna, Friday Health Plans, Oscar	UnitedHealthcare		Ambetter, WellCare	AmeriHealth Caritas
<b>ND</b>	Blue Cross Blue Shield of North Dakota, Medica			Sanford Health	
<b>NE</b>	Bright Health, Medica, Oscar			Ambetter	
<b>NH</b>	Ambetter, Harvard Pilgrim		Anthem		

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