

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS  
HEADQUARTERS**  
Leon Rodriguez, Director  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS  
REGION IV**  
Roosevelt Freeman, Regional Manager  
Sam Nunn Atlanta Federal Center, Suite 16T70  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8909

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

National Women's Law Center  
11 Dupont Circle, NW, Suite 800  
Washington, DC 20036  
(202) 588-5180

The National Women's Law Center ("NWLC") is a non-profit organization that has been working since 1972 to expand the possibilities for women and their families in education, employment, family economic security, health, and other critical areas. The NWLC has a particular focus on addressing women's equal access to health care, which includes its work to ensure compliance with Section 1557 of the Affordable Care Act.

**RECIPIENT**

Auburn University  
107 Samford Hall  
Auburn, AL 36849

**PRELIMINARY STATEMENT**

1. This Complaint is filed by the NWLC pursuant to Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2012) ("Section 1557"). Section 1557 prohibits discrimination on the basis of sex in health programs or activities, any part of which receives federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Act or its amendments.
2. Auburn University ("Auburn") receives federal financial assistance and offers an employee health plan that excludes coverage for maternity care for female dependent

children of employees. Creating a special exclusion to the plan's pregnancy coverage denies these female beneficiaries the comprehensive coverage the plan offers to their male counterparts. The exclusion discriminates on the basis of sex in violation of Section 1557.

3. NWLC requests that the Office for Civil Rights ("OCR") investigate Auburn and require that it end the discriminatory practice of excluding coverage for dependent maternity care and the relief requested in ¶ 17.

## **JURISDICTION**

4. OCR is responsible for ensuring compliance with Section 1557 and receiving information about, investigating, and remedying violations of Section 1557. The Region IV OCR is responsible for investigating and remedying violations of Section 1557 for actions in Alabama, where Auburn is located.
5. The NWLC has not filed this complaint with any other agency or institution.
6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. Auburn University receives federal financial assistance through its acceptance of federal financial aid from enrolled students. Auburn University has several colleges and schools, including a nursing school that provides undergraduate and graduate degrees. Nursing, Auburn Univ., [http://www.auburn.edu/academic/nursing/about\\_us/](http://www.auburn.edu/academic/nursing/about_us/) (last updated Jan. 18, 2011).
8. The 2013 Summary Plan Description provides information about the health benefits available to Auburn employees under the University's self-insured group health plan (the "Plan"). Health Insurance, Auburn Univ., [http://www.auburn.edu/administration/business\\_office/payroll/health.html](http://www.auburn.edu/administration/business_office/payroll/health.html) (last visited May 22, 2013).
9. Auburn employees may elect coverage for their dependents. The Plan defines eligible dependents as, in relevant part:
  - Your spouse (person to whom you are legally married under Alabama law); married or unmarried child up to age 26; and, who is not eligible for employer sponsored health insurance through their employer;
  - An unmarried, incapacitated child who (1) is age 26 and over; (2) is not able to support himself; and (3) depends on you for support, if the incapacity occurred before age 26.

The child may be a natural child; stepchild; legally adopted child; child placed for adoption.

Auburn Univ., National Bluecard PPO Summary Plan Description, 4 (Jan 1, 2013), available at [http://www.auburn.edu/administration/business\\_office/pdf/national-bluecard-ppo\\_spd.pdf](http://www.auburn.edu/administration/business_office/pdf/national-bluecard-ppo_spd.pdf).

10. Once an Auburn employee has elected coverage for a dependent child, that dependent child becomes a plan beneficiary entitled to comprehensive health coverage from the Plan.
11. The “Health Benefit Exclusions” includes on its list of exclusions, in relevant part:

**Services for or related to a dependent pregnancy, including the six-week period after delivery. A dependent pregnancy means the pregnancy of any dependent other than the subscriber's wife.**

*Id.* at 28 (emphasis added).

## **LEGAL ALLEGATIONS**

12. Section 1557 provides, in relevant part that:

[A]n individual shall not, on the ground prohibited under... title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)..., be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).

Patient Protection and Affordable Care Act § 1557(a), 42 U.S.C. § 18116(a) (2012).

13. Auburn is a recipient of federal financial assistance. Auburn accepts students who pay in part with federal aid, including students who attend its nursing school. This is a well-established form of federal financial assistance. *Grove City College v. Bell*, 465 U.S. 555, 563-64 (1984); see also *Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 603 (D. S.C. 1974), *aff'd*, 529 F.2d 514 (4th Cir. 1975).
14. Auburn operates health programs and activities, including its employee health plan and its nursing school.
  - a. Auburn’s employee health plan is a “health program or activity” within the meaning of Section 1557. The widely-accepted definition of health provided by the World Health Organization (WHO) defines “health” to include the mental, physical, or social well-being of individuals or populations.<sup>1</sup> The Plan is designed

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<sup>1</sup> The WHO defines health to include not just the absence of disease but also “physical, mental and social well-being.” Preamble to the Constitution of the World Health Organization as adopted by the International Health

to promote, maintain, or prevent the decline of the physical, mental, or social health of its beneficiaries by providing insurance coverage for medical benefits and services. *See Zamora-Quezada v. HealthTexas Med. Grp. of San Antonio*, 34 F. Supp. 2d 433, 440 (W.D. Tex. 1998) (finding that a health maintenance organization (HMO) that provides medical benefits to enrollees is “‘principally engaged in the business of providing... health care’”).

- b. Auburn’s nursing school, for example, is also a “health program or activity” within the meaning of Section 1557. Auburn’s nursing program is a health education program that trains individuals to join the health care workforce. Because the program prepares individuals who are an integral part of promoting, maintaining, or preventing the decline of the physical, mental, or social health of individuals and populations, it is a “health” program under Section 1557.
15. Because Auburn receives federal financial assistance, all of the health programs and activities it operates are covered by Section 1557. This is true regardless of whether a specific health program or activity itself receives the federal financial assistance. The plain language of Section 1557 does not limit the form of federal financial assistance that triggers its application to health assistance. This is similar to the Title IX context. *See, e.g., Jeldness v. Pearce*, 30 F.3d 1220, 1226 (9th Cir. 1994) (recognizing that the recipient of federal financial assistance need not be educational in nature for an education program or activity operated by the non-educational entity to be covered by Title IX). Moreover, Auburn’s health programs, such as its nursing program, do receive federal financial assistance.
  16. Auburn’s health plan discriminates on the basis of sex by creating a special coverage exclusion for maternity in violation of Section 1557. It is well established under civil rights laws such as Title IX and Title VII that a health insurance plan that provides comprehensive coverage to its beneficiaries but fails to provide comprehensive coverage for women—including full coverage for gynecological and maternity care—is discriminating on the basis of sex. *See, e.g., 34 C.F.R. §§ 106.39, 106.40* (2012) (stating that Title IX requires comprehensive gynecological care when a recipient provides full coverage for health services and that a recipient must treat pregnancy in the same manner it treats other conditions); 29 C.F.R. pt. 1604 app. (stating that Title VII, amended by the Pregnancy Discrimination Act, requires that any employer-provided health insurance must cover expenses for pregnancy related conditions on the same basis as expenses for other medical conditions); *Newport News Shipbuilding & Dry Dock v. EEOC*, 462 U.S. 669 (1983) (holding that Pregnancy Discrimination Act, which amended Title VII, required employer health plan to cover pregnancy-related conditions for employees’ spousal dependents on the same basis as other conditions covered for dependent spouses).

Likewise, under Section 1557, treating pregnancy differently, including by excluding maternity care from an otherwise comprehensive insurance plan, is sex discrimination. Section 1557 specifically states that an individual cannot be subject to

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Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

discrimination “on the ground prohibited under . . . Title IX.” Patient Protection and Affordable Care Act § 1557(a), 42 U.S.C. § 18116(a) (2012). The ground prohibited under Title IX is sex, and therefore, just as the exclusion of maternity coverage from a covered health plan is sex discrimination under civil rights statutes such as Title IX and Title VII, it is also sex discrimination under Section 1557.

Section 1557 protects “an individual” from “be[ing] excluded from participation in, be[ing] denied the benefits of, or be[ing] subjected to discrimination under” a health program or activity because of the individual’s sex. This broad language applies to any individual participating in a covered health program or activity. The dependent children of Auburn’s employees are “individuals” participating in a covered health program or activity because the children are themselves beneficiaries of Auburn’s health insurance plan. Because the dependent children are protected by Section 1557, and are being denied a benefit—maternity coverage—based on their sex, Auburn’s health insurance plan unlawfully discriminates based on sex in violation of Section 1557.

### **RELIEF REQUESTED**

17. The NWLC requests that:

- a. OCR investigate Auburn’s plan to determine whether it provides maternity benefits for all eligible dependents.
- b. OCR secure an end to the discrimination by Auburn and an assurance that Auburn will comply with Section 1557.
- c. OCR take all necessary steps to remedy any unlawful conduct identified in its investigation, including back payments for claims denied as a result of the coverage exclusion, as required by Section 1557.
- d. OCR monitor any resulting agreements with the Auburn to ensure that compliance with Section 1557 is achieved.

Respectfully submitted,



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Date: June 4, 2013