

**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 III**
Barbara Holland, Regional Manager
150 S. Independence Mall West
Suite 372, Public Ledger Building
Philadelphia, PA 19106-9111

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.

RECIPIENTS

Pennsylvania State System of Higher Education
2986 North Second Street
Harrisburg, PA 17110

The Universities of the Pennsylvania State System of Higher Education:

Bloomsburg University of Pennsylvania
California University of Pennsylvania
Cheyney University of Pennsylvania
Clarion University of Pennsylvania
East Stroudsburg University of Pennsylvania
Edinboro University of Pennsylvania
Indiana University of Pennsylvania

Kutztown University of Pennsylvania
Lock Haven University of Pennsylvania
Mansfield University of Pennsylvania
Millersville University of Pennsylvania
Shippensburg University of Pennsylvania
Slippery Rock University of Pennsylvania
West Chester University of Pennsylvania

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. The Pennsylvania State System of Higher Education (“PASSHE”) and each of the Universities of the Pennsylvania State System of Higher Education (“PASSHE Universities”) receive federal financial assistance and offer a health plan to employees of the universities 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 PASSHE and the Universities and require that they end the discriminatory practice of excluding coverage for dependent maternity care and the relief requested in ¶ 20.

JURISDICTION

4. OCR is responsible for ensuring compliance with Section 1557 and receiving information about, investigating, and remedying violations of Section 1557. The Region III OCR is responsible for investigating and remedying violations of Section 1557 for actions in Pennsylvania.
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. PASSHE is “a public corporation and government instrumentality” consisting of these fourteen public universities: Bloomsburg University of Pennsylvania; California University of Pennsylvania; Cheyney University of Pennsylvania; Clarion University of Pennsylvania; East Stroudsburg University of Pennsylvania; Edinboro University of Pennsylvania; Indiana University of Pennsylvania; Kutztown University of Pennsylvania; Lock Haven University of Pennsylvania; Mansfield University of Pennsylvania; Millersville University of Pennsylvania; Shippensburg University of Pennsylvania; Slippery Rock University of Pennsylvania; and West Chester University of Pennsylvania. 24 Pa. Stat. Ann. § 20-2002-A(a) (West 2013), *amended by* 1988 Pa. Legs. Serv. 77 (West 2013) (changing names of each school to “[name] University of Pennsylvania”).
8. According to PASSHE’s most recent available final statement, it receives federal grants and contracts. P.A. State System of Higher Education, Financial Statements, 14 (June 30, 2012), *available at* <http://www.passhe.edu/inside/anf/accounting/Documents/PASSHE%20Financial%20Statements,%20June%2030,%202012.pdf>.
9. The Universities of the Pennsylvania State System of Higher Education are public universities each of which receives federal financial assistance through their acceptance of federal financial aid from enrolled students. The Universities operate a variety of health programs and activities, including classes in the health sciences, undergraduate and graduate nursing programs, and school health centers in addition to the PASSHE employee health plan. *See, e.g.*, Department of Nursing, Bloomsburg Univ., <http://www.bloomu.edu/nursing> (last visited May 21, 2013); Nursing, Edinboro Univ., <http://www.edinboro.edu/academics/departments/department.dot?deptKey=NUHL&inode=80237> (last visited May 21, 2013).
10. PASSHE offers three options for health coverage for employees of PASSHE Universities: the Indemnity or Classic Plan, the Preferred Provider Organization (PPO) Plan, and Health Maintenance Organizations (HMOs). Information posted about the 2012-2013 benefits in the Classic and PPO plans, (collectively referred to herein as “the Plan,”) are publicly available. *See* P.A. State System of Higher Education, ClassicBlue Comprehensive Major Medical Benefits Summary (Apr. 3, 2012), *available at* http://www.passhe.edu/inside/hr/syshr/Medical_docs/State%20System%20of%20Higher%20Education%20CMM%20OE%20Grid%202010.pdf; P.A. State System of Higher Education, PPOBlue Benefits Summary, *available at* http://www.passhe.edu/inside/hr/syshr/Medical_docs/State%20System%20of%20Higher%20Education%20PPO%20OE%20Grid%202010.pdf (last visited May 21, 2013).
11. PASSHE Universities’ employees may elect coverage for their dependents under the Plan. The Plan defines eligible dependents as:

Legal Spouse

Children under 26 years of age who are not eligible for coverage within their own employer's health plan, or within their spouse's health plan if married, and who meets one of the following requirements:

- A natural child of your own;
- A legally adopted child (including a child living with the employee during the probation period);
- A stepchild;
- A child for whom the employee is the legal guardian;
- A foster child, if the employee was the child's legal guardian or foster parent prior to the child's 18th birthday (foster children under age 18 are not eligible dependents);
- A child being supported by the employee under a court order as a result of a divorce decree; or
- A newborn child of an employee from the moment of birth to a maximum of 31 days from date of birth. To be covered as a Dependent beyond the 31-day period, the newborn child must be added as a Dependent through the System university office within 60 days from date of birth. In the event that a newborn child is not eligible for continuing coverage as a Dependent under this Contract, the parent may convert such child's coverage to individual coverage with your health care provider, provided an application for conversion is made within thirty-one (31) days of the child's birth and the appropriate premium is received within such period.

Unmarried Dependent child 26 years of age or older who is incapable of self-support because of a physical or mental disability that commenced before the age of 26.

Unless otherwise set forth in this Section, a child Member's coverage automatically terminates and all benefits hereunder cease, whether or not notice to terminate is received by the Plan on the day following the date in which such Member ceases to be eligible.

A Domestic Partner, and the child of a Domestic Partner. *

* Applies only to Faculty, Non-faculty Coaches and Managers

P.A. State System of Higher Education, Who is Eligible for PASSHE Health Program Coverage (Active Employees), 1-2 *available at* http://www.passhe.edu/inside/hr/syshr/Medical_docs/Eligibility%20for%20Health%20Care%20Benefits.pdf (last visited May 21, 2013).

12. Once an employee of a PASSHE University has elected coverage for a dependent child, that dependent child becomes a plan beneficiary entitled to comprehensive health coverage from the Plan.

13. The “Maternity” section of the Plan states, in relevant part:

Excludes Dependent Daughters – covered for complications ONLY.

P.A. State System of Higher Education, ClassicBlue Comprehensive Major Medical Benefits Summary at 1; P.A. State System of Higher Education, PPOBlue Benefits Summary at 1.

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. PASSHE is a recipient of federal financial assistance in the form of federal grants and contracts. 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. The PASSHE Universities each accept students who pay in part with federal aid, including students who attend the nursing programs operated by some of the universities. 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).

17. PASSHE operates health programs or activities, including the employee health plan. The PASSHE Universities also operate health programs and activities, including the employee health plan as well as classes in the health sciences, nursing programs, and student health centers.

- a. The PASSHE Universities’ 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 employee benefit 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. The nursing programs and health sciences classes at the PASSHE Universities, for example, are also “health programs or activities” within the meaning of Section 1557. The PASSHE Universities’ health sciences classes and nursing programs are a health education programs that teach students about a range of health care issues and train individuals to join the health care workforce. Because the programs prepare individuals who are an integral part of promoting, maintaining, or preventing the decline of the physical, mental, or social health of students of the Universities’ and the individuals generally, they are “health” programs under Section 1557.
 - c. PASSHE Universities’ student health centers are “health programs or activities” within the meaning of Section 1557. The student health centers provide health and medical services to students to promote, maintain, or prevent the decline of students’ health.
18. Because PASSHE and the PASSHE Universities receive federal financial assistance, all of the health programs and activities they operate 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, the PASSHE Universities’ health programs, such as its nursing programs, health sciences courses, and student health centers, receive federal financial assistance.
19. PASSHE’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

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.

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 PASSHE Universities’ employees are “individuals” participating in a covered health program or activity because the children are themselves beneficiaries of PASSHE’s health plan. Because the dependent children are protected by Section 1557, and are being denied a benefit—maternity coverage—based on their sex, PASSHE’s health insurance plan unlawfully discriminates based on sex in violation of Section 1557.

RELIEF REQUESTED

20. The NWLC requests that:

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

Respectfully submitted,

A handwritten signature in black ink that reads "Marcia Greenberger". The signature is written in a cursive, flowing style.

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