

**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 V**
Celeste Davis, Regional Manager
233 N. Michigan Ave., Suite 240
Chicago, IL 60601

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

Battelle Memorial Institute
505 King Avenue
Columbus, OH 43201-2696

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. Battelle Memorial Institute (“Battelle”) receives federal financial assistance and offers a 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 Battelle and require that it end the discriminatory practice of excluding coverage for dependent maternity care and the relief requested in ¶ 19.

JURISDICTION

4. OCR is responsible for ensuring compliance with Section 1557 and receiving information about, investigating, and remedying violations of Section 1557. The Region V OCR is responsible for investigating and remedying violations of Section 1557 for actions in Ohio, where Battelle is headquartered.
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. Battelle is a research and development organization working for the national security, health and life sciences, and energy and environmental industries. Battelle employs over 22,000 people at more than 100 locations globally with several major locations in the United States. About Us, Battelle, <http://www.battelle.org/about-us> (last visited May 22, 2013); Office Locations, Battelle, <http://www.battelle.org/about-us/office-locations> (last visited May 22, 2013).
8. According to USASpending.gov, Battelle has received and continues to receive grants and contracts from several federal government agencies. Many of the grants and contracts for which public information is available are used to fund Battelle’s health and life sciences work, including funds from the Department of Health and Human Services and National Institutes of Health. *See* attached documentation from USASpending.gov tracking Battelle’s receipt of federal funds through grants and contracts.
9. The 2013 health benefits plan for Battelle employees is called the “Battelle Memorial Institute Medical Plan for BMI Active Staff” or the “Battelle Blue Cross Blue Shield Network Only Medical Plan” (the “Plan”). Battelle’s plan is self-insured and Battelle is “the Plan Sponsor and Plan Administrator of the Plan.” *See* Battelle, Battelle Blue Cross Blue Shield Network Only Medical Benefits Plan, Plan Document and Summary Plan Description, 4 (Jan. 2013), available at http://cdn.benefits.battelle.org/docs/benefits-documents/2013_anthem_blue_cross_blue_shield_network_only_medical_plan_active.pdf?sfvrsn=4.

10. Battelle employees may elect coverage for their dependents. The Plan defines eligible dependents as:

- Your lawful Spouse/Registered Partner.
- Your Child, who is up to, but not including, age 26 regardless of marital status and availability of coverage under another employer sponsored plan. A Child will be eligible for coverage under the Plan only until the end of the month in which he or she loses status as a Dependent under the Plan.
- Your Other Child, who is up to, but not including, age 26, must reside in your home, and can legally be claimed as your tax dependent. An Other Child will be eligible for coverage under the Plan only until the end of the month in which he or she loses status as a Dependent under the Plan.
- Your Disabled Dependent who is permanently and continuously incapable of self-sustaining support by reason of mental or physical handicap existing prior to the child's attainment of age 26 and you are the main source of support and maintenance. The insurance carrier must receive proof within 31 days of the date the child is eligible for coverage under the Plan and as required during the first two years. After the first two years, the insurance carrier will ask for proof when needed, but not more than once a year.

Id. at 8.

11. Once a Battelle employee has elected coverage for a dependent child, that dependent child becomes a plan beneficiary entitled to comprehensive health coverage from the Plan.

12. The "Maternity Benefit" section of the "Schedule of Benefits" states, in relevant part:

Coverage is not extended to persons defined as Child, Other Child, or Disabled Dependent except for those that are enrolled as a dependent of a staff member that works and/or resides in Massachusetts.

Id. at 20 (emphasis added).

13. The "Maternity Services" section of "Covered Services" states:

Maternity Services include Inpatient Services, Outpatient Services, and Physician Office Services for normal pregnancy, complications of pregnancy, miscarriage, therapeutic abortion, and ordinary routine nursery care for a well newborn.
Maternity services for a dependent daughter are not covered, except for those that are enrolled as a dependent of a staff member that works and/or resides in Massachusetts.

Id. at 44 (emphasis added).

LEGAL ALLEGATIONS

14. 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).

15. Battelle is a recipient of federal financial assistance. Battelle receives federal financial assistance through grants and contracts, including those that fund its health and life sciences research projects. Grants are a form of federal financial assistance as defined under Title IX and other civil rights statutes. *See, e.g.*, 34 C.F.R. § 106.2(g)(1) (2012) (defining federal financial assistance for purposes of Title IX). Contracts may also be a form of federal financial assistance. *Id.* at §106.2(g)(5) (stating that “[a]ny other contract, agreement, or arrangement which has as one of its purposes the provision of assistance” is federal financial assistance for purposes of Title IX).

16. Battelle operates health programs and activities, including its employee health plan and its health and life sciences research projects.

- a. Battelle’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.¹ The plan is designed 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. Battelle’s health and life sciences projects, for example, are also “health programs or activities” within the meaning of Section 1557. Battelle’s health research is funded by the National Institutes of Health, mental health research grants, and grants for the study of cancer cause and prevention. These health research projects, which are designed to study a range of health and disease research, fall

¹ 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 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.

within the definition of “health” programs or activities because they focus on the study of the promotion, maintenance, or prevention of the decline of the physical, mental, or social health of individuals and populations.

17. Because Battelle receives federal financial assistance, all of the health programs and activities it operates are covered by Section 1557. The plain language of Section 1557 does not limit the form of federal financial assistance that triggers its application to health assistance. This is true regardless of whether a specific health program or activity itself receives the federal financial 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, Battelle’s health programs, such as its health research projects, do receive federal financial assistance.
18. Battelle’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 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 Battelle’s employees are “individuals” participating in a covered health program or activity because the children are themselves beneficiaries of Battelle’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, Battelle’s health insurance plan unlawfully discriminates based on sex in violation of Section 1557.

RELIEF REQUESTED

19. The NWLC requests that:

- a. OCR investigate Battelle’s plan to determine whether it provides maternity benefits for all eligible dependents.
- b. OCR secure an end to the discrimination by Battelle and an assurance that Battelle 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 Battelle to ensure that compliance with Section 1557 is achieved.

Respectfully submitted,



Marcia D. Greenberger
Judith G. Waxman
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11 Dupont Circle, NW, Suite 800
Washington, D.C. 20036

Date: June 4, 2013



Search

Prime Award Advanced Search Sub-award Advanced Search
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Prime Award Spending Data

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Filters: Contractor: **Battelle Memorial Institute** Clear All

By Agency By Prime Awardee By Location

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Total Dollars:	Number of Transactions:	Total Sub-Award Dollars:	Number of Sub-Award Reports:
\$8,213,166,312	26,553	\$16,013,286	36

All Spending Data

BATTELLE MEMORIAL INSTITUTE

Top 5 Prime Award Recipient Locations (States)

1. Ohio	\$8,205,687,815	
2. Washington	\$4,745,878	

Top 5 Prime Award Major Agencies

1. Department of Defense	\$4,887,438,406	
2. Department of Energy	\$1,886,026,856	
3. Department of Health and Human Services	\$668,784,807	
4. Department of Homeland Security	\$261,477,855	
5. Department of Transportation	\$167,413,557	

Top 5 Prime Award Sub Agencies

1. Department of the Army	\$1,929,898,157	
2. Department of Energy	\$1,886,026,856	
3. Department of the Air Force	\$1,615,203,185	
4. Department of the Navy	\$777,522,974	
5. National Institutes of Health	\$427,556,588	

Top 10 Prime Awards in All Fiscal Years

1.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$132,583,703	
2.	Contract: Department of Energy 00006198310DAC0676RL01830 Oper of Govt R&d Goco Facilities	\$122,502,000	
3.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$122,455,000	
4.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$96,434,536	
5.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$94,237,000	
6.	Contract: Department of Defense 9005 R&d-Other R & D-B Res	\$78,500,000	
7.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$75,130,000	
8.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$60,429,721	
9.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$56,520,806	
10.	Contract: Department of Energy 00006198310DAC0676RL01830 Environmental Sciences (Basic)	\$56,194,000	

Contracts Data Only

Top 5 Prime Award Type of Contracts Used

1. Cost Plus Fixed Fee	\$3,337,313,465	
2. Cost Plus Award Fee	\$2,039,470,137	
3. Firm Fixed Price	\$1,034,338,974	
4. Time and Materials	\$623,596,904	
5. Cost No Fee	\$412,510,419	

Top 5 Prime Award Contractors

1. Battelle Memorial Institute Inc	\$8,199,335,570	
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Top 5 Prime Award Products or Services Sold

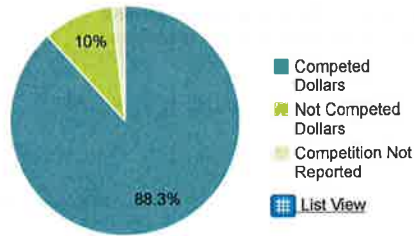
1. Environmental Sciences (Basic)	\$1,402,078,742	
2. R&d-Other R & D-a Res/Expl Dev	\$997,438,745	
3. Prof Svcs/Tech Sharing-Util	\$683,516,269	

Top 5 Contract Sub-awardees

1. Battelle Memorial Institute	\$12,354,544	
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4.	R&d-Other R & D-B Res	\$666,851,700	
5.	Maint-Rep of Misc Eq	\$455,151,148	

Competition



* Click on the pie chart slice or the corresponding legend text for Competed/Not Competed Dollars to drill down more into "Dollars by Competition Type"

Assistance Data Only

Top 5 Prime Award Recipients

1.	Battelle Memorial Institute	\$11,602,473	
2.	Battelle Memorial Institute	\$2,188,270	
3.	Battelle Memorial Inst Pacific Nw	\$39,999	

Top 5 Prime Award Recipient Types

1.	Non-Profit Organization	\$13,489,520	
2.	Other	\$457,442	
3.	Higher Education	\$-1	
4.	Government	\$-116,219	

Top 5 Prime Award CFDA Programs

1.	Cancer Cause and Prevention Research	\$4,576,243	
2.	Mental Health Research Grants	\$3,712,629	
3.	Office of Research and Development Consolidated Research/Training /Fellowships	\$2,638,270	
4.	International Financial Assistance Projects Sponsored by the Office of International and Tribal Affairs	\$1,040,000	
5.	Drug Abuse and Addiction Research Programs	\$673,741	

Top 5 Prime Award Assistance Types

1.	Grant	\$13,830,743	
2.	Direct Payment	\$-1	

Prime Awards Timeline

- Contracts
- Grants
- Direct Payments
- Insurance
- Loans and Guarantees
- Others

List View

All prime awardee data as reported by agencies. The assistance prime awardee data includes agency submissions as of 05/30/2013 and the contracts prime awardee data includes procurement data downloaded from FPDS as of 05/31/2013. Please note that availability of DOD contracts prime awardee data is delayed by 90 days to protect operations tempo. All Sub-awardee data is based on prime awardee submissions from FRS, for sub-contracts as of 05/30/2013 and for sub-grants as of 05/30/2013. For more information about the data, data sources, and data timeliness, please see [Learn](#).