**Template Letter from You to Your Employer or School Asking Them to Remove an Exclusion**

**[FOR SELF-FUNDED PLANS WITH EXCLUSIONS ONLY]**

**INSTRUCTIONS:**

1. **Only use this template if you have a self-funded plan that has an exclusion. To understand whether you have a self-funded plan, and for resources on approaching your employer, please refer to this page.**
2. Replace all the bold text with your information.
3. The section that says “**WHY REMOVING THE EXCLUSION IS IMPORTANT FOR YOU AND OTHER EMPLOYERS OR STUDENTS”** is *optional*. You can use the space to include additional information about why it would be important for you or other employers or students that employers/students have access to transition-related care, or to a specific procedure that is currently excluded. If discussing a specific procedure, it would be helpful to include statements from medical organizations or studies. You can refer to the health care provider’s letter page for more resources.
4. Keep in mind that you can consider reaching out to other colleagues who may want to co-sign the letter and support you in this process, including non-transgender colleagues.
5. If your employer or school continues to refuse to remove the exclusion after you send this letter, **we strongly recommend that you reach out to a lawyer to discuss other options** (you can refer to this list of legal resources).

**[YOUR NAME]**

**[YOUR ADDRESS]**

**[YOUR PHONE NUMBER]**

**[YOUR EMAIL ADDRESS]**

**[DATE]**

**[EMPLOYER OR SCHOOL NAME]**

**[EMPLOYER OR SCHOOL ADDRESS]**

RE: Request to remove exclusion for gender dysphoria treatment from self-funded health plan

To Whom It May Concern:

My name is **[NAME]** and I am an **[EMPLOYEE OR STUDENT]** at **[EMPLOYER/SCHOOL]**. I am enrolled in the self-funded health plan **[NAME OF PLAN and POLICY NUMBER]**, administered by **[PLAN ADMINISTRATOR NAME]**. This health plan currently has an exclusion for treatment for gender dysphoria (also known as transition-related care), a serious medical condition that affects many transgender people.According to the plan booklet, the plan excludes **“[COPY THE SECTION OF THE PLAN THAT LISTS THE BLANKET EXCLUSION OR THE EXCLUSION OF THE SPECIFIC PROCEDURE YOU NEED]”.**

I respectfully ask that this exclusion of coverage for gender dysphoria treatment be removed from the health plan. Over the past few years, similar exclusions have been largely eliminated in public programs and private insurance, as medical experts, state and federal agencies, and the business community developed a greater understanding of the medical benefit and cost effectiveness of providing this treatment. Courts have also found that these types of exclusions are discriminatory and violate federal law.

It is the overwhelming consensus among major medical organizations that transition-related treatments, including counseling, hormone therapy and surgical treatments, are safe, effective, and medically necessary when clinically indicated to treat gender dysphoria. Major medical organizations such as the American Medical Association, the American College of Physicians, the American Psychological Association, the American Psychiatric Association, the American Academy of Family Physicians, the Endocrine Society, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists, have issued policy statements to this effect,[[1]](#footnote-1) and numerous studies have demonstrated the significant benefits of medical treatments for gender dysphoria.[[2]](#footnote-2) Major medical organizations such as those named above support coverage of medically necessary transition-related care in accordance with the World Professional Association for Transgender Health’s (WPATH) most recent *Standards of Care* (available at <https://www.wpath.org/publications/soc>). Recently, WPATH specifically spoke to the medical necessity of this type of treatment and the need for private and public health coverage for it in the United States.[[3]](#footnote-3)

This exclusion also violates federal nondiscrimination law. Federal courts have determined that Title VII and Title IX’s sex discrimination provisions protect transgender people from discrimination in employment and schools, including in receiving and accessing health care benefits (see, e.g., [*EEOC v. R.G. &. G.R. Harris Funeral Homes, Inc.*](https://www.aclu.org/legal-document/eeoc-v-rg-gr-harris-funeral-homes-ruling), 884 F.3d 560 (6th Cir. 2018); *[Barnes v. City of Cincinnati](http://law.justia.com/cases/federal/appellate-courts/F3/401/729/551549/%22%20%5Ct%20%22_blank)*, 401 F.3d 729 (6th Cir. 2005); *[Smith v. City of Salem](http://caselaw.findlaw.com/us-6th-circuit/1380020.html%22%20%5Ct%20%22_blank)*, 378 F.3d 566 (6th Cir. 2004); *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217 (6th Cir. 2016); *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017)). Federal courts and the Equal Employment Opportunity Commission have specifically found that exclusions for medically necessary treatment for gender dysphoria in self-funded health plans are discriminatory, in violation of federal protections (see, e.g., *Boyden v. Conlin*, No. 17-cv-264-WMC, 2018 (W.D. Wis. September 18, 2018); Amicus Brief of the Equal Employment Opportunity Commission in Support of Plaintiff and in Opposition to Defendant’s Motion to Dismiss, *Robinson v. Dignity Health*, No. 4:16-cv-03035-YGR (N.D. Cal., *filed* August 22, 2018)).

Courts have similarly found that exclusions of transition-related care can violate Section 1557 of the Affordable Care Act and the Equal Protection Clause of the U.S. Constitution, and that insurers acting as third party administrators can be held liable for enforcing discriminatory exclusions in self-funded plans (see, e.g., *Tovar v. Essentia Health*, No. 16-cv-00100-DWF-LIB (D. Minn. September 20, 2018); *Flack v. Wis. Dep’t of Health Servs.*, No. 3:18-cv-00309-wmc (W.D. Wis. July 25, 2018); *Cruz v. Zucker*, 195 F.Supp.3d 554 (S.D.N.Y. 2016); *Prescott v. Rady Children’s Hosp.-San Diego*, 265 F.Supp.3d 1090 (S.D. Cal. 2017). Illegal practices under federal law include blanket exclusions of all care related to gender dysphoria; automatic exclusions of specific treatments for gender dysphoria regardless of medical necessity (such as classifying certain treatments as always cosmetic or refusing to cover a treatment for gender dysphoria when a similar treatment is covered for other conditions); and the use of arbitrary and excessive standards for determining medical necessity or eligibility when those standards are not based on accepted medical guidelines.

The evolution of the medical consensus on the necessity and effectiveness of treatment of gender dysphoria and legal and constitutional protections led federal- and state-regulated health programs, including Medicare,[[4]](#footnote-4) the Office of Personal Management, which oversees Federal Employee Health Benefits (FEHB),[[5]](#footnote-5) to remove their prior exclusions of transition-related care and the overwhelming majority of Medicaid programs have removed or do not have such exclusions.[[6]](#footnote-6) Private health insurance carriers have also overwhelmingly eliminated exclusions and adopted coverage policies in their health plans. A study by Out2Enroll of over 500 plans being sold in the individual marketplace in 2018 across 18 states found that 90% of marketplace plans did not have an exclusion on transition-related care. Nearly one third of all plans (28%) had affirmative coverage protocols for treatment of gender dysphoria, up from 18.5% in 2017.[[7]](#footnote-7)

Over the past few years, major companies offering self-funded or large group insurance plans have likewise moved to remove exclusions and provide comprehensive care for gender dysphoria. Employers reported minimal economic impact from providing equal coverage for transgender employees. For example, the Human Rights Campaign’s Corporate Equality Index reports that for the 750 major employers in the index who did so, eliminating exclusions “comes at an overall negligible cost to the employers’ overall health insurance plans. This holds true across industries.”[[8]](#footnote-8) The index also reported that 58% of Fortune 500 businesses provide coverage for transition-related care. A survey of employers by the Williams Institute at the UCLA School of Law found that transition-related health care benefits have “zero or very low costs” and low utilization rates estimated at 1 per 10,000 to 20,000 employees.[[9]](#footnote-9) Other private and public employers that have covered transition-related care for their employees have similarly found it to be highly cost-effective.[[10]](#footnote-10) More than 86 leading universities and colleges, including state universities in at least 28 states, have similarly found that it is cost-effective to provide this coverage in their student health plans.[[11]](#footnote-11)

**[OPTIONAL: WHY REMOVING THE EXCLUSION IS IMPORTANT FOR YOU AND OTHER EMPLOYERS OR STUDENTS]**

For all of the above, I respectfully ask that the current exclusion on treatment for gender dysphoria be removed. Removing this discriminatory exclusion will ensure that transgender **[EMPLOYEES OR STUDENTS]** receive equitable benefits, and are valued in their **[PLACE OF EMPLOYMENT OR EDUCATION]**. Removing the exclusion will not result in onerous costs, and will bring our health care plan in line with the overwhelming majority of private and public health plans, and in compliance with federal law.

Sincerely,

**[YOUR NAME]**

1. For a compilation of statements from major medical associations on this issue, see https://www.lambdalegal.org/publications/fs\_professional-org-statements-supporting-trans-health [↑](#footnote-ref-1)
2. For example, in a literature review of all peer-reviewed articles published in English between 1991 and 2017 on the effects of transition-related care on the wellbeing of transgender people, a Cornell University research team concluded that surgical and other transition-related treatment is highly effective. See <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-well-being-of-transgender-people/> [↑](#footnote-ref-2)
3. WPATH, Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A. (December 2016), <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH-Position-on-Medical-Necessity-12-21-2016.pdf> [↑](#footnote-ref-3)
4. Dep’t of Health and Human Services, NCD 140.3, Transsexual Surgery, 12 (2014); HHS Department Appeals Board, Decision of Medicare Appeals Council, Docket Number M-15-1069, United Healthcare/AARP (January 21, 2016) [↑](#footnote-ref-4)
5. FEHB Program Carrier Letter No. 2015-12, Covered Benefits for Gender Transition Services, (June 24, 2015). [↑](#footnote-ref-5)
6. Thirty-nine states and the District of Columbia have either eliminated or never adopted exclusions of transition-related care in their Medicaid programs. Of the only 11 states that still maintain exclusions in their Medicaid programs, at least two are currently subject to legal challenges. Seventeen states and the District of Columbia have proactively adopted policies to help ensure that their Medicaid programs do not discriminate against transgender beneficiaries and provide coverage for transition-related care. For more information, see [www.lgbtmap.org/equality-maps/healthcare\_laws\_and\_policies](http://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies). [↑](#footnote-ref-6)
7. Out2Enroll, *Summary of Findings: 2018 Marketplace Plan Compliance with Section 1557* (2017), [out2enroll.org/out2enroll/wp-content/uploads/2017/11/Overview-of-Trans-Exclusions-in-2018-Marketplace-Plans-1.pdf](file:///C%3A%5CUsers%5Cmanaf%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CZPOKN33Y%5Cout2enroll.org%5Cout2enroll%5Cwp-content%5Cuploads%5C2017%5C11%5COverview-of-Trans-Exclusions-in-2018-Marketplace-Plans-1.pdf). [↑](#footnote-ref-7)
8. Human Rights Campaign, *Corporate Equality Index 2018: Rating Workplaces on Lesbian, Gay,*

*Bisexual, Transgender, and Queer Equality* 28 (2018). [↑](#footnote-ref-8)
9. Jody L. Herman, *Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefit Plans: Findings from a Survey of Employers*, (2013), available at: http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf. [↑](#footnote-ref-9)
10. *See, e.g.,* S.F. Human Rights Comm’n, *San Francisco City and County Transgender Health Benefit* (2007), <http://www.hrc.org/files/assets/resources/San_Francisco_City_and_County_Transgender_Health_Benefit_-_2007-08-10.pdf>; Cal. Dep’t of Ins., *Economic Impact Assessment: Gender Nondiscrimination in Health Insurance* (2012), <http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf>; William V. Padula et al., “Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis,” 31 *Journal of General Internal Medicine* 394 (2015); Wis. Dep’t of Employee Trust Funds, *Correspondence Memorandum* (August 14, 2018), <http://etf.wi.gov/boards/agenda-items-2018/gib0822/item6a1.pdf>; Wis. Dep’t of Employee Trust Funds, *Correspondence Memorandum* (January 30, 2017), <http://etf.wi.gov/boards/agenda-items-2017/gib0208/item4.pdf>. [↑](#footnote-ref-10)
11. Campus Pride, *Trans Policy Clearinghouse: Colleges and Universities that Cover Transition-Related Medical Expenses under Student Health Insurance* (2018), [www.campuspride.org/tpc-student-health-insurance](http://www.campuspride.org/tpc-student-health-insurance). [↑](#footnote-ref-11)