

# Anti-Discrimination Certification Requirements

**DC Health Link**

**Executive Board Insurance Market Working Committee**

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# Nondiscrimination in EHB

Prohibits discrimination on the basis of:

- Race
- Color
- National origin
- Disability
- Age
- Sex
- Gender identity
- Sexual orientation
- Health status (expected length of life, present or predicted disability, degree of medical dependency, quality of life, other health conditions)
- Significant health need

Includes the “implementation of benefit designs” (i.e., coverage decisions, reimbursement rates, incentive programs)

# Implementation To Date



## NONDISCRIMINATION UNDER THE AFFORDABLE CARE ACT

Katie Keith, Kevin Lucia, and Christine Monahan

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- No ideal standard for identifying discriminatory benefit design.
- Benefit design features with the potential to be discriminatory:
  - **Narrow networks**
  - **Drug formularies**
  - **Benefit substitution**
  - **Exclusions**
  - Cost-sharing
  - Medical necessity definitions
  - Waiting periods
  - Service areas
  - Rating
  - Visit limits
  - Marketing of products
  - Utilization management

# Implementation To Date

AIDS patients in Obamacare limbo  
as insurers reject checks

Seattle Children's sues insurance  
commissioner over pediatric coverage  
in state exchange

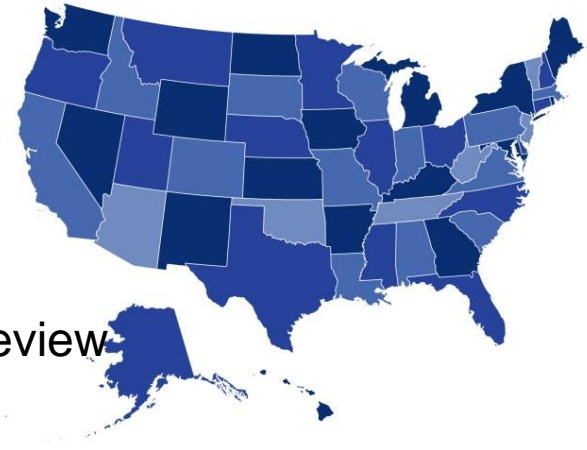
HHS Says Insurers' Coverage For Same-Sex  
Spouses Must Match Other Married Couples

Advocacy Group Seeks To Force Employers To  
Give Pregnancy Coverage To Dependents

Get Ready for Huge Drug Cost Gap  
in Obamacare

Consumers Expecting Free 'Preventive' Care  
Sometimes Surprised By Charges

# State Enforcement



## Significant challenges to enforcement

- Broad standards
- Limited clinical expertise
- Filing systems that do not enable systematic review

## Confusion with the benchmark plan

- Only 4 states analyzed benchmark plan for discriminatory benefit design:
  - One did not analyze exclusions
  - Three found exclusions that should not have been in the benchmark itself

## Tools for state regulators

- Old tools: consumer complaints, market conduct exams, attestations, form and rate review checklists
- New tools
  - Internal working group of regulators adopted internal database to track specific benefits
  - Federal tools – formulary checklist, outlier identification
  - Partnership with state pharmacy board to review formularies
- Drug formularies – emphasis on the use of complaints data to review:
  - Drug sub-classes, tiering and cost-sharing, coverage of drugs on and off the formulary

# Recommendations

- Issue guidance with specific examples of discriminatory benefit design
- Define key terms, such as “disability”
- Conduct a full analysis of the benchmark plan to identify and address discriminatory elements
- Use attestations that allow post-approval intervention
- Post (or require insurers to post) full and complete plan language to increase transparency
- Collect data under the ACA and use feedback from consumer assistance personnel and advocates

# Questions?

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