

# District Court Holds Third-Party Administrator Violated ACA's Anti-Discrimination Rules by Administering Self-Insured Plan's Exclusion for Gender-Affirming Care

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On the heels of several recent court decisions concerning gender-affirming care, a federal district court in Washington concluded that the denial of benefits for gender-affirming care by a third-party administrator (“TPA”) administering a self-insured plan violated Section 1557 of the Patient Protection and Affordable Care Act (the “ACA”). By way of background, Section 1557 sets forth the ACA’s nondiscrimination requirements applicable to any “health program or activity” which receives federal financial assistance. There has been considerable litigation over the past few years regarding the applicability of Section 1557 to health plan service providers.

In this case, the court ruled that the TPA’s denial of benefits based on the plan’s gender-affirming care exclusion violated Section 1557 of the ACA. The court rejected the TPA’s argument that it was not subject to Section 1557 because it was administering a self-funded plan that did not receive federal financial assistance, reasoning that the TPA was part of a larger organization operating health programs that received federal financial assistance. Having concluded that the TPA’s activities were subject to Section 1557, the court found that the TPA’s denial of benefits for gender-affirming care violated Section 1557, noting that the denial constituted discrimination on the basis of sex under the U.S. Supreme Court’s decision in *Bostock v. Clayton County, Georgia* and the Ninth Circuit’s decision in *Doe v. Snyder*.

As for the TPA's contention that it did not draft or control the self-funded plan's gender-affirming care exclusion, the court responded: "tough luck." The court explained that the TPA had an independent duty to comply with Section 1557, and while the court recognized that the TPA was caught between ERISA's requirement to follow the terms of a plan document and the requirements of Section 1557, the court resolved this issue by pointing to the ERISA principle that ERISA shall not be construed to impair other laws—including the ACA.

### **Proskauer's Perspective**

While other courts have ruled on Section 1557's applicability to gender-affirming care exclusions in different contexts, this court's decision is notable for holding a TPA accountable under Section 1557 for a self-insured plan's terms.

The case is *C.P. v. Blue Cross Blue Shield of Illinois*, No. 20-cv-6145, 2022 WL 17788148 (W.D. Wash. Dec. 19, 2022).

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