

**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 X**
Linda Yuu Connor, Regional Manager
2201 Sixth Avenue - M/S: RX-11
Seattle, WA 98121-1831

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

Gonzaga University
502 East Boone Avenue
Spokane, WA 99258-0102

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. Gonzaga University (“Gonzaga”) 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 Gonzaga and require that it end the discriminatory practice of excluding coverage for dependent maternity care and the relief requested in ¶ 18.

JURISDICTION

4. OCR is responsible for ensuring compliance with Section 1557 and receiving information about, investigating, and remedying violations of Section 1557. The Region X OCR is responsible for investigating and remedying violations of Section 1557 for actions in Washington, where Gonzaga 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. Gonzaga University is a private university that receives federal financial assistance through its acceptance of federal financial aid from enrolled students. Gonzaga University offers several degree programs, including a nursing program that grants undergraduate and graduate nursing degrees. Department of Nursing, Gonzaga Univ., <http://www.gonzaga.edu/academics/colleges+and+schools/School-of-Professional-Studies/Degrees-Programs/Nursing/default.asp> (last visited May 22, 2013).
8. Gonzaga provides health coverage for its employees. The 2012-2013 Summary Plan Description provides information about the health benefits available to Gonzaga employees under the University’s self-insured group health plan (the “Plan”). Gonzaga Univ., *Your Choice Heritage Plus 1* (Oct. 1, 2012), *available at* <http://www.gonzaga.edu/Campus-Resources/Offices-and-Services-A-Z/Human-Resources/Benefits/Files/GonzagaUniversity2012-10YourChoiceFinal1.17.13.pdf>.
9. Gonzaga employees may elect coverage for their dependents. The Plan defines eligible dependents as:
 - The documented lawful spouse of the subscriber, unless legally separated. (“Lawful spouse” means a legal union of two persons that was validly formed in any jurisdiction.)
 - The domestic partner of the subscriber. [...]

- An eligible dependent child who is under 26 years of age.
An eligible child is one of the following:
 - A documented natural offspring of either or both the subscriber or spouse
 - A legally adopted child of either or both the subscriber or spouse
 - A child placed with the subscriber for the purpose of legal adoption in accordance with state law. “Placed” for adoption means assumption and retention by the subscriber of a legal obligation for total or partial support of a child in anticipation of adoption of such child.
 - A legally placed ward of the subscriber or spouse. There must be a court order signed by a judge, which grants guardianship of the child to the subscriber or spouse as of a specific date. When the court order terminates or expires, the child is no longer an eligible child.

Foster children are not eligible for coverage.

Id. at 39.

10. Once a Gonzaga 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 “Obstetrical Care” section of the Plan states, in relevant part:

Benefits for pregnancy and childbirth are provided on the same basis as any other condition for the subscriber or enrolled spouse. **Pregnancy and childbirth are not covered for dependent children.** However, complications of pregnancy are covered on the same basis as any other illness for the subscriber, enrolled spouse, or enrolled dependent child.

Id. at 19 (emphasis added).

12. The “Limited and Non-Covered Services” section of the Plan includes in a list of exclusions:

Pregnancy Of Dependent Children
Any care connected with a dependent child's pregnancy, except care furnished for the treatment of a complication of pregnancy.¹

¹ The Plan defines “complication of pregnancy” as: “A condition which falls into one of the 3 [*sic*] categories listed below that requires covered, medically necessary services which are provided in addition to, and greater than, those usually provided for antepartum care, normal or cesarean delivery, and postpartum care, in order to treat the condition. [1] Diseases of the mother which are not caused by pregnancy, but which coexist with and are adversely affected by pregnancy [2] Maternal conditions caused by the pregnancy which make its treatment more difficult. These conditions are limited to: Ectopic pregnancy; Hydatidiform mole/molar pregnancy; Incompetent cervix requiring treatment; Complications of administration of anesthesia or sedation during labor or delivery; Obstetrical trauma uterine rupture before onset or during labor; Ante- or postpartum hemorrhage requiring medical/surgical treatment; Placental conditions which require surgical intervention; Preterm labor and monitoring; Toxemia;

Id. at 35 (emphasis added).

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. Gonzaga is a recipient of federal financial assistance. Gonzaga 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).

15. Gonzaga operates health programs and activities, including its employee health plan and its Department of Nursing.

- a. Gonzaga'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.² 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. Gonzaga's Department of Nursing, for example, is also a "health program or activity" within the meaning of Section 1557. Gonzaga's nursing program is a health education program that trains individuals to join the health care workforce.

Gestational diabetes; Hyperemesis gravidarum; [or] Spontaneous miscarriage or missed abortion." Gonzaga Univ., Your Choice Heritage Plus 1 54-55 (Oct. 1, 2012) <http://www.gonzaga.edu/Campus-Resources/Offices-and-Services-A-Z/Human-Resources/Benefits/Files/GonzagaUniversity2012-10YourChoiceFinal1.17.13.pdf>.

² 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.

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.

16. Because Gonzaga 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, Gonzaga’s health programs, such as its nursing program, do receive federal financial assistance.
17. Gonzaga’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 Gonzaga’s employees are “individuals” participating in a covered health program or activity because the children are themselves beneficiaries of Gonzaga’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, Gonzaga’s health insurance plan unlawfully discriminates based on sex in violation of Section 1557.

RELIEF REQUESTED

18. The NWLC requests that:

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

Respectfully submitted,



Marcia D. Greenberger
Judith G. Waxman
National Women’s Law Center
11 Dupont Circle, NW, Suite 800
Washington, D.C. 20036

Date: June 4, 2013