

The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Administrator Shelanski:

Re: RIN 1250-AA07, "Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors"

Based upon current Administration policy with respect to discrimination on the basis of gender identity, I write to you with deep concerns regarding the draft direct final rule, "Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors" submitted to the Office of Information and Regulatory Analysis from the Department of Labor's Office of Federal Contract Compliance Programs on October 20, 2014. Because the Office of Personnel Management continues to discriminate against transgender federal employees on the basis of gender identity with respect to the Federal Employees Health Benefits Program, there are obvious concerns that the draft direct final rule will similarly permit Federal contractors to discriminate against employees on the basis of gender identity with respect to the "fringe benefit" of employer-provided health insurance.

On June 13, 2014, OPM issued FEHB Program Carrier Letter No. 2014-17, titled "Gender Identity Disorder / Gender Dysphoria." This letter referenced a prior letter, Carrier Letter No. 2011-12, which directed carriers to allow employees to "select their preferred gender designation" for health records, before stating that "OPM is removing the requirement that FEHB brochures exclude 'services, drugs, or supplies related to sex transformations' in Section 6 of the FEHB plan brochure effective with the 2015 plan year." OPM has admitted in response to Freedom of Information Act requests that such a requirement never existed. The letter goes on to state that carriers will have the option of maintaining such general exclusion language for the 2015 plan year.

Of the six insurance providers offering nationwide fee-for-service insurance plans open to all Federal employees, all six maintain their illegal discrimination on the basis of gender identity.

Under current nondiscrimination regulations promulgated by the Office of Federal Contract Compliance Programs, specifically 41 CFR §60-20.3(c), "fringe benefits" such as insurance

are explicitly discussed. It would be highly disheartening if the Administration were to issue new regulations prohibiting discrimination on the basis of sexual orientation and gender identity that did not address the all-too-frequent issue of transgender exclusions in health insurance. It strains credulity that a regulation could truly prohibit discrimination on the basis of sexual orientation and gender identity without addressing de jure discrimination in official policies of Federal contractors.

Exclusions of transition-related care are inhumane and have real human costs. As the American Medical Association states in its 2008 resolution, "Removing Financial Barriers to Care for Transgender Patients," H-185.980, Resolution 122 A-08, "[Gender Identity Disorder], if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death." A January 2014 report by the American Foundation for Suicide Prevention and the Williams Institute, "Suicide Attempts among Transgender and Gender Non-Conforming Adults," found that transgender men and women have "an exceptionally high prevalence of lifetime suicide attempts . . . across all demographics and experiences" of 46% and 42% respectively. This rate increases more than 10%, exceeding 50%, for individuals who are unable to afford necessary health care. While costs can be prohibitive for individuals, studies have shown that providing transition-inclusive health insurance causes negligible to no increase in costs of insurance; see, for instance, The Williams Institute, "Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans," (Sept. 2013).

In order to avoid the real harms created by categorical exclusions of transition-related care, the final rule must specifically prohibit Federal contractors from offering insurance plans containing such exclusions. I ask that you decline to approve the rule for publication if it lacks such a specific prohibition.

I would be grateful for an opportunity to discuss this matter with you or your staff.

Sincerely,

Emily T. Prince, Esq.