

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS
HEADQUARTERS**

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**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

Beacon Health System
Elkhart General Hospital
Memorial Hospital of South Bend
Beacon Health System Administrative Offices
615 N. Michigan Street
South Bend, IN 46601

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. Beacon Health System (“Beacon”) 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 offered 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 Beacon 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 V OCR is responsible for investigating and remedying violations of Section 1557 for actions in Indiana and Michigan, where Beacon Health System 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. Beacon Health System is the parent organization of Elkhart General Hospital and Memorial Hospital of South Bend, which operate in North Central Indiana and Southwestern Michigan. About, Beacon Health Sys., http://beaconhealthsystem.org/about/?utm_source=beaconbar&utm_medium=link&utm_term=visitbeaconbutton&utm_campaign=beaconbar (last visited May 22, 2013).
8. Beacon Health System receives federal financial assistance through its receipt of Medicare and/or Medicaid funds.
9. The 2013 enrollment guides for Beacon Health System employees and home care registry (collectively referred to herein as “Beacon Health System employees”) provide an overview of the benefits available to eligible staff and dependents.
10. Beacon Health System employees may elect coverage for their dependents. The Plan defines eligible dependent children as:

Your dependent children are eligible to be covered on one of Beacon’s Medical, Dental, and/or Vision Plans until they reach age 26, provided they are not eligible for coverage under their employer’s health plan. There is no age restriction for disabled children who are primarily supported by the employee.

Beacon Health Sys., Benefits: 2013 Enrollment Guide, 5 (2013), *available at* http://www.qualityoflife.org/tasks/sites/memorialcms/assets/File/2013_Enrollment_Guide_Beacon.pdf; Beacon Health Sys., Benefits: 2013 Enrollment Guide: Home Care Registry Staff, 4 (2013), *available at* http://www.qualityoflife.org/tasks/sites/memorialcms/assets/File/2013_Enrollment_Guide_Staffing.pdf.

11. Once a Beacon 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 “Pregnancy” section of the “Schedule of Benefits” of both plans states, in relevant part:

Pregnancy—Excludes dependent pregnancy

Beacon Health Sys., Benefits: 2013 Enrollment Guide at 7; Beacon Health Sys., Benefits: 2013 Enrollment Guide: Home Care Registry Staff at 7.

LEGAL ALLEGATIONS

13. 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).

14. Beacon Health System is a “health program or activity.” As a hospital system, Beacon’s primary purpose is providing health services. A hospital is subject to Section 1557 in the same way a college is subject to Title IX. Under Title IX, a covered “education program or activity” includes all the operations of an educational institution, such as a college. U.S. Dep’t of Justice, Civ. Rights Div., Title IX Legal Manual, 20 (Jan. 11, 2001), *available at* <http://www.justice.gov/crt/about/cor/coord/ixlegal.pdf> (“[I]t is well established that, when a recipient is an educational institution, all of the institution’s operations are covered by Title IX’s antidiscrimination provisions.”). Under Section 1557, all aspects of a health institution such as a hospital constitute a covered health program or activity. Thus, just as Title IX’s antidiscrimination provision applies to all operations of an educational institution, Section 1557’s antidiscrimination provision applies to all operations of a health institution such as a hospital system like Beacon.
15. Beacon Health System is a recipient of federal financial assistance. Beacon, through its subsidiaries Elkhart General Hospital and Memorial Hospital of South Bend, receives Medicare funds. Medicare is a form of federal financial assistance, making all of Beacon’s

operations subject to Section 1557. *See, e.g., U.S. v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1042 (5th Cir.1984) (holding that Medicare and Medicaid are federal financial assistance for purposes of Section 504 of the Rehabilitation Act). As a health institution that receives federal financial assistance, Beacon Health System cannot discriminate in any of its operations, including its employee health plan.

16. Beacon’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 Beacon’s employees are “individuals” participating in a covered health program or activity because the children are themselves beneficiaries of Beacon’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, Beacon’s health insurance plan unlawfully discriminates based on sex in violation of Section 1557.

RELIEF REQUESTED

17. The NWLC requests that:

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

Respectfully submitted,



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Date: June 4, 2013