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28 \*Admitted pro hac vice

*Attorneys for Plaintiff Russell B. Toomey*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

**Russell B. Toomey,**  
  
Plaintiff,  
  
v.  
  
**State of Arizona; Arizona Board of Regents,**  
**D/B/A University of Arizona,** a governmental  
body of the State of Arizona; et al.,  
  
Defendants.

Case No.19-cv-00035-TUC-RM (LAB)

**PLAINTIFF’S NOTICE OF FILING  
EXHIBIT 14 TO DECLARATION  
OF CHRISTINE K. WEE**

1 Notice is hereby given that Plaintiff is filing Exhibit 14 to the declaration of Christine  
2 K. Wee (Doc. 300). It was inadvertently excluded from the exhibits filed with the declaration  
3 (Doc. 300-1 thru 300-10).

4 Respectfully submitted this 26th day of September 2022.

5 ACLU FOUNDATION OF ARIZONA

6 By /s/ Christine K. Wee

7 Christine K. Wee

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9 Phoenix, Arizona 85014

10 AMERICAN CIVIL LIBERTIES UNION  
11 FOUNDATION

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24 *Attorneys for Plaintiff Russell B. Toomey and the*  
25 *certified classes*  
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27  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2022, I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing. Notice of this filing will be sent by email to all parties by operation of the Court’s electronic filing system.

/s/ Christine K. Wee  
Christine K. Wee

# Exhibit 14

## Message

**From:** Kelly Sharritts [Kelly.Sharritts@azdoa.gov]  
on behalf of Kelly Sharritts <Kelly.Sharritts@azdoa.gov> [Kelly.Sharritts@azdoa.gov]  
**Sent:** 10/28/2015 4:51:11 PM  
**To:** Marie Isaacson [Marie.Isaacson@azdoa.gov]  
**CC:** Michael Meisner [Michael.Meisner@azdoa.gov]  
**Subject:** Transgender Coverage  
**Attachments:** Transgender Coverage Analysis.xlsx

Marie,

From the sources quickly available on the internet, most studies find that the utilization and cost of covering transgender hormones, surgery, medication and/or mental health have an immaterial impact on the health plans.

**Summary: The utilization estimates range from 1-11 claims per year and an average annual cost of \$130k-\$582k (0.02% - 0.08% of the \$711M in medical costs) . UHC is an outlier in the estimated annual cost at \$3.6M. The per month increase to cover these cost for the ~60k employees we currently have would range from \$0.17 - \$0.77 per month per employee.**

The State of Oregon began covering transgender procedures and medications in 2013 after a lawsuit was filed and the state lost on the grounds that prohibiting the coverage was discriminatory under Oregon's Equality Act. The result was Oregon was required change their plans include transgender coverages and to pay the employee who initiated the lawsuit \$36,000.

The State of Washington included transgender coverage in their plan in 2015. I spoke with Lou McDermott, Public Employee Benefits Director at the State of Washington, about the decision to cover these costs. They did not do an in-depth analysis to determine the costs. They determined that it was discriminatory to exclude the coverage and when brought to the legislature off session, it was approved with little to no backlash to not include this coverage. He indicated they included the coverage not due to the high demand to include it, but because of the discrimination risk of not covering these costs was high and there was not a lot of push to not include this coverage. Also, their assumption of the small number of people who this benefit would cover, then the even smaller number that would take the benefit, and the even fewer that would proceed with the surgery were so low that it would not have a significant impact on their costs. In an April 2015 Board Meeting, it was noted that the impact to premiums related to including this coverage was less than \$1, in other words, no impact.

When looking at the City of San Francisco's data (while old - covering PY2001-2006) they showed a minimum utilization rate of 0.0324 per 1,000 employees and a max of 0.192 per 1,000 employees. The year with the highest costs was \$183k and the lowest cost was \$44k with an average annual cost over 5 years of \$77k. They have an estimated 80,000 covered lives and 37,000 employees. When we apply the utilization and cost per claim found with San Francisco to our enrollment we estimated between 1-7 claims per year at an annual cost between \$130k and \$542k. This includes a 10% increase in average cost per claim compared to San Francisco in order to be conservative assuming our plan design has higher coverage. This also includes an inflation factor of 1.58 due to the old data used from San Francisco. (see attached spreadsheet)

University of California also implemented transgender coverage and found a utilization of 0.84 per 1,000 covered lives (note: San Francisco's utilization is based on employees , not covered lives) with an average cost of \$30k. Using these numbers applied to our enrollment and increasing the average cost for the same 10% and 1.58 inflation as we did with San Francisco: There is an estimated 11 claims and an annual cost of \$582k.

UHC indicated their public employers are who looking to implement transgender coverage are estimating a 0.5% increase in spend. If we apply this to our approximate \$711M in medical costs (\$558M for medical and \$153M for pharmacy) estimated for FY2016, this would be an annual impact of \$3.6M. Most companies are estimating extreme costs increasing to ensure they are covering themselves for the change in coverage. San Francisco implemented a

premium surcharge to ensure enough revenue was collected and ended up collecting approximately \$5.6M over 5 years when the total costs over those 5 years was only \$383k. The 0.5% is much higher than the actual increases noted by the studies below.

I discussed with the benefits manager at the State of Colorado and she indicated that their fully insurance plans were required to includes these coverages and therefore, the included them in their self-insured options to ensure equal coverage between plans. The manager was not aware of any increase in the fully insured plans related to including this coverage and their self-insurance plans (which rates are set by Segal) did not increase either. She has asked if there have been any activity related to transgender coverage from her TPA's and there are not negligible activity.

Thanks,

**Kelly J Sharritts, CPA**

Audit and Finance Manager

ADOA- Benefit Services Division | State of Arizona

100 North 15th Avenue, Suite 103, Phoenix, AZ 85007

p: 602.542.4146 | m: 602.319.2652 | f: 602.542.4048

[Kelly.Sharritts@azdoa.gov](mailto:Kelly.Sharritts@azdoa.gov)

<http://benefitoptions.az.gov/>

**How am I doing? Please take a few moments to answer a few questions.**

<https://www.surveymonkey.com/r/BenFinAu>

NOTICE: This e-mail and any attachments to it may contain information that is PRIVILEGED and CONFIDENTIAL under State and Federal law and is intended only for the use of the specific individual(s) to whom it is addressed. This information may only be used or disclosed in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the person named above by reply e-mail, and then delete the one you received.

	Max Utilization and Cost		Min Utilization and Cost		Max Utilization and Avg Cost	
	City of San Fran	Arizona Est+	City of San Fran	Arizona Est+	City of San Fran	Arizona Est+
Estimated Covered Lives <sup>#</sup>	80,000	133,000	80,000	133,000	80,000	133,000
Estimated Ratio	2.2	2.1	2.2	2.1	2.2	2.1
Total Employees <sup>#</sup>	37,209	63,333	37,209	63,333	37,209	63,333
Utilization per 1,000 <sup>#</sup>	0.192	0.192	0.032	0.032	0.192	0.192
Estimated Utilization	7	12	1	2	7	12
Total Covered Lives	80,000	133,000	80,000	133,000	80,000	133,000
Utilization per 1,000	0.089	0.091	0.015	0.015	0.089	0.091
Estimated Utilization	7	12	1	2	7	12
PMPM Cost	\$0.41	\$0.71	\$0.10	\$0.17	\$0.17	\$0.30
Estimated Annual Cost <sup>#</sup>	\$183,000	\$541,547	\$44,117	\$130,554	\$76,624	\$226,751
Estimated Cost per Utilization <sup>^</sup>	\$25,615	\$44,535	\$36,594	\$63,623	\$10,725	\$18,647

The University of California experienced a utilization rate of 0.084 per 1,000 covered lives from 2009-2011 and an average cost of \$29,929 ~. Applying that to our enrollment:

	Arizona Est+
Estimated Covered Lives	133,000
Estimated Ratio	2.1
Total Employees	63,333
Utilization per 1,000	0.177
Estimated Utilization	11
Total Covered Lives	133,000
Utilization per 1,000	0.084
Estimated Utilization	11
PMPM Cost	\$0.77
Estimated Annual Cost	\$582,720
Estimated Cost per Utilization* \$	52,035

**Notes:**

<sup>^</sup> Assuming our plan design covers approximately 10% more than San Fran. They have a 15% co-insurance and we have a \$150 co-pay. Estimating the surgery cost \$20,000 (per comment in State of Washington's public comments) 15% of 20,000 = 3,000 compared to \$150 copay = 5%, using 10% to be conservative and a 1.58 inflation rate due to San Fran data being from 2001-2006

<sup>#</sup> <http://www.hrc.org/resources/entry/san-francisco-transgender-benefit-actual-cost-utilization-2001-2006>

\* Using the same assumptions as above to increase the costs for a conservative estimate for our plan design

~University of California CY 2009: CY 2011 data

<http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf>

**Inflation Estimate:**

<http://us.milliman.com/uploadedFiles/insight/Periodicals/mmi/2015-MMI.pdf>

<http://www.bds-corp.com/wp-content/uploads/2010/05/Milliman-Study-on-Family-of-4-Annual-Health-Costs.pdf>

Milliman Health Cost Index

Year	
CY 2015	24,671
CY 2008	15,609
factor	1.58

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