



STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
INSURANCE DIVISION

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June 10, 2021

MEMORANDUM 2021-8H

To: All Health Insurance Companies, Mutual Benefit Societies, and Health Maintenance Organizations Authorized to Write Health Insurance in Hawaii

From: Colin M. Hayashida, Insurance Commissioner

Subject: Gender identity discrimination in health coverage

The Commissioner reminds all insurers, mutual benefit societies, and health maintenance organizations doing business in Hawaii that the insurance laws of Hawai'i explicitly prohibit discrimination in health plans, with respect to participation and coverage, based on actual or perceived gender identity. HRS §§ 431:10A-118.3(a), 432:1-607.3(a), and 432D-26.3(a).

This prohibited discrimination includes “[d]enying, canceling, or limiting coverage for ...services related to gender transition; provided that there is coverage ... when the services are not related to gender transition[.]” HRS §§ 431:10A-118.3(b)(4), 432:1-607.3(b)(4), and 432D-26.3(b)(4).¹

Violations of HRS §§ 431:10A-118.3, 432:1-607.3, and 432D-26.3 are within the scope of the Commissioner’s enforcement authority and any reported violations are subject to investigation.

Additionally, insurers, mutual benefit societies, and health maintenance organizations that discriminate coverage on the basis of sexual orientation or gender identity may be subject to federal enforcement actions. The federal Department of Health and Human Services issued a notice of interpretation, effective May 10, 2021, indicating that the Office of Civil Rights “will interpret and enforce [the Patient Protection and Affordable Care Act] Section 1557’s prohibition on discrimination on the basis of sex to include: (1) Discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity.” 86 Fed. Reg. 27,984, 27,985 (May 25, 2021).

¹Prohibited discrimination is addressed more generally in HRS §§ 431:10A-118.3(b), 432:1-607.3(b), and 432D-26.3(b).

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It is the duty of every insurer, mutual benefit society, and health maintenance organization to comply with all relevant state and federal laws.

Please contact the Insurance Division's Health Insurance Branch at ihealth@dcca.hawaii.gov or 808-586-2804 if you have any questions on this matter.