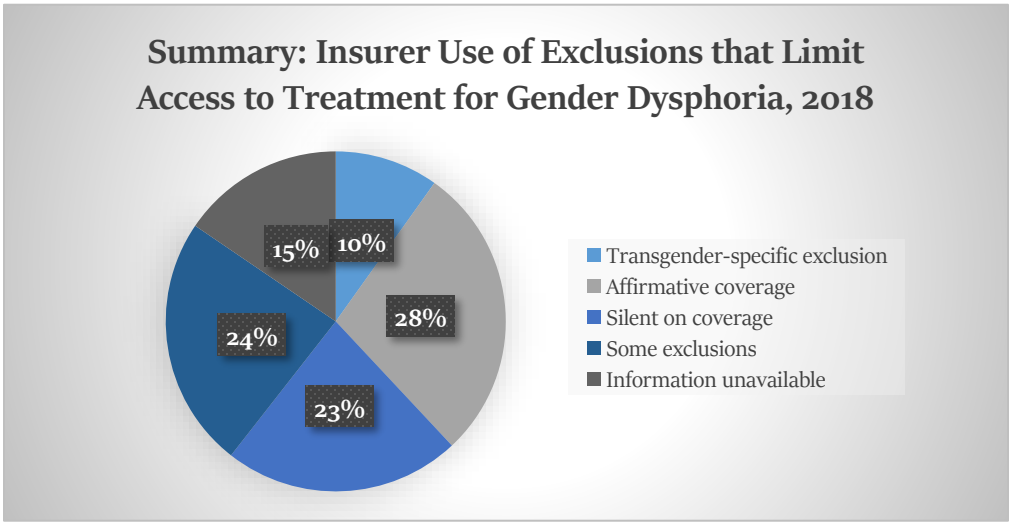
Summary of Findings:
2018 Marketplace Plan Compliance with Section 1557

To assess the degree to which insurers complied with Section 1557 of the Affordable Care Act for the 2018 plan year, Out2Enroll collected and analyzed 548 silver marketplace plan options from 71 insurers in 18 states. This report briefly summarizes the methodology used and the results of this analysis.

Summary of Findings

- **For the second year in a row, the majority of insurers did not use transgender-specific exclusions.** The vast majority of insurers (90% studied) did not include transgender-specific exclusions in their 2018 silver marketplace plan options. Only plans from seven insurers—Ambetter (Centene) in Arizona and Missouri, Alliant in Georgia, Oscar in Ohio and Tennessee, Christus Health Plan in Texas, and Sendero Health in Texas—continued to have discriminatory transgender-specific exclusions.
- **More insurers than ever before affirmatively stated that medically necessary treatment for gender dysphoria was covered.** Nearly one-third of insurers (28% studied) incorporated plan language that stated that all or some medically necessary treatment for gender dysphoria would be covered by the plan. In 2017, only 18.5% of insurers had affirmative coverage language. An additional 22.5% of insurers were silent about the coverage of treatment for gender dysphoria: these insurers did not affirmatively state that such care is covered but also did not have other broad exclusions that would likely deny access to medically necessary care.
- **Fewer insurers had exclusions that would limit access to medically necessary treatment for gender dysphoria.** About one-quarter of insurers (24%) did not include transgender-specific exclusions but completely excluded a procedure commonly used to treat gender dysphoria, incorporated potentially overbroad definitions of excluded "cosmetic" care, or narrowly construed reconstructive benefits that would deny access to medically necessary treatment for gender dysphoria. This is compared to 55.5% of insurers that had this type of language in their plans in 2017.
- **Consumers continue to find it challenging to obtain and review certificates of coverage.** Although plan documents were more available than in 2017, Out2Enroll could not access plan documents from 11 insurers (15.5% studied) to assess their coverage of treatment for gender dysphoria. This lack of access will continue to present challenges to transgender consumers when assessing coverage options.



Methodology

In November 2017, Out2Enroll reviewed 2018 silver plans sold through HealthCare.gov in 18 states. Plans were identified using the 2018 Plan Attributes PUF files, which include plan- and insurer-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, garnering nearly 74% of enrollment nationwide in 2017 in HealthCare.gov states. Out2Enroll excluded dental-only plans, SHOP plans, cost-sharing reduction variation plans, off-marketplace plans, and child-only plans from its review. Once identified, 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 would affect access to treatment. In total, Out2Enroll analyzed 548 silver marketplace plan options from 71 insurers in 18 states. This information was compiled into state-specific guides for transgender consumers and is available at: www.out2enroll.org/2018-cocs.

Findings

Most insurers have removed discriminatory transgender-specific exclusions in compliance with Section 1557 of the Affordable Care Act; however, some marketplace plans continue to include exclusions that limit access to medically necessary treatment for gender dysphoria. Of the plans reviewed from 71 insurers in 18 states, seven insurers in six states—Ambetter (Centene) in Arizona and Missouri, Alliant in Georgia, Oscar in Ohio and Tennessee, Christus Health Plan in Texas, and Sendero Health in Texas—continued to use discriminatory transgender-specific exclusions. The language of these exclusions varies but all seven were categorical exclusions of treatment for gender dysphoria, including, for instance, hormone therapy, mental health services, and surgical procedures.

These exclusions must be addressed. However, the vast majority of insurers (90% studied) removed transgender-specific exclusions from their 2018 silver marketplace plan options. This analysis, although limited to 18 states, suggests that insurers acknowledge that the gender identity nondiscrimination protections under Section 1557 continue to apply to marketplace coverage. This is consistent with several federal courts and the HHS Office for Civil Rights, which have concluded that transgender-specific exclusions constitute unlawful sex-based discrimination under federal law. For instance, 45 C.F.R. § 92.207(b)(4) states that insurers subject to Section 1557 may not "[h]ave or implement a categorical coverage exclusion or limitation for all health services related to gender transition."

Affirmative coverage for the treatment of gender dysphoria. Nearly one-third of insurers (28% studied) incorporated language indicating that all or some medically necessary treatment for gender dysphoria would be covered by the plan. This is up from 18.5% in 2017, representing a 1.5 time increase in the number of insurers that included this language in just one year. Affirmative coverage language varied significantly. Some insurers included extensive information on the coverage of gender dysphoria: plans from Health Plan of Nevada, for instance, included a comprehensive section on the coverage of services to treat gender dysphoria. Other plans—such as those offered by BlueCross BlueShield of Michigan—noted simply that the plan "covers medically necessary services, including prescription drug services, for the treatment of gender dysphoria. This includes professional and facility services."

About one-quarter of insurers did not include transgender-specific exclusions but excluded a transition-related procedure, incorporated broad "cosmetic" exclusions, or narrowly construed reconstructive benefits in a way that would likely deny access to medically necessary treatment for gender dysphoria. This approach, especially in the absence of affirmative coverage for the treatment of gender dysphoria, continues to be problematic for transgender consumers (but is much lower than the 55.5% of insurers with partial exclusions that Out2Enroll observed in 2017).

In a new development for 2018, an additional 22.5% of insurers were silent about the coverage of treatment for gender dysphoria. While these insurers did not affirmatively state that transition-related care is covered, the plans did not have broad exclusions that would likely automatically access to medically necessary treatment for gender dysphoria. Where a plan is silent about coverage, transgender consumers should expect that their medically necessary health care needs will be covered in accordance with plan rules and protocols.

Conclusion

Although some gaps remain in the nondiscriminatory coverage of medically necessary treatment for gender dysphoria, insurers that offer marketplace plans continue to make significant progress in complying with Section 1557. To better ensure that transgender people have a minimal level of access to medically necessary treatment, Out2Enroll 1) urges insurers to build upon the progress made in 2018 by affirmatively stating in their plan documents that medically necessary treatment for gender dysphoria is covered; and 2) urges state and federal insurance regulators to encourage the use of affirmative coverage language and closely review plan documents to ensure compliance with state and federal gender identity nondiscrimination requirements.