

Emily T. Prince, Esq.  
<http://www.emily-esque.com>

Michael Marquis  
FOIA Officer  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, D.C. 20201

*Submitted via E-mail*

Dear Mr. Marquis:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I request that a copy of the following documents (or documents containing the following information) be provided to me:

- Any and all documents since March 23, 2010 establishing a complaint against a health insurance carrier for discrimination on the basis of gender identity, specifically by denying coverage for transition-related care such as mental health treatment, hormone replacement therapy, or gender affirming surgeries such as genital reconstructive surgery.
- Any and all documents since March 23, 2010 closing a complaint against a health insurance carrier for discrimination on the basis of gender identity, specifically by denying coverage for transition-related care such as mental health treatment, hormone replacement therapy, or gender affirming surgeries such as genital reconstructive surgery.
- Any and all documents establishing current guidance, rules, or similar content used by the Department of Health and Human Services to determine how to resolve complaints against a health insurance carrier for discrimination on the basis of gender identity, specifically by denying coverage for transition-related care such as mental health treatment, hormone replacement therapy, or gender affirming surgeries such as genital reconstructive surgery.

I request that the documents be produced in electronic format, preferably conveyed by e-mail. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all severable portions of otherwise-exempt material. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I request a waiver of all fees for this request.

### **Specific explanation for waiver of fees:**

- The subject matter of the requested records themselves must specifically concern identifiable “operations or activities of the government.”

The requested records pertain to the Department of Health and Human Services’ enforcement of 42 U.S.C. § 18116, and concern the operations or activities of the Department of Health and Human Services in that capacity.

- In order for the disclosure to “likely contribute” to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request.

The disclosure is meaningfully informative in relation to the subject matter of the request: the Department of Health and Human Services’ enforcement of 42 U.S.C. § 18116. Complaints and closure of complaints is the best available information on how the Department has been carrying out its obligation to enforce 42 U.S.C. § 18116. Similarly, the current guidance, rules, or similar content used by the Department to guide and assess compliance with 42 U.S.C. § 18116 is the best available information on how the Department has interpreted 42 U.S.C. § 18116 in the absence of regulatory action on the provision.

- The disclosure must contribute to the “understanding of the public at large,” as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester’s subject matter expertise and intentions, ability, and methods of disseminating information to the public.

As a regulatory attorney with years of experience in drafting, promulgating, and enforcing Federal guidance and regulations, including contentious regulations with net societal benefits exceeding \$1 billion and guidance regarding complicated statutes dating back to 1907, I have the subject-matter expertise necessary to distill the complaints, complaint closures, and guidance, rules, or similar content disclosed by the Department of Health and Human Services into the underlying interpretations of law that animate those documents. As an activist in the transgender community focusing on regulatory affairs, I have engaged in substantial activities to address continued discrimination on the basis of gender identity within the Federal government, including several meetings with the Office of Information and Regulatory Affairs concerning access to transition-related health care and other issues. My interpretations of Federal actions have been reported in the Federal Times, the Advocate, and most recently in BuzzFeed, discussing the Office of Personnel Management’s recent decision to obey 42 U.S.C. § 18116 and no longer permit Federal Employee Health Benefits Program plans to categorically exclude coverage for transition-related care.

Upon receipt of the disclosed information, the entirety will be posted to my advocacy site, <http://www.emily-esque.com>, with analysis to follow concurrently or shortly thereafter. As I expect the disclosure will be of interest to the public at large, I will be in communication with several journalists to discuss the disclosures and my analysis of the disclosed information in order to

contribute to the public's understanding of the Department of Health and Human Services' enforcement of 42 U.S.C. § 18116.

- The disclosure must “contribute significantly” to public understanding of government operations or activities.

Discrimination on the basis of gender identity, specifically in the form of discrimination against transition-related care, is endemic in the health insurance industry. Standard clauses of insurance contracts exclude transition-related care from coverage. Such exclusions have been illegal under 42 U.S.C. § 18116 since March 23, 2010. However, as the Federal agency responsible for enforcing 42 U.S.C. § 18116, the Department of Health and Human Services has dithered in its responsibilities, taking until 2015 to finally publish a proposed rule on the subject. The public at large would benefit from the Department disclosing what actions it has taken since March 23, 2010 to address discrimination on the basis of gender identity, as well as whatever guidance, rules, or similar content has been created to guide and assess compliance with 42 U.S.C. § 18116.

- The request must not involve any “commercial interest of the requester,” or the public interest in disclosure must be greater in magnitude than the requester's commercial interest.

I have no commercial interest in the material.

Thank you for your consideration of this request. Please contact me as soon as possible should you have any questions. I look forward to your reply within 20 business days, as the statute requires.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emily T. Prince', with a stylized, cursive script.

Emily T. Prince, Esq.