

# **EXHIBIT 26**

Message

**From:** Scott Bender [Scott.Bender@azdoa.gov]  
**on behalf of** Scott Bender <Scott.Bender@azdoa.gov> [Scott.Bender@azdoa.gov]  
**Sent:** 6/9/2016 2:46:29 PM  
**To:** Marie Isaacson [Marie.Isaacson@azdoa.gov]; Elizabeth Schafer [Elizabeth.Schafer@azdoa.gov]  
**Subject:** FW: Final rule - enhanced protection for transgender individuals

Here's UHC's interpretation of the recent ruling, more info to follow next week.

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**From:** Martin, Stephanie A [mailto:stephanie\_martin@uhc.com]  
**Sent:** Thursday, June 09, 2016 12:12 PM  
**To:** Scott Bender <Scott.Bender@azdoa.gov>  
**Cc:** Gallegos, Heather K <heather\_gallegos@uhc.com>  
**Subject:** RE: Final rule - enhanced protection for transgender individuals

Hi Scott,

I am anticipating that we will have more information related to our position as an Insurer next week.

With that said, I can tell you the following information was released within UnitedHealthcare yesterday related to the Non-Discrimination Act and below information is specific to transgender benefits:

**Expanded Protection for Transgender Individuals**

Covered entities are not required to cover any specific item or service for transgender individuals. Categorical coverage exclusions or limitations for all health services related to gender transition are not allowed. Individuals may not be excluded from health programs and activities for which they are otherwise eligible based on their gender identity.

Covered entities may use nondiscriminatory limitations or restrictions on coverage. The same neutral, nondiscriminatory criteria used for other coverage determinations must be used when addressing gender transition. If certain elective procedures beyond those considered medically necessary are covered, then the same standards must apply to coverage of comparable procedures for gender transition.

The Office of Civil Rights will not second-guess a covered entity's neutral nondiscriminatory application of evidence-based criteria used to make medical necessity or coverage determinations. But it cautions that covered entities must use a nondiscriminatory process to determine whether a particular health service is medically necessary or otherwise meets applicable coverage requirements.

Some procedures are only appropriate for individuals of one sex and, therefore, coverage is not required for individuals for whom the procedure isn't applicable. Coverage for health services must be appropriately provided to individuals regardless of their sex assigned at birth, gender identity or recorded gender.

**Section 1557 and ASO Employers**

ASO employers' obligations under Section 1557 are determined independent of the status of the third-party administrator as a covered entity. The final rule acknowledges that third-party administrators are not responsible for the benefit design for the ASO plans they administer. As such, each ASO employer will need to evaluate their status as a covered entity under Section 1557 and other relevant laws such as Title VII of the Civil Rights Act.

Lastly, another item we will be monitoring closely is a lawsuit that was filed by the American Civil Liberties Union (ACLU) on Monday, June 6<sup>th</sup> against **Dignity Health** because it denies transition related healthcare under its benefits plan.

Listed below is a link to an ACLU announcement specific to a lawsuit filed by an employee of Dignity Health:  
<https://www.aclu.org/news/aclu-challenges-major-health-systems-denial-insurance-transgender-employee>

Below is another link to the same story published by Reuters:  
<http://www.reuters.com/article/health-transgender-idUSL1N1900CZ>

There are also a number of local news stories on this same issue as well- Fox 10, AZ Family (channel 3), KJZZ (NPR), Phoenix Business Journal.

I will provide additional information as it is released to us as well as updates to the ACLU/Dignity Health case.

Let us know if you have any questions.

Thanks,  
Stephanie

**Stephanie A. Martin**

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**From:** Gallegos, Heather K  
**Sent:** Thursday, June 09, 2016 6:50 AM  
**To:** Scott Bender  
**Cc:** Martin, Stephanie A; Gallegos, Heather K  
**Subject:** RE: Final rule - enhanced protection for transgender individuals

Scott,

I wanted to acknowledge receipt and advise we are currently looking into this further. We will provide follow up once we have additional information.

Thanks,  
Heather

**Heather K. Gallegos** | Senior Account Manager, Client Management

UnitedHealthcare  
Government, Labor & Education  
(office) 602.255.8525 (cell) 602.451.9867  
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**From:** Scott Bender [<mailto:Scott.Bender@azdoa.gov>]  
**Sent:** Wednesday, June 08, 2016 6:17 PM  
**To:** Muth, Ken; Severns, Colette; Emmons, Erica 654; Eveleth, Ray G; Dash, Jay A; Gallegos, Heather K  
**Subject:** Final rule - enhanced protection for transgender individuals

Hi all,

Now that the HHS has issued a final rule on the nondiscrimination in health programs under the ACA, we need some guidance as to whether our plans as they exist will be compliant as of the effective date of July 18, 2016. The ruling expands protection for transgender individuals with respect to accessibility for health services that may not be denied or limited due to an individuals assigned sex at birth, gender identity or recorded gender. What's not clear is if our plans must now cover reassignment surgery, or other treatments required during a transition. Please advise how your organization is treating this ruling and how specifically the ADOA plans are impacted.

Thanks  
Scott

**Scott Bender**

Plan Administration Manager  
ADOA – Benefit Services Division | State of Arizona  
100 North 15th Avenue, Suite 260, Phoenix, AZ 85007  
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# **EXHIBIT 27**

Message

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**From:** Eveleth, Ray G [EvelethR@aetna.com]  
**on behalf of** Eveleth, Ray G <EvelethR@aetna.com> [EvelethR@aetna.com]  
**Sent:** 6/9/2016 11:57:16 AM  
**To:** Scott Bender [Scott.Bender@azdoa.gov]  
**CC:** Dash, Jay A [DashJ@aetna.com]  
**Subject:** RE: Final rule - enhanced protection for transgender individuals  
**Attachments:** robinson\_v\_dignity\_complaint\_-filed.pdf

Scott,

Currently, your plan would be required to cover this based on medical necessity. We are asking our Compliance department for guidance to our self-funded clients. However, attached is a current case in the 9<sup>th</sup> Circuit that addresses this very issue. I'd be curious what UHC's response is.

I apologize for including the NPL link, this is an internal link. It spells out our procedures based on a member requesting either a Par or Non-Par provider.

Be well,

**Ray Eveleth**

Senior Account Executive  
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**From:** Scott Bender [mailto:Scott.Bender@azdoa.gov]  
**Sent:** Thursday, June 09, 2016 10:42 AM  
**To:** Eveleth, Ray G  
**Cc:** Dash, Jay A  
**Subject:** RE: Final rule - enhanced protection for transgender individuals

Thank you for the response Ray. The second link below to the National Provider Precertification does not work for me, is there an attachment you could send instead? To clarify on the below procedures and these requiring preauthorization, assuming Aetna determines there is medical necessity based on the criteria, is our plan required to offer the reassignment benefits even though we're self insured? This seems to be the sticking point and if we have an option or not.

Thanks,  
Scott

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**From:** Eveleth, Ray G [mailto:EvelethR@aetna.com]  
**Sent:** Thursday, June 09, 2016 9:53 AM  
**To:** Scott Bender <Scott.Bender@azdoa.gov>  
**Cc:** Dash, Jay A <DashJ@aetna.com>  
**Subject:** RE: Final rule - enhanced protection for transgender individuals

Hi Scott,

Below is our official response plus I'm including additional information about our National Medical Excellence Program as it would be a source for referral.

In regards to reassignment surgery/other treatments required during transition Aetna considers it medically necessary when all of the criteria is met per Clinical Policy Bulletin 0615  
[http://www.aetna.com/cpb/medical/data/600\\_699/0615.html](http://www.aetna.com/cpb/medical/data/600_699/0615.html).

Also sharing additional information as it applies to NME:

The National Medical Excellence (NME) Program has 3 components:

- National Transplantation Program - designed to help arrange covered care for organ and tissue transplants, including heart, lung, liver, kidney, pancreas, peripheral stem cell and bone marrow transplants
- **National Special Case Program** - developed to provide referral management for preauthorized services for members with very complex conditions that are not commonly encountered in routine patient management activities. Some examples of diagnosis/procedures qualifying as NME special cases are:

- Acrocephalosyndactyla
- Brachial Plexus Neuropathies
- Desmoid Tumors
- Dysautonomia Familial
- Epidermolysis Bullosa
- Fragile X Syndrome
- **Gender reassignment surgery** - see Precertification Policy/Overview: [National Participating Provider Precertification List \(NPL\)](#)
- Laryngotracheal Reconstruction
- Merkel Cell Cancer
- Moyamoya Disease
- The Special Case Program also includes the Hemophilia Program. The NME Hemophilia Program is responsible for providing case management and factor precertification services to all members diagnosed with hemophilia or vonWillebrand's Disease.
- [Out of Country Care](#) for members who need emergency inpatient medical care while temporarily traveling outside of the continental United States.

Be well,

**Ray Eveleth**

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**From:** Scott Bender [<mailto:Scott.Bender@azdoa.gov>]

**Sent:** Wednesday, June 08, 2016 6:17 PM

**To:** Muth, Ken; Severns, Colette; Emmons, Erica 654; Eveleth, Ray G; Dash, Jay A; [heather\\_k\\_gallegos@uhc.com](mailto:heather_k_gallegos@uhc.com)

**Subject:** Final rule - enhanced protection for transgender individuals

Hi all,

Now that the HHS has issued a final rule on the nondiscrimination in health programs under the ACA, we need some guidance as to whether our plans as they exist will be compliant as of the effective date of July 18, 2016. The ruling expands protection for transgender individuals with respect to accessibility for health services that may not be denied or limited due to an individuals assigned sex at birth, gender identity or recorded gender. What's not clear is if our plans must now cover reassignment surgery, or other treatments required during a transition. Please advise how your organization is treating this ruling and how specifically the ADOA plans are impacted.

Thanks  
Scott

**Scott Bender**

Plan Administration Manager

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15 dhill@achuaz.org

16 *Attorneys for Plaintiff Josef Robinson*

17 *\* Pro hac vice motion to follow*

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

22 JOSEF ROBINSON, )  
23 )  
Plaintiff, )  
24 ) Civil No. \_\_\_\_\_  
v. )  
25 ) **COMPLAINT**  
DIGNITY HEALTH d/b/a CHANDLER )  
26 REGIONAL MEDICAL CENTER, )  
27 )  
Defendant. )  
28 )

COMPLAINT

**COMPLAINT**

1  
2           1.       This is a civil rights complaint for sex discrimination in violation of Title VII of  
3 the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (“Title VII”), and the Patient Protection  
4 and Affordable Care Act § 1557, 42 U.S.C. § 18116 (“Section 1557”).

5           2.       Dignity Health owns and operates the fifth largest health care system in the  
6 United States. It provides health benefits to its employees through a self-funded plan (the  
7 “Dignity Health Plan”).

8           3.       The Dignity Health Plan singles out transgender employees for unequal treatment  
9 by categorically depriving them of all medical care for gender dysphoria, a serious medical  
10 condition codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and  
11 International Classification of Diseases (ICD-10).

12           4.       In the past, public and private insurance companies excluded coverage for gender  
13 dysphoria based on the erroneous assumption that such treatments were cosmetic or  
14 experimental. Today, however, it is widely recognized that such exclusions have no basis in  
15 medical science.

16           5.       Plaintiff Josef Robinson is an employee of Dignity Health who works at Dignity  
17 Health’s Chandler Regional Medical Center. As a result of the categorical exclusion in the  
18 Dignity Health Plan, Mr. Robinson has been forced to pay thousands of dollars out of pocket in  
19 order to obtain medically necessary care for gender dysphoria, and he has had to forego some  
20 medically necessary care entirely.

21           6.       The explicit and categorical exclusion of care for gender dysphoria discriminates  
22 against Mr. Robinson and other transgender employees on the basis of sex, in violation of Title  
23 VII and Section 1557.

24           7.       Mr. Robinson brings this action against Dignity Health d/b/a Chandler Regional  
25 Medical Center seeking declaratory and injunctive relief and damages caused by the  
26 discriminatory denial of medically necessary care.  
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**JURISDICTION**

8. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”), and the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (“Section 1557”).

9. This Court has jurisdiction pursuant to Article III of the United States Constitution; 28 U.S.C. §§ 1331, 1343; and 42 U.S.C. § 2000e-5(f)(3).

10. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

11. This Court has personal jurisdiction over Defendant because Defendant’s corporate headquarters is located in this District.

**VENUE**

12. Venue lies with this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practice was committed at Dignity Health’s corporate headquarters in San Francisco and employment records relevant to such practice are maintained and administered at Dignity Health’s corporate headquarters in San Francisco.

13. Venue also lies with this Court pursuant to 28 U.S.C. §§ 1391(b)(1), 1391(b)(2) because Defendant resides in this District, and a substantial part of the events or omissions giving rise to the claim occurred at Dignity Health’s corporate headquarters in San Francisco.

**INTRADISTRICT ASSIGNMENT**

14. This action arises in the San Francisco Division because a substantial part of the events or omissions which give rise to the claim occurred at Dignity Health’s corporate headquarters in San Francisco.

**PARTIES**

15. Plaintiff Josef Robinson resides in Chandler, Arizona.

16. Dignity Health is a non-profit corporation organized under the laws of California. Its corporate headquarters is located in San Francisco, California.

17. Dignity Health does business in Chandler, Arizona as the Dignity Health Chandler Regional Medical Center.

**EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

1  
2 18. On December 3, 2015, Plaintiff timely filed a charge with the Equal Employment  
3 Opportunity Commission against Dignity Health for sex discrimination in violation of Title VII.

4 19. On February 2, 2016, Plaintiff filed an amended charge.

5 20. On May 12, 2016, the EEOC issued a determination finding reasonable cause to  
6 believe that the Dignity Health Plan discriminates against Mr. Robinson on the basis of sex by  
7 excluding all treatments for gender dysphoria from health care coverage in violation of Title VII.  
8 (Exhibit A.)

9 21. On May 16, 2016, the EEOC issued a right-to-sue letter to Plaintiff. (Exhibit B.)

10 **FACTUAL ALLEGATIONS**

11 22. Mr. Robinson is a man who is transgender. That means that he was assigned the  
12 sex of female at birth, but his gender identity is male and he identifies as a man.

13 23. “Gender identity” is a well-established medical concept, referring to one’s sense  
14 of oneself as belonging to a particular gender. Typically, people who are designated female at  
15 birth based on their external anatomy identify as girls or women, and people who are designated  
16 male at birth identify as boys or men. For transgender individuals, however, the sense of one’s  
17 self—one’s gender identity—differs from the sex assigned to them at birth. Transgender men  
18 are men who were assigned “female” at birth, but have a male gender identity. Transgender  
19 women are women who were assigned “male” at birth, but have a female gender identity.

20 24. The medical diagnosis for the feeling of incongruence beyond one’s gender  
21 identity and one’s sex assigned at birth, and the resulting distress caused by that incongruence, is  
22 “gender dysphoria” (previously known as “gender identity disorder”). Gender dysphoria is a  
23 serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders  
24 (DSM-V) and International Classification of Diseases (ICD-10). The criteria for diagnosing  
25 gender dysphoria are set forth in the DSM-V (302.85).

26 25. The widely accepted standards of care for treating gender dysphoria are published  
27 by the World Professional Association for Transgender Health (“WPATH”). The WPATH  
28

1 Standards of Care have been recognized as the authoritative standards of care by the leading  
2 medical organizations, the U.S. Department of Health and Human Services, and federal courts.

3 26. Under the WPATH standards, medically necessary treatment for gender dysphoria  
4 may require medical steps to affirm one’s gender identity and help an individual transition from  
5 living as one gender to another. This treatment, often referred to as transition-related care, may  
6 include hormone therapy, surgery (sometimes called “sex reassignment surgery”), and other  
7 medical services that align individuals’ bodies with their gender identities. The exact medical  
8 treatment varies based on the individualized needs of the person.

9 27. According to every major medical organization and the overwhelming consensus  
10 among medical experts, treatments for gender dysphoria, including surgical procedures, are  
11 effective, safe, and medically necessary when clinically indicated to alleviate gender dysphoria.

12 28. In the past, public and private insurance companies excluded coverage for  
13 transition-related care based on the erroneous assumption that such treatments were cosmetic or  
14 experimental. Today, however, the medical consensus recognizes that such discriminatory  
15 exclusions of transition-related healthcare have no basis in medical science.

16 **Dignity Health Plan’s Categorical Exclusion of Coverage**

17 29. Dignity Health owns and operates the fifth largest health care system in the  
18 United States.

19 30. Since January 2014, and at all times relevant to this Complaint, Mr. Robinson has  
20 been an employee of Dignity Health, working as a nurse at the Dignity Health Chandler Regional  
21 Medical Center.

22 31. Dignity Health provides health care coverage to employees, including Mr.  
23 Robinson, through a self-funded plan administered by United Medical Resources (“UMR”),  
24 which is a fully owned subsidiary of United Healthcare.

25 32. The health plan offered to employees at Chandler Regional Medical Center is the  
26 Dignity Health Arizona Preferred Plan (“Dignity Health Plan”). (Exhibit C.)  
27  
28

1 33. The Dignity Health Plan has a categorical exclusion of “Treatment, drugs,  
2 medicines, services and supplies for, or leading to, sex transformation surgery.” (Exhibit C at  
3 63.)

4 34. United Healthcare has adopted policy guidelines for coverage of medically  
5 necessary treatments for gender dysphoria in accordance with the WPATH Standards of Care,  
6 including, *inter alia*, continuous hormone replacement therapy, complete hysterectomy,  
7 orchiectomy, penectomy, vaginoplasty, vaginectomy, clitoroplasty, labiaplasty, salpingo-  
8 oophorectomy, metoidioplasty, scrotoplasty, urethroplasty, placement of testicular prosthesis,  
9 phalloplasty, thyroid chondroplasty, bilateral mastectomy, and augmentation mammoplasty. *See*  
10 United Healthcare Coverage Determination Guideline CDG.011.05: Gender Dysphoria (Gender  
11 Identity Disorder) Treatment (Oct. 1, 2015),  
12 [https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-](https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-US/Assets/ProviderStaticFiles/ProviderStaticFilesPdf/Tools%20and%20Resources/Policies%20a)  
13 [US/Assets/ProviderStaticFiles/ProviderStaticFilesPdf/Tools%20and%20Resources/Policies%20a](https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-US/Assets/ProviderStaticFiles/ProviderStaticFilesPdf/Tools%20and%20Resources/Policies%20a)  
14 [nd%20Protocols/Medical%20Policies/Medical%20Policies/Gender\\_Identity\\_Disorder\\_CD.pdf](https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-US/Assets/ProviderStaticFiles/ProviderStaticFilesPdf/Tools%20and%20Resources/Policies%20a).

15 35. Because the Dignity Health Plan categorically excludes all coverage related to  
16 “sex transformation surgery,” the Dignity Health Plan does not cover any of the medically  
17 necessary treatments for gender dysphoria that would be covered as medically necessary under  
18 United Healthcare’s coverage determination guidelines.

### 19 **Denial of Medically Necessary Care**

20 36. As a result of the Dignity Health Plan’s categorical exclusion of coverage related  
21 to “sex transformation surgery,” Mr. Robinson has been denied coverage for medically necessary  
22 treatments for gender dysphoria that were prescribed to him in accordance with the WPATH  
23 Standards of Care.

24 37. As a result of the Dignity Health Plan’s categorical exclusion of coverage related  
25 to “sex transformation surgery,” Mr. Robinson has been forced to pay out of pocket for  
26 medically necessary hormone therapy to treat his gender dysphoria and will have to continue  
27 doing so for the foreseeable future.  
28

1           38.     On or around August 24, 2015, Mr. Robinson received a double mastectomy as  
2 part of his medically necessary treatment for gender dysphoria in accordance with the WPATH  
3 Standards of Care.

4           39.     Mr. Robinson attempted to obtain pre-authorization for the double mastectomy  
5 surgery, but UMR denied coverage in letters dated June 22, 2015, and August 13, 2015, based on  
6 the “sex transformation” exclusion in the Dignity Health Plan. (Exhibits D, E.)

7           40.     As a result, on or around August 24, 2015, Mr. Robinson paid approximately  
8 \$7,450 out of pocket for his medically necessary surgery.

9           41.     Mr. Robinson appealed the denial of coverage, but UMR upheld the adverse  
10 benefit determination in a letter dated February 12, 2016. (Exhibit F.) The letter stated that the  
11 “sex transformation” exclusion in the Dignity Health Plan “excludes all treatment related to th[e]  
12 diagnosis” of gender dysphoria.

13           42.     In accordance with the WPATH Standards of Care, Mr. Robinson’s medical  
14 providers have referred him to a surgeon for medically necessary phalloplasty surgery, but Mr.  
15 Robinson does not have sufficient funds to pay for the phalloplasty out of pocket.

16           43.     Mr. Robinson was originally scheduled to undergo the surgery in March 2016.  
17 Because the medically necessary phalloplasty surgery is excluded from coverage under the  
18 Dignity Health Plan as a form of “sex transformation surgery,” Mr. Robinson was forced to  
19 cancel the scheduled surgery and lose the money he had paid as a deposit.

20                                 **Response from Dignity Health**

21           44.     On September 24, 2015, Mr. Robinson’s fiancée, who is also an employee at  
22 Dignity Health, emailed Dignity Health Chief Executive Officer Lloyd Dean to ask him to  
23 remove the “sex transformation” exclusion from the Dignity Health Plan so that Mr. Robinson  
24 could receive coverage for his medically necessary care. (Exhibit G at 4-8.)

25           45.     On September 24, 2015, Mr. Dean responded by email: “Thanks for sharing this  
26 very unfortunate situation. I am asking our head of HR to look into this matter and to then follow  
27 up with you. Thanks for bringing this to my attention.” (Exhibit G at 4.) Mr. Dean included  
28

1 Daryll Robinson, Dignity Health Executive Vice President and Chief Human Resources Officer,  
2 as an email recipient.

3 46. On October 26, 2015, the Chief Human Resources Officer provided the following  
4 information to Mr. Robinson's fiancée by email:

5 You have raised a unique issue that warrants more thought and review. I have spoken  
6 with our employee benefits team as well as our policy staff. All agree that the issue you  
7 have raised is both unique and important. Rather than provide an answer that is not  
thoroughly and carefully considered from all angles, I'd like to convene a small team of  
individuals from HR, Mission, Ethics and potentially operations to discuss your situation.

8 (Exhibit G at 1.)

9 47. On November 6, 2015, the Chief Human Resources Officer provided the  
10 following information to Mr. Robinson's fiancée by email:

11 Thank you for raising this issue for contemplation and discernment. We held our  
12 discussion with representatives from HR Policy, Employee Benefits, Total  
13 Rewards, Mission Integration and Ethics on Thursday morning, November 5th.  
14 We discussed your situation through the lens of our values, our internal policy and  
15 our ethical & religious directives. We also considered our medical plan insurance  
coverages for both fully insured plans in California and self-funded plans in  
Arizona and individual state requirement statutes, but we did not have an  
employment attorney involved in the meeting.

16 With specific intent, we deliberated whether our existing policies were  
17 discriminatory and inconsistent with our organization values as you stated in your  
letter. We found no evidence of discriminatory practice in the employee benefit  
plan documents, internal practice or the administration of the plan.

18 (Exhibit H.)

19 48. After Mr. Robinson filed a charge of discrimination with the EEOC, Dignity  
20 Health submitted a position statement responding to the charge. (Exhibit I.) In the position  
21 statement, Dignity Health asserted that the exclusion of healthcare for gender dysphoria was not  
22 discriminatory because "health benefits under the Dignity plan are not provided for any  
23 personality disorders, including sexual/gender identity disorders and behavior and impulse  
24 control disorders." (Ex. I at 6.)

25 49. Contrary to the assertions in Dignity Health's position statement, gender  
26 dysphoria is not considered a "personality disorder" by the medical community.  
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**COUNT ONE**  
**Violation of Title VII**

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3 50. Title VII provides that employers may not “discriminate against any individual  
4 with respect to his compensation, terms, conditions, or privileges of employment, because of  
5 such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1).

6 51. Dignity Health is an employer as that term is defined in Title VII, 42 U.S.C. §  
7 2000e-(b).

8 52. Plaintiff is an employee of Dignity Health as that term is defined in Title VII, 42  
9 U.S.C. § 2000e(f).

10 53. An employer-sponsored health plan is part of the “compensation, terms,  
11 conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).

12 54. Discrimination on the basis of transgender status or gender nonconformity is  
13 discrimination on the basis of “sex” under Title VII.

14 55. By categorically excluding all medically necessary care related to “sex  
15 transformation surgery,” the Dignity Health Plan has drawn a classification that discriminates  
16 based on transgender status and gender nonconformity.

17 56. Because the only individuals who require medically necessary care to treat gender  
18 dysphoria are transgender individuals, denying coverage for such health care constitutes  
19 discrimination based on transgender status. As a result of the exclusion in the Dignity Health  
20 Plan, non-transgender employees receive coverage for all of their medically necessary  
21 healthcare, but transgender individuals do not.

22 57. Because medical transition from one sex to another inherently violates gender  
23 stereotypes, denying coverage for such health care constitutes impermissible discrimination  
24 based on gender nonconformity.

25 58. By excluding all healthcare related to “sex transformation surgery” from the only  
26 available health plan it provides to employees, Dignity Health has unlawfully discriminated  
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1 against Mr. Robinson—and continues to unlawfully discriminate against him—based on his sex  
2 in violation of Title VII.

3 **COUNT TWO**  
4 **Violation of ACA § 1557**

5 59. Section 1557 of the Patient Protection and Affordable Care Act § 1557, 42 U.S.C.  
6 § 18116 (“Section 1557”), provides that “an individual shall not, on the ground prohibited under  
7 . . . title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)”—which prohibits  
8 discrimination “on the basis of sex”—“be excluded from participation in, be denied the benefits  
9 of, or be subjected to discrimination under, any health program or activity, any part of which is  
10 receiving Federal financial assistance.”

11 60. Dignity Health receives federal financial assistance, and is therefore a “covered  
12 entity” for purposes of Section 1557.

13 61. On May 13, 2017, the U.S. Department of Health and Human Services issued a  
14 final rule (the “Final Rule”). *See* Nondiscrimination in Health Programs and Activities, 81 Fed.  
15 Reg. 31376 (May 18, 2016) (to be codified at 45 C.F.R. Part 92).

16 62. The Final Rule states that a covered entity “that provides an employee health  
17 benefit program to its employees and/or their dependents shall be liable for violations of [Section  
18 1557] in that employee health benefit program” if “[t]he entity is principally engaged in  
19 providing or administering health services.” 45 C.F.R. § 92.208(a).

20 63. Because Dignity Health is principally engaged in the business of providing health  
21 services, Section 1557 and 45 C.F.R. § 92.208(a) prohibit Dignity Health from discriminating  
22 against employees on the basis of sex in the terms of its employer-sponsored health care plan.

23 64. The Final Rule states that a covered entity “providing or administering health-  
24 related insurance” may not “[h]ave or implement a categorical coverage exclusion or limitation  
25 for all health services related to gender transition.” 45 C.F.R. § 92.207(b)(4).



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- D. Punitive damages for violation of Title VII;
- E. Pre-judgment and post-judgment interest at the highest lawful rate;
- F. Plaintiffs' reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- G. Such other relief as the Court deems just and proper.

June 6, 2016

ACLU FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: /s/ Elizabeth O. Gill  
Elizabeth O. Gill  
Attorneys for Plaintiff Josef Robinson

# **EXHIBIT 28**

## Message

**From:** Emmons, Erica 654 [Erica.Emmons@Cigna.com]  
**on behalf of** Emmons, Erica 654 <Erica.Emmons@Cigna.com> [Erica.Emmons@Cigna.com]  
**Sent:** 6/15/2016 11:41:41 AM  
**To:** Scott Bender [Scott.Bender@azdoa.gov]  
**CC:** Maddalena, Diana M 646 [Diana.Maddalena@Cigna.com]  
**Subject:** RE: Final rule - enhanced protection for transgender individuals

Hi Scott –

I sent your inquiry to Cigna’s healthcare legislation team. Below is Cigna’s response at this point:

Employers should be aware of whether they are considered a “covered entity” as defined in the final regulation. Employers such as hospitals or other provider types that receive Federal financial assistance are impacted by the rule in its entirety (that would include requirements for language assistance, disability accessibility - including in connection with building and facilities, and assuring equal access to services for persons in a protected class). Employers are also impacted if they operate a health program or activity which, in any part, receives Federal financial assistance or funding (examples include Medicare Part A, student health plans, advanced premium tax credits, and many more).

For the “average” employer, the primary impact will be the requirement to eliminate categorical exclusions or limitations for all health services related to gender transition. ASO clients, for whom Cigna is the TPA, will be responsible for making their own determination of how they will handle coverage or exclusion for gender transition.

Should an ASO client establish a benefit design that is defined as discriminatory – it either contains a categorical exclusion, or contains a difference in cost sharing (like a lifetime maximum or a higher copay) for gender transition services, they may be subject to investigation by the EEOC for such practices. These issues will not fall under the enforcement responsibilities of the Office of Civil Rights in connection with this Nondiscrimination rule, but may be referred to the EEOC for enforcement. Employers who have insured coverage with Cigna will see their plans modified at the first renewal on and after 1/1/2017 – to remove any outright exclusion for gender transition.

The industry, as a whole, is in the very early stages of analyzing this wide-ranging regulation, and additional clarification may be provided as that process continues.

**Erica Emmons** | Strategic Account Executive | Government and Education | Cigna | 5310 East High Street, Suite 200 | Phoenix, AZ 85054 | Direct: 480.426.6761 | Mobile: 480.622.0899 | [erica.emmons@cigna.com](mailto:erica.emmons@cigna.com)



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**From:** Scott Bender [mailto:Scott.Bender@azdoa.gov]  
**Sent:** Wednesday, June 08, 2016 6:17 PM  
**To:** Muth, Ken; Severns, Colette; Emmons, Erica 654; Eveleth, Ray G; Dash, Jay A; heather\_k\_gallegos@uhc.com  
**Subject:** Final rule - enhanced protection for transgender individuals

Hi all,

Now that the HHS has issued a final rule on the nondiscrimination in health programs under the ACA, we need some guidance as to whether our plans as they exist will be compliant as of the effective date of July 18, 2016. The ruling expands protection for transgender individuals with respect to accessibility for health services that may not be denied or limited due to an individuals assigned sex at birth, gender identity or recorded gender. What’s not clear is if our plans must now cover reassignment surgery, or other treatments required during a transition. Please advise how your organization is treating this ruling and how specifically the ADOA plans are impacted.

Thanks  
Scott

**Scott Bender**

Plan Administration Manager  
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