

Summary of Findings: 2023 Marketplace Plan Compliance with Section 1557 of the Affordable Care Act

In its seventh year of conducting this analysis, Out2Enroll collected and reviewed 1,677 silver marketplace plan options from 210 insurers in the 33 states that use HealthCare.gov. The goal of this analysis was a preliminary assessment of the degree of compliance with Affordable Care Act Section 1557 (“Section 1557”) for the 2023 plan year. This report summarizes the methodology used and the results of this analysis.

Recommendations for Insurers and Policymakers

To better ensure that transgender people do not face discrimination and that they have access to the medically necessary treatment they deserve, Out2Enroll makes the following recommendations. The rationale for these recommendations is discussed below in more detail.

- ***Insurers should:*** (i) clearly and affirmatively state in their publicly available plan documents that all medically necessary treatment for gender dysphoria is covered; and (ii) identify and mitigate underlying coverage policies, medical necessity criteria, and other utilization management tools that could inappropriately limit access to treatment for gender dysphoria.
- ***State and federal insurance regulators should:*** (i) encourage the use of affirmative coverage language; (ii) closely review plan documents (including underlying coverage policies) to ensure compliance with state and federal gender identity nondiscrimination requirements; and (iii) ensure that all marketplace plans have publicly available documentation of the scope and conditions of the coverage they offer.

Findings

- **For the seventh year in a row, the vast majority of insurers did not use transgender-specific exclusions; however, there were more exclusions observed than in recent years.** Most insurers (90.5% studied) did not include explicit exclusions for gender-affirming care in their 2023 silver marketplace plans. However, some marketplace plans continue to include such exclusions, limiting access to medically necessary treatment for gender dysphoria. Several insurers—U.S. Health and Life in Kansas and Tennessee, Cox Health Systems and WellFirst Health in Missouri, CommunityCare of Oklahoma, Community First Health Plans and Sendero Health Plans in Texas, and UnitedHealthCare in its plans in 13 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. Further, UnitedHealthcare continues to use broad exclusions in most of its plans (13 of 16; offering affirmative coverage in none), even as it expands its footprint in the marketplaces.

These exclusionary plans accounted for 9.5% of the total number of insurers reviewed, which is a significant increase relative to prior years. Last year, Out2Enroll noted concerns that many insurers used such exclusions in response to the Trump administration's efforts to roll back explicit nondiscrimination protections in regulations implementing Section 1557 in 2020. With little improvement from the 2022 plan year, these concerns remain.

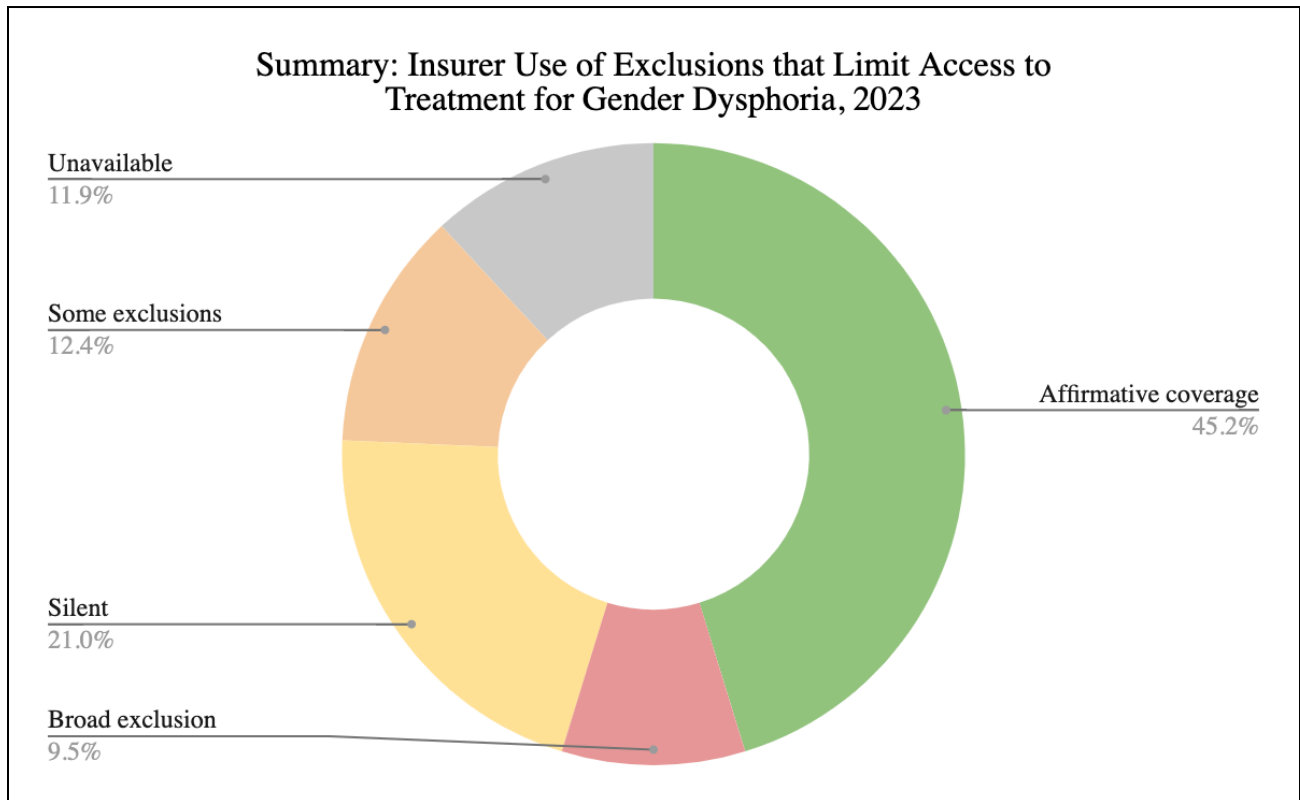
- **Some insurers affirmatively state that some or all medically necessary treatment for gender dysphoria is covered.** Consistent with 2022 plans, more than half of insurers (51.4% of available plans studied; 45.2% of all reviewed plans) incorporated language stating that all or some medically necessary treatment for gender dysphoria would be covered in plan year 2023. This is up significantly from the 2017 plan year, when Out2Enroll began this annual analysis: in 2017, only 18% of insurers included affirmative coverage language. This percentage increased significantly for the first few years after the U.S. Department of Health and Human Services (HHS) Office for Civil Rights promulgated regulations in 2016 clarifying that Section 1557's sex nondiscrimination protections include gender identity and thus prohibit blanket exclusions of coverage for gender-affirming care. However, in more recent years, the number has stagnated to around 40-50% of available plans.

Affirmative coverage language varies significantly by insurer. Some insurers include extensive information on their coverage for gender dysphoria, while others simply note that the plan covers medically necessary treatment for this condition. Even more troubling, some affirmative coverage is in the context of an exclusion. For example, 12 of 14 Cigna policies (the others are silent) only mention gender-affirming care in their Exclusions and Limitations Section, stating "Procedures, surgery or treatments to change characteristics of the body to those of the opposite sex *unless such services are deemed Medically Necessary*" (emphasis added).

This approach suggests a continued presumption among insurers that this type of care is not covered except under narrow circumstances. As such, Out2Enroll is 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, inappropriate utilization management criteria, and other underlying coverage policies that may not be publicly available for review.

- **Many insurers still provide no meaningful information to consumers about the scope of coverage available for gender-affirming care.** Another large portion of plans (21% this year) were silent regarding coverage for the treatment of gender dysphoria: these insurers did not use broad exclusions, but they also did not affirmatively state that gender-affirming care is covered. 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. In the absence of affirmative language, however, it is very difficult for transgender consumers to understand their coverage options, to ensure that they are following appropriate procedures and protocols for requesting coverage, and to appeal denials of coverage. As such, clear, affirmative coverage language in publicly available plan documents is a best practice that Out2Enroll urges more insurers to adopt.

- Several insurers had some exclusions that could limit access to medically necessary treatment for gender dysphoria.** Consistent with recent years, 12.4% of insurers did not include transgender-specific exclusions but incorporated potentially overbroad definitions of excluded “cosmetic” care, possibly excluding procedures that should not be considered cosmetic in the context of gender-affirming care, which is medically necessary for the treatment of gender dysphoria. This is far lower than the 56% of insurers with partial exclusions that Out2Enroll observed in 2017. Nonetheless, in the absence of affirmative coverage for the treatment of gender dysphoria, this approach continues to be a barrier for transgender consumers to finding reliable coverage they can count on.
- Consumers continue to find it challenging to obtain and review certificates of coverage.** Plan documents were about as available as in prior years: Out2Enroll could not access plan documents from 25 insurers (11.9%) to assess their coverage of treatment for gender dysphoria. This lack of access to important plan documents continues to present challenges to transgender consumers when assessing their coverage options and should be a priority for federal and state regulators in the marketplaces.



Historical Trends

This is Out2Enroll’s seventh year of conducting an analysis of silver marketplace plan options for discriminatory benefit design. This information is summarized in the below table for comparison purposes.

Plan Year	Analysis Information			Results				
	No. of States	No. of Insurers	No. of Plans	Affirmative Coverage	Broad Exclusions	Some Exclusions	Silent	Unavailable
2017	16	81	866	18.0%	5.0%	56.0%	N/a	21.0%
2018	18	71	548	28.0%	10.0%	24.0%	23.0%	15.0%
2019	38	129	622	41.0%	6.0%	25.0%	18.0%	10.0%
2020	38	161	1,057	47.0%	3.0%	12.0%	25.0%	13.0%
2021	36	176	1,386	46.0%	7.0%	14.0%	20.0%	13.0%
2022	33	203	3,748	51.0%	6.0%	9.0%	24.0%	10.0%
2023	33	210	1,677	45.2%	9.5%	12.4%	21.0%	11.9%

In general, insurers have made significant progress since Out2Enroll began these analyses in 2016 (ahead of the 2017 plan year). Insurers have largely eliminated categorical transgender-specific exclusions, which were explicitly banned in the 2016 Section 1557 regulation. In no year have more than 10% of insurers included transgender-specific exclusions in their marketplace plans sold through HealthCare.gov, though this year had the highest rate of exclusionary policies since the 2018 plan year.

Since the 2017 plan year, insurers have significantly increased their use of affirmative coverage language, with nearly half now consistently including language that confirms coverage of medically necessary treatment for gender dysphoria. These data underscore that the use of affirmative coverage language is increasingly the industry standard and a best practice, as it helps ensure that transgender enrollees do not face discrimination and that they are able to access medically necessary gender-affirming care, as required by federal law.

Methodology

In November 2022, Out2Enroll reviewed 2023 silver plans sold through HealthCare.gov in 33 states. Plans were identified using the 2023 Plan Attributes PUF files, which include plan- and carrier-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.

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 could affect access to gender-affirming treatment. In total, Out2Enroll analyzed 1,677 silver marketplace plan options from 210 insurers in 33 states. This information was compiled into state-specific guides for transgender consumers, which are available at: <https://out2enroll.org/2023-cocs/>

State-Level Summary of Insurer Approaches to Trans Health Coverage, 2023

State	Affirmative coverage	Broad exclusion	Some exclusions	Silent	Unavailable
AK	Premiera BCBS				Moda
AL		UnitedHealthCare		BCBS of Alabama, Celtic Insurance Company	
AR	Ambetter, Arkansas BCBS, Health Advantage				
AZ	BannerAetna, Cigna, Health Net, Imperial, Medica, Oscar	UnitedHealthCare		BCBS of Arizona	
DE				AmeriHealth Caritas Next, Highmark BCBS	Aetna CVS
FL	Ambetter, AmeriHealth Caritas Next, Cigna, Florida BCBS, Florida Health Care Plans, Health First, Molina, Oscar		UnitedHealthCare		Aetna CVS, AvMed, Capital Health Plan
GA	Aetna CVS, Ambetter, Cigna, Friday Health Plans, Oscar	UnitedHealthCare	Alliant, Anthem BCBS, CareSource	Kaiser Permanente	
HI	HMSA			Kaiser Permanente	
IA	Medica, Oscar		CareSource	Wellmark	
IL	Aetna, Ambetter, Cigna, Molina, Oscar	UnitedHealthCare		BCBS of Illinois, MercyCare, WellFirst	Health Alliance, Quartz
IN	Cigna		Anthem BCBS, CareSource	Ambetter, US Health and Life	
KS	Ambetter, Cigna, Medica, Oscar	UnitedHealthCare, US Health and Life		BCBS of Kansas City	BCBS of Kansas
LA		UnitedHealthCare	BCBS of Louisiana	Ambetter, Christus Health Plan	HMO Louisiana, Vantage
MI	BCBS of Michigan, Molina, Oscar			Ambetter, UnitedHealthCare, US Health and Life	McLaren, Physicians Health Plan, Priority Health
MO	Aetna CVS, Ambetter, Cigna, Medica, Oscar	Cox, UnitedHealthCare, WellFirst	Anthem BCBS	BCBS of Kansas City	
MS	Ambetter, Cigna, Molina	UnitedHealthCare			Vantage
MT	Mountain Health Co-op, PacificSource			BCBS of Montana	

NC	Aetna, BCBS of North Carolina, Cigna, Friday Health Plans, Oscar	UnitedHealthCare	CareSource	Ambetter, WellCare	AmeriHealth Caritas Next
ND	BCBS of North Dakota, Medica				Sanford Health Plan
NE	Medica, Oscar		BCBS of Nebraska	Ambetter	
NH	Ambetter, Harvard Pilgrim		Anthem BCBS		
OH	Ambetter, Molina, Oscar	UnitedHealthCare	Anthem BCBS, CareSource, MedMutual		AultCare, Paramount, SummaCare
OK	Friday Health Plans, Medica, Oscar	CommunityCare, UnitedHealthCare		Ambetter, BCBS of Oklahoma	
OR	BridgeSpan, Kaiser Permanente, PacificSource, Providence, Regence BCBS				Moda
SC	Cigna, Molina			Ambetter, BCBS of South Carolina, First Choice Next	
SD				Wellmark	Avera, Sanford Health Plan
TN	Cigna, Oscar	UnitedHealthCare, US Health and Life	BCBS of Tennessee	Ambetter	
TX	Aetna CVS, Ambetter, Cigna, Imperial, Moda, Molina, Oscar	Community First, Sendero IdealCare, UnitedHealthCare	Community Health Choice, Scott and White Health Plan	BCBS of Texas, Christus Health Plan, FirstCare, US Health and Life	
UT	Molina			BridgeSpan, Cigna, Regence BCBS, SelectHealth	University of Utah Health Plans
VA	Aetna, CareFirst BlueChoice, Innovation Health Plan, Oscar		HealthKeepers, Optima, Piedmont Community HealthCare	Cigna, Kaiser Permanente, UnitedHealthCare	
WI	Aspirus, HealthPartners, Medica, Molina, Security Health Plan		Anthem BCBS, Common Ground, Group Health Cooperative, Chorus Health	Dean Health Plan, MercyCare	Network Health, Quartz
WV	Highmark BCBS		CareSource		
WY	BCBS of Wyoming, Mountain Health Cooperative				