



The State of New Hampshire Insurance Department

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Christopher R. Nicolopoulos
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Deputy Commissioner

Bulletin

Docket No: INS 20-033-AB

To: All Accident and Health Insurers and Entities Involved in the Business of
Consumer Guaranty Contracts

From: Christopher Nicolopoulos, Commissioner *C.R.N.*

Date: June 8, 2020

Re: Gender Identity Discrimination Prohibited

Recent Expansion of Gender Identity Protection in New Hampshire

Over the past year, several gender identity anti-discrimination laws have passed in New Hampshire, including one that pertains to insurance regulation. During the 2019 legislative session, the New Hampshire legislature enacted HB 608, which defines “gender identity” as “a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.” RSA 21:53. With respect to insurance regulation, HB 608 amended RSA 415-C:7, I(h) to prohibit unfair discrimination based solely on gender identity in consumer guaranty contracts. It also amended RSA 420-C:5¹ to prohibit health care insurers from discriminating against providers based on their gender identity or sexual orientation. In doing so, these changes in 2019 added gender identity to other protected classes, such as, religion, race, color, national origin, age, sex, and marital status.

Gender Identity Discrimination Prohibited in Accident & Health Policies

Effective January 1, 2020, HB 608 amended RSA 415:15 and RSA 417:4, VIII(b) to prohibit discrimination “on the basis of gender identity with respect to the availability of any covered services, medications, supplies, or durable medical equipment” in health insurance policies or

¹ 420-C:5 Discrimination Prohibited. – No health care insurer shall discriminate against any provider on the basis of religion, race, color, national origin, age, sex, gender identity, sexual orientation, or marital status. Reasonable terms and conditions including, but not limited to, those based on economic or geographic considerations, certain affiliations, or professional privileges shall not be prohibited under this section.

contracts. Prior to the amendment, insurers were already prohibited from discriminating “between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract.” RSA 417:4, VIII(b); *see also* RSA 415:15², RSA 415:6-F,³ and RSA 415:18.⁴ The new language expressly prohibits discrimination on the basis of gender identity with respect to covered services.

In light of the foregoing, insurers are prohibited from denying, excluding, or otherwise limiting coverage for medically necessary services, based on an individual’s gender identity. Any offered services, medications, supplies, or durable medical equipment in a health insurance policy or contract must be provided to all individuals for whom a medical provider, in consultation with the individual patient, has determined that the services are medically necessary, consistent with RSA 420-J. Insurers should base coverage decisions on medical necessity rather than a person’s gender identity. The Department considers any blanket policy exclusions for health care services related to gender transition or any other form of gender dysphoria treatment as a violation of RSA 417:4, VIII(b) and RSA 415:15 in that such exclusions discriminate on the basis of gender identity.

² 415:15 Discrimination. –

Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this chapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatever, is prohibited. Discrimination on the basis of gender identity with respect to the availability of any covered services, medications, supplies, or durable medical equipment is specifically prohibited.

³ 415:6-f Patients' Bill of Rights. – Any insurer issuing an individual policy under this chapter shall provide to each new policyholder who is a resident of this state a copy of the patients' bill of rights law under RSA 151:21.

⁴ 415:18 General Group or Blanket Policy Provisions. –

XIV. An insurer issuing policies of group insurance shall provide to each new certificate holder who is a resident of this state a copy of the patients' bill of rights law under RSA 151:21.

RSA 151:21, XVI: The patient shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, gender identity, age, disability, marital status, or source of payment, nor shall any such care be denied on account of the patient's sexual orientation.