



DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 86

**TO: INSURERS, PRODUCERS, HEALTH SERVICE CORPORATIONS, AND
MANAGED CARE ORGANIZATIONS THAT DELIVER OR ISSUE FOR
DELIVERY IN THIS STATE INDIVIDUAL AND GROUP INSURANCE
POLICIES OR PLANS SUBJECT TO REGULATION UNDER TITLE 18
OF THE DELAWARE CODE**

RE: THE GENDER IDENTITY NONDISCRIMINATION ACT OF 2013

DATED: March 23, 2016

REVISED: September 4, 2020 and October 20, 2026

The purpose of the March 23, 2016 version of this Bulletin was to provide guidance regarding implementation of the Delaware Gender Identity Nondiscrimination Act of 2013 (the “Act”), which was signed into law on June 19, 2013. The September 4, 2020 version of this Bulletin reiterated the Delaware Department of Insurance's (“Department”) commitment to hold regulated persons and entities accountable for maintaining nondiscriminatory policies or practices, and to require them to make coverage determinations on a nondiscriminatory basis.

On May 6, 2024, the United States Department of Health and Human Services (“HHS”) issued its 2024 Final Rule (89 FR 37522), updating 45 C.F.R. Part 92 to reinstate and expand the scope of civil rights protections in health programs and activities receiving Federal financial assistance. This rule reaffirmed that discrimination based on sex includes discrimination based on gender identity, sexual orientation, sex characteristics, and pregnancy or related conditions. Subsequent federal developments and litigation that vacated portions of the Final Rule are not relevant to Delaware, as the State codified the nondiscrimination provisions at § 1557 of the Patient Protection and Affordable Care Act as they were in effect on January 1, 2025 ([HB 209](#), 153rd GA).

The Department issues this revised Bulletin to reinforce carriers’ obligations under both Delaware law and federal law, and to remind all regulated entities that Delaware’s protections have remained fully operative and enforceable throughout all federal regulatory changes.

BACKGROUND

The Act amended two provisions of the Delaware Insurance Code that together unequivocally prohibit the denial, cancellation, termination, limitation, refusal to issue or renew, or restriction

of insurance coverage or benefits based on a person's **gender identity, transgender status, or gender transition**.

- 18 *Del. C.* § 2304(22) of the Unfair Trade Practices Act makes it unlawful for any insurer licensed in Delaware to discriminate based on gender identity, defined as “a gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth.”
- 18 *Del. C.* § 2304(13)(b) prohibits unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premiums, 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, or in any other manner whatsoever.

These protections apply to both access to coverage and the provision of benefits, and they remain in full force regardless of federal regulatory variations.

THE FEDERAL AFFORDABLE CARE ACT (ACA), SECTION 1557

Section 1557 of the ACA prohibits discrimination on the basis of sex in any health program or activity receiving federal funds, administered by HHS, or established under the ACA, including all plans offered on the health insurance marketplace.

In 2016, HHS clarified that sex discrimination includes discrimination based on gender identity and sex stereotyping, creating a federal framework aligned with Delaware law.

On June 19, 2020, HHS issued the **2020 Rule** (85 Fed. Reg. 37,160), which significantly narrowed the protections formerly afforded under Section 1557 by removing explicit protections for transgender individuals, reducing coverage obligations for various populations, and narrowing the types of plans considered subject to the rule.

Despite the confusion this may have created, the Department consistently emphasized to carriers that Delaware law remained unchanged and that discrimination based on gender identity continued to be illegal.

On May 6, 2024, HHS issued the **2024 Final Rule**, updating 45 C.F.R. Part 92 to restore and expand Section 1557 protections. Among its provisions, the Final Rule:

- Clarifies that sex discrimination includes discrimination based on gender identity, sexual orientation, sex characteristics, and pregnancy-related conditions;
- Confirms that Medicare Part B constitutes federal financial assistance,
- Restores nondiscrimination notices, language-access requirements, and grievance procedures; and
- Reapplies Section 1557 to additional insurers and marketplace participants.

An October 2025 federal court ruling vacated certain provisions of the 2024 rule, but that ruling does not affect Delaware carriers' obligations to comply with Delaware's nondiscrimination laws.

Therefore, carriers must assess their obligations under the applicable provisions of Delaware law separately from the current federal enforcement position, and must continue to comply with all applicable federal and state nondiscrimination requirements.

PROHIBITION ON GENDER IDENTITY DISCRIMINATION REMAINS FULLY IN EFFECT

Discrimination based on gender identity or transgender status in the availability of coverage or the provision of benefits is prohibited.

Delaware law prohibits insurers from denying, cancelling, terminating, limiting, refusing to issue or renew, or otherwise restricting coverage because of a person's gender identity or gender transition. Insurers may not deny, exclude, or limit medically necessary services for an individual based on gender identity if that same service would be covered for another individual under comparable circumstances. Any blanket exclusion for gender dysphoria, gender identity disorder, gender-affirming surgeries, or other gender-transition-related treatments constitutes unlawful discrimination, including exclusions justified on the basis that a treatment lacks FDA approval for gender-transition purposes.

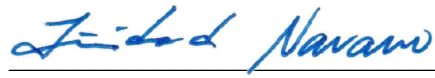
Insurers may not impose different premiums or rates based on gender identity. Benefits related to gender identity must be provided on the same basis as those for any other health condition, with determinations grounded in medical necessity as determined by a healthcare provider in consultation with the insured. Determinations of medical necessity, eligibility, and prior authorization related to gender-affirming care must reflect current, evidence-based standards established by nationally recognized experts in transgender healthcare.

These requirements apply to all health plans regulated by the Department, including qualified health plans on Delaware's Health Insurance Marketplace and plans offering Essential Health Benefits. The Department will continue to take administrative or legal action against insurers that fail to comply with Delaware law.

Policy forms containing gender-identity-based exclusions or limitations will be disapproved. Delaware's appeal and review procedures apply to all adverse benefit determinations.

Questions about this Bulletin should be emailed to compliance@delaware.gov.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.

A handwritten signature in blue ink, reading "Trinidad Navarro", positioned above a horizontal line.

Trinidad Navarro

Delaware Insurance Commissioner

Note: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Delaware Department of Insurance if additional information is needed.