Your TPA May Violate Federal Law If Your Self-Funded Group Health Plan Excludes Gender-Affirming Care

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PRACTICES Employee Benefits and Executive Compensation

In December 2022, a U.S. District Court in Washington ruled that a third party administrator (***"TPA"***) of self-funded, employer-sponsored group health plans violated federal law by administering the plans' exclusions of gender-affirming care. The court determined that the TPA was covered by Section 1557 of the Affordable Care Act (***"Section 1557"***) because it received federal financial assistance for Medicare and Medicaid-related products, even though the TPA did not receive federal financial assistance for its administration of self-funded plans. The court ruled that the denial of benefits based on the covered person's transgender status, in the form of a plan exclusion triggered by a diagnosis of gender dysphoria, was discrimination on the basis of sex that is prohibited under Section 1557. The court denied the TPA's various defenses, including that it was obligated under ERISA to administer the plan as written and did not draft the discriminatory exclusion. The relief due has not yet been decided.

Employers that continue to maintain plan exclusions for services relating to gender dysphoria should review their TPA service agreements to determine whether the employer is responsible for any liability resulting from the TPA's violation of Section 1557.

The case is *C.P. v. Blue Cross Blue Shield of Ill.*, 2022 WL 17788148 (W.D. Wash. 2022).