



DAVE JONES
Insurance Commissioner

October 13th, 2017

Insurance Commissioner Dave Jones
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Acting Secretary Eric Hargan
U.S. Department of Health and Human Services
200 Independence Ave. S.W.
Washington, DC 20201

Dear Acting Secretary Hargan:

Enclosed please find a letter on behalf of eight Insurance Commissioners regarding Section 1557 of the Affordable Care Act.

I am sending this letter on behalf of the undersigned Commissioners. Any reply can be directed to my office at the above address.

Sincerely,

A handwritten signature in blue ink that reads "Dave Jones".

Dave Jones, Insurance Commissioner
California Department of Insurance

October 13th, 2017

Acting Secretary Eric Hargan
U.S. Department of Health and Human Services
200 Independence Ave. S.W.
Washington, DC 20201

Dear Acting Secretary Hargan:

On behalf of the undersigned state insurance commissioners, the primary regulators of U.S. insurance markets, we write today to urge the Department not to roll back a rule, adopted just last year by the Office for Civil Rights, implementing historic civil rights protections.

Based on the government's recent status report in *Franciscan Alliance v. Price*, we understand that the Department has drafted a proposed rule on Section 1557 and intends to proceed with rulemaking. We write to urge you against making changes to the Section 1557 rule's definition of sex, which currently includes gender identity and sex stereotyping, and convey our perspective on why these protections are critical to our consumers and state insurance markets.

As you know, Section 1557 went into effect the day the Affordable Care Act was signed, March 23, 2010. While this provision was one of the few immediately effective parts of the law, state insurance regulators, regulated entities, and consumers waited more than six years for the Office for Civil Rights to finalize the regulation implementing Section 1557.

In the absence of federal guidance and in response to consumer concerns and complaints, we took action to make clear that discrimination on the basis of gender identity or transgender status is prohibited in our jurisdictions. We implemented these protections based on state law and regulations and in reliance on Section 1557 and other federal requirements because we believe that transgender people should have equal access to the same health insurance and care as every other insured American. This includes health care related to gender transition, which for years has been recognized by the medical community as medically effective and necessary for many individuals, as well as routine tests and treatments that have sometimes been denied to transgender individuals based on their association with a specific gender. Consumer protection is a core part of our mission and responsibility as regulators and includes ensuring that no person, transgender or not, is treated unfairly or subject to discrimination.

Changing the rules now—less than one year after they became effective—will generate uncertainty for the consumers we serve and the companies we regulate. Our regulated entities have already taken significant steps to come into compliance with Section 1557. Undoing the rule and its clarification of federal requirements now would impose an additional regulatory burden, and the absence of clear and well-understood federal rules could result in an uneven playing field among insurers.

Our collective experience in implementing these protections has been that the fiscal and regulatory impact of ensuring nondiscriminatory treatment of insurance claims, including claims for medical care related to gender transition, are negligible. We have been able to consider and resolve the consumer complaints that we have received. In fact, we have found that these historic protections have been nothing short of life changing for people who, prior to the enactment of these protections, were often denied the care that their doctors deemed medically necessary.

We are committed to prohibiting discrimination in our states and are deeply concerned about the impact of potential changes to the Section 1557 rule on the companies we regulate and consumers nationwide. As you consider rulemaking, we urge you not to roll back the Section 1557 rule's existing definition of sex, including its recognition of protections under federal law based on gender identity and sex stereotyping. We further urge you to engage a wide array of stakeholders on these issues, as we do at the state level, before moving forward with any regulatory action.

We look forward to continuing to work with you and the Office for Civil Rights on these and other issues. Please do not hesitate to call on us to provide additional information.

Sincerely,

Dave Jones, Insurance Commissioner
California Department of Insurance

Jessica Altman, Acting Insurance Commissioner
Pennsylvania Insurance Department

Trinidad Navarro, Insurance Commissioner
Delaware Department of Insurance

Marie Ganim, Rhode Island Insurance
Commissioner

Mike Rothman, Insurance Commissioner
Minnesota Department of Commerce

Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation

Jean Straight, Acting Director
Oregon Department of Consumer and Business
Services

Mike Kreidler, Insurance Commissioner
Washington State Office of the Insurance
Commissioner

Cc:

Roger Severino, Director
Office for Civil Rights