



1111 North Charles Street
Baltimore, MD 21201
410-625-LGBT (5428)

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jwelter@freestatelegal.org

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November 11, 2013

The Honorable T. Eloise Foster
Secretary
Department of Budget & Management
Attn: James Preston
EEO Coordinator
Department of Budget & Management
301 W. Preston Street, Room 607
Baltimore, MD 21201

Dr. William E. Kirwan
Chancellor & Chief Executive Officer
The University System of Maryland
Attn: Sheila Greenwood
Manager of EEO/ Affirmative Action
University of Maryland, Baltimore
620 W. Lexington Street, 3rd Floor
Baltimore, MD 21201

Re: **Sailor F. Holobaugh (DOB: [REDACTED])**
EEO Complaint
Discrimination on the Basis of Gender Identity in
Provision of Employee Health Benefits

Dear Secretary Foster and Dr. Kirwan:

I write on behalf of the FreeState Legal Project and our client, Sailor F. Holobaugh. Mr. Holobaugh is an employee of the University System of Maryland, University of Maryland, Baltimore ("UMB"), and is a participant in one of the State of Maryland's self-funded employee health benefit plans, which are administered by private insurance administrators under contract with the Department of Budget and Management ("DBM"). Pursuant to plan terms established or approved by UMB and/or DBM, Mr. Holobaugh's health benefit plan has unlawfully and discriminatorily denied him coverage for medically necessary surgical treatment on the basis of his gender identity.

In particular, Mr. Holobaugh, who is a transgender man, was denied coverage for a bilateral mastectomy performed for the purpose of sex reassignment. His claim for coverage was denied on the basis of a provision in his health benefit plan, approved and established by DBM, that explicitly excludes coverage for any "procedure or treatment designed to alter an individual's physical characteristics to those of the opposite sex" (the "Sex Reassignment Exclusion"). The incorporation of the Sex Reassignment Exclusion in the employee health benefit plan offered by UMB and established by DBM, and the application of the Sex Reassignment Exclusion against Mr. Holobaugh to deny him coverage in this instance, constitute employment discrimination on the basis of gender identity, which is prohibited by Governor O'Malley's Executive Order 01.01.2007.16 (Aug.

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 2 of 13

22, 2007) and Policy VI-1.05 of the Board of Regents of the University System of Maryland.

This letter constitutes a complaint under the Equal Employment Opportunity ("EEO") complaint procedure established by §§ 5-201 *et seq.* of the Md. Code, State Personnel & Pensions Article ("SPP") and COMAR 17.04.08.01 *et seq.*¹ Without prejudice to Mr. Holobaugh's rights under the EEO complaint procedure and other applicable law, we would also welcome the opportunity to discuss this matter cooperatively to achieve a speedy and fair resolution.

Facts Giving Rise to Complaint

A. Mr. Holobaugh's Background and the Surgical Treatment at Issue

Sailor Holobaugh is a full-time, regular employee of UMB. He is a Clinical Research Assistant in the University of Maryland School of Medicine, Department of Neurology. He has been employed by UMB for over two years.

¹ The EEO complaint procedure is available to employees of the University System of Maryland. *See* SPP § 5-209(b)(1). According to COMAR 17.04.08.03.B(1)(e), an EEO complaint should be filed "with the head of the principal unit or the principal unit's designee" *See also* SPP § 5-211(a). Under COMAR 17.04.01.01.B(5), "principal unit" means a "principal department or other principal independent unit of State government."

It is not entirely clear whether the appropriate recipient of this complaint is the Chancellor of the University System of Maryland—the head of the principal independent unit of State government that employs Mr. Holobaugh, *see* § 12-102(a)(3) of the Education Article, Md. Code (establishing University System of Maryland as independent unit); *see also id.* § 12-101(b)(6)(i) (defining UMB as a "constituent institution" of the University System of Maryland)—or instead is the Secretary of the Department of Budget & Management—the head of the principal department of State government that is responsible for specifying and approving the provisions of the State employee health benefit plan. *See* SPP § 3-201 (establishing DBM as principal department); *see also id.* § 2-502 & §§ 2-501 *et seq.* (establishing plenary DBM authority over State Employee & Retiree Health & Welfare Benefit Program, including authority of Secretary of DBM to "arrange as the Secretary considers appropriate any benefit option for inclusion in the Program," SPP § 2-503(b)(1)). Accordingly, we are filing this complaint with the appropriate designees of both the Secretary and the Chancellor.

Although we believe that this letter satisfies the requirements of COMAR 17.04.08.03.B(1) so as to be considered a complaint, we have also included for administrative convenience a completed complaint in the form provided by DBM (which incorporates this letter by reference).

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 3 of 13

As noted, Mr. Holobaugh is a transgender man. He was born biologically female, but his gender identity is male—in other words, he identifies psychologically and emotionally as male on a longstanding and permanent basis. In particular, Mr. Holobaugh is a transsexual male: he has undergone a social transition from female to male, accompanied by hormonal and surgical treatment under the care of medical professionals, to align his physical sex characteristics with those of the male gender.²

Mr. Holobaugh has been formally diagnosed with gender dysphoria, also known as gender identity disorder ("GID"), which is the psychiatric diagnosis associated with transgender status.³ Gender dysphoria is characterized by a "marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration," and typically manifests as "a strong desire to be of the other gender," to "be treated as the other gender," to "be rid of one's primary and/or secondary sex characteristics," or to have the "sex characteristics of the other gender," or a "strong conviction that one has the typical feelings and reactions of the other gender" DSM-V, at 452 (diagnostic criteria for gender dysphoria in adolescents and adults). Mr. Holobaugh was diagnosed with GID in January 2012 by his treating psychologist, Dr. Kate Thomas, Ph.D., APRN, an internationally recognized expert in the treatment of gender dysphoria who is on the faculty of the Johns Hopkins University School of Medicine. See **Exhibit A** (letter from Dr. Kate Thomas).

The medical community's recognized standards for the care of transsexual and transgender persons are promulgated by the World Professional Association for Transgender Health (WPATH).⁴ According to the *Standards of Care*,

² The term "transgender" is a broad term that encompasses the spectrum of persons who persistently or transiently identify with a gender different from their assigned gender at birth. The more specific term "transsexual" refers to transgender persons who have undergone a permanent and complete social transition to a gender different from their assigned gender at birth, often accompanied by hormonal and/or surgical treatment.

³ Gender dysphoria is a recognized psychiatric diagnosis in the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) ("DSM-V"), published by the American Psychiatric Association. In previous editions of the DSM (including the DSM-IV-TR, which was the edition in effect at the time Mr. Holobaugh was diagnosed), the diagnosis was referred to as "gender identity disorder" or "GID." The diagnosis has been recognized by the psychiatric community since the publication of the DSM-III in 1980.

⁴ See Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (WPATH, 7th ed. 2011), published as 13 INT'L J. OF TRANSGENDERISM 165 (2011), available at http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf (last visited

Hon. T. Eloise Foster & Dr. William E. Kirwan
 Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)
 November 11, 2013
 Page 4 of 13

masculinizing hormone therapy and sex reassignment surgery, including chest surgery (*i.e.*, mastectomy and creation of a male chest), are appropriate and medically necessary treatments for gender dysphoria in female-to-male transsexual persons when specified therapeutic criteria are met. *See Standards of Care* at 186-96 (hormone therapy); *id.* at 199-201 (surgery, including chest surgery). Mr. Holobaugh began hormone therapy in May 2012, under the care of medical professionals at Chase Brexton Health Care in Baltimore. *See Exhibit B* (letter of Dr. Eduardo Leon Guerrero, MD and Tyler Cornell, MSN/MPH, CRNP).

On November 20, 2012, as part of his ongoing medical treatment for gender dysphoria, Mr. Holobaugh underwent the surgery that is at issue in this complaint, a bilateral subcutaneous mastectomy performed by Dr. Beverly A. Fischer, M.D., a board certified plastic surgeon. The total cost of the surgical procedure and associated care was \$6,500, which Mr. Holobaugh paid out-of-pocket. On March 23, 2013, Mr. Holobaugh submitted a claim to the administrator of his State of Maryland employee health benefit plan for reimbursement for the surgical procedure and associated care. *See Exhibit C* (Employee Claim Form with attachments, Mar. 23, 2012).

B. Mr. Holobaugh's Health Benefit Coverage

Mr. Holobaugh is a participant in the State employees' point-of-service ("POS") health benefit plan that is administered for the Department of Budget & Management by CareFirst of Maryland, Inc. d/b/a CareFirst Blue Cross Blue Shield ("CareFirst"). CareFirst administers the POS plan for the State pursuant to a contract with DBM executed on March 18, 2009, as subsequently amended.⁵ In order to obtain the contract to administer the POS plan, CareFirst was required to submit a proposed benefit plan in conformance with a detailed Request for Proposals promulgated by DBM in April 2008.⁶

Nov. 11, 2013) ("*Standards of Care*"). When citing to the *Standards of Care*, the pagination from the INTERNATIONAL JOURNAL OF TRANSGENDERISM is used.

⁵ See "Contract for Point of Service Health Plan Administration and Services," Mar. 18, 2009, *available at* http://dbm.maryland.gov/contractors/contractlibrary/Documents/EmpBenHealthPlans/hlth_plan_redac_cf_pos.pdf (last visited Nov. 11, 2013). See also DBM, "Contract Library: Health Plan Administration and Services," *available at* <http://dbm.maryland.gov/contractors/contractlibrary/Pages/HealthPlanAdmin.aspx> (last visited Nov. 11, 2013) (listing health benefit plan contracts and modifications).

⁶ See "Request for Proposals, Health Plan Administration and Services (PPO, POS, HMO), Project No. F10B8200015," Apr. 14, 2008, *available at* <http://dbm.maryland.gov/contractors/contractlibrary/Documents/EmpBenHealthPlans/healthplanf10b8200015rfp.pdf> (last visited Nov. 11, 2013).

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 5 of 13

Notably, the CareFirst POS plan is not the only health benefit plan available to State employees under the State's employee benefit program. CareFirst also administers a preferred provider organization ("PPO") plan and a health maintenance organization ("HMO") plan, and two other vendors administer a total of five additional plans.⁷ As with the CareFirst POS plan, all seven additional available plans are self-funded by the State and administered pursuant to DBM contracts executed following the vendors' submission of plan proposals in response to DBM's Request for Proposals.

The terms of the CareFirst POS plan for the July 1, 2012 – June 30, 2013 plan year (which is the plan year at issue) are set forth in the plan's Certificate of Coverage (hereafter referred to as the "Plan"), a 154-page document. *See Exhibit D* (relevant excerpts from the Plan).⁸ On its first page, the Plan identifies the State of Maryland as the "Group" and states: "The Group reserves the right to change, modify, or terminate the Plan, in whole or in part." *Exhibit D* at 1. It also provides: "CareFirst provides administrative claims payment services only and does not assume any financial risk or obligation with respect to those claims." *Id.* These provisions are consistent with the fact that the Plan is self-funded by the State of Maryland and that the State, acting through DBM, has comprehensive authority to establish the terms of coverage under the Plan by contract with CareFirst.

C. Denial of Mr. Holobaugh's Claim and Procedural History

As discussed, Mr. Holobaugh submitted his claim for reimbursement for the surgical treatment at issue on March 23, 2013. *See Exhibit C*. His surgeon, Dr. Fischer, is not a "preferred provider" under the Plan and did not treat Mr. Holobaugh on the basis of a referral by a preferred provider. Accordingly, under the terms of the Plan, Mr. Holobaugh expected to be reimbursed for the claim at the "Out-of-Network" level, for 70% of the Plan's established "allowed benefit" amount for the outpatient surgical procedures and services at issue. *See Exhibit D* at 90 (benefit schedule for outpatient surgical care), 29 (preferred provider provision), 33 (referral provisions); *see also id.* at 3-4 (definition of "Allowed Benefit"); 9 (definition of "Preferred Provider"). In other words, Mr.

⁷ United HealthCare Insurance Co. administers a PPO plan, a POS plan, and an HMO plan, and Aetna Life Insurance Co. administers a POS plan and an HMO plan.

⁸ Particular relevant excerpts from the Plan, as well as its cover page, front matter, and table of contents, are collected and attached as *Exhibit D* to this complaint. The entire Plan for the July 1, 2012 – June 30, 2013 plan year is available online at <http://www.carefirst.com/statemd/attachments/EvidenceofCoveragePOS.pdf> (last visited Nov. 11, 2013). When citing to the Plan, the pagination of the Plan is used rather than the pagination of *Exhibit D*.

Hon. T. Eloise Foster & Dr. William E. Kirwan
 Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)
 November 11, 2013
 Page 6 of 13

Holobaugh expected to be reimbursed for up to \$4,550 of Dr. Fischer's charges (*i.e.*, 70% of \$6,500), with the exact amount of reimbursement dependent on the extent to which Dr. Fischer's charges came within the allowed benefit amount payable under the Plan.

On April 12, 2013, CareFirst issued an Explanation of Benefits ("EOB") stating that the claim was denied. *See Exhibit E* (EOB of Apr. 12, 2013). The EOB did not provide a specific reason that the claim was denied. Rather, it stated: "This procedure is not covered under your benefit plan. Please refer to your employee benefit booklet or contract for additional information." *Id.* at 1.

On April 24, 2013, in accordance with procedures specified in the Plan and outlined in the EOB, Mr. Holobaugh submitted an internal appeal of the denial of the claim to CareFirst. *See Exhibit F* (internal appeal letter, without attachments). He provided two letters from his treating health care professionals attesting to the fact the surgery was a medically necessary treatment.⁹

On July 3, 2013, an Appeals Nurse Analyst with CareFirst sent Mr. Holobaugh a letter emphasizing that a "final appeal decision ha[d] not been made," and inviting Mr. Holobaugh to submit "evidence and comments" that he felt "would help the Plan in making a final decision on [his] claim." *Exhibit G* at 1 (letter of July 3, 2013, without attachments). The letter provided no other explanation of the status of the claim, but stated that the "evidence and/or rationale considered, relied upon, or generated by the Plan in connection with [Mr. Holobaugh's] claim" was enclosed for his review. *Id.* The documents enclosed consisted of Mr. Holobaugh's claim (*i.e.*, the contents of Exhibit C to this complaint); his internal appeal letter of April 24, 2013 with attachments (*i.e.*, the contents of Exhibits A, B & F to this complaint); and copies of pages 1 and 72 of the Plan. *See Exhibit D* at 1, 72. Page 72 of the Plan lists various exclusions "for which benefits are not available under this Certificate of Coverage." *Id.* at 72 (emphasis in original). The last exclusion listed on the page is the Sex Reassignment Exclusion: "Any procedure or treatment designed to alter an individual's physical characteristics to those of the opposite sex." *Id.*

On July 9, 2013, Mr. Holobaugh sent a letter to CareFirst enclosing additional medical literature for CareFirst's review, including a copy of the WPATH *Standards of Care*, supporting the proposition that his surgery constituted "medically necessary care for the treatment of gender dysphoria" *Exhibit H* (letter of July 9, 2013, without attachments).

On July 12, 2013, CareFirst issued a Notice of Appeal Decision. *See Exhibit I*. The Notice of Appeal Decision stated that the denial was upheld because the

⁹ The letters that Mr. Holobaugh submitted were the same letters that are attached to this complaint as Exhibits A & B.

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 7 of 13

surgery was excluded from coverage under the Plan pursuant to the Sex Reassignment Exclusion. See **Exhibit I** at 2. It also provided information about Mr. Holobaugh's rights, under the Plan and applicable law, to external review of CareFirst's decision to deny coverage. In particular, it advised Mr. Holobaugh of three entities that could conduct an external review of a denial of coverage under the Plan or otherwise provide assistance to a claimant: the Maryland Insurance Administration ("MIA"), Appeals & Grievance Unit; the Employee Benefits Division of DBM; and the Health Education and Advocacy Unit ("HEAU") of the Maryland Office of the Attorney General. Mr. Holobaugh filed requests for review with all three entities.

Mr. Holobaugh filed a request for review with the Employee Benefits Division of DBM on August 14, 2013. See **Exhibit J** (letter of Aug. 14, 2013). The Director of Operations of the Employee Benefits Division responded by letter dated September 3, 2013, stating that CareFirst's "decision regarding coverage is upheld." **Exhibit K** at 1 (letter of Sept. 3, 2013). The Director's letter quoted the Sex Reassignment Exclusion (noting that it was included "in the plan documents for all the medical plans offered by the State of Maryland Employee and Retiree Health and Welfare Benefits program"). *Id.* However, the Director did not state explicitly that DBM had discretionary authority to determine the exclusions from coverage in the Plan.

Mr. Holobaugh submitted requests for review to the MIA and to the HEAU in late September 2013. See **Exhibit L** (MIA complaint form dated Sep. 25, 2013); **Exhibit M** (MIA acknowledgment letter dated Oct. 1, 2013); **Exhibit N** (HEAU acknowledgment & transmittal letter, dated Oct. 3, 2013).¹⁰ The MIA request was assigned to an investigator in the Life & Health Unit. See **Exhibit M**. HEAU forwarded Mr. Holobaugh's request to a separate unit of the MIA, the Appeals & Grievance Unit. See **Exhibit N**. The two units of the MIA apparently conducted separate inquiries into Mr. Holobaugh's requests. On October 11, 2013, the Appeals & Grievance Unit of the MIA wrote to Mr. Holobaugh stating that it appeared that the denial was not based on lack of medical necessity, but rather was "based upon [the] . . . health benefit policy for State of Maryland employees," and as such was "not within the purview of [the MIA] and needs to be addressed by the State of Maryland Department of Budget & Management." **Exhibit O** (letter of Oct. 11, 2013). Similarly, on October 25, 2013, the Life & Health Unit of the MIA wrote to Mr. Holobaugh explaining that, "[f]or State employee plans, the [MIA] can assist only with complaints that involve a denial of a claim . . . based on whether a service is medically necessary, efficient, or appropriate," and that, in contrast, "CareFirst has denied [Mr. Holobaugh's] claim based on a specific policy exclusion." **Exhibit P** (letter of Oct. 25, 2013). For

¹⁰ Mr. Holobaugh did not retain a copy of his correspondence to the HEAU, but recalls that it was submitted contemporaneously with his MIA complaint, and was similar in content.

Hon. T. Eloise Foster & Dr. William E. Kirwan
 Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)
 November 11, 2013
 Page 8 of 13

the first time, the letter from the Life & Health Unit made clear that responsibility for the exclusion lay with DBM. The letter stated, *id.*:

You sent us a complaint about your health benefit plan through the State of Maryland. Your plan is self-funded by the State. This means that the insurance company is acting only as an administrator. The State is ultimately responsible for payment of claims. . . . If you wish to pursue this matter further, you should write to the Maryland Department of Budget and Management

The October 25, 2013 letter from the Life & Health Unit of the MIA was the first correspondence received by Mr. Holobaugh that made evident that, regardless of any complaint he may have with CareFirst, Mr. Holobaugh has been subjected to gender identity discrimination by his employer, the State of Maryland. The October 25 letter made clear to a reasonable lay reader that the State, through DBM, has the ultimate authority to establish the terms of the Plan, including the Sex Reassignment Exclusion. Accordingly, receipt of the October 25 letter was the first occasion on which Mr. Holobaugh knew or reasonably should have known that he was the victim of employment discrimination (as opposed to or in addition to insurance discrimination). Pursuant to SPP § 5-211(b) and COMAR17.04.08.03.B(1)(e), this complaint is being filed within 30 days thereafter.

Complaint of Discrimination

Under Executive Order 01.01.2007.16, discrimination on the basis of gender identity is prohibited in State employment. In particular, the Executive Order provides that "[a]ll personnel actions concerning any employee . . . in the Executive Branch will be taken . . . without regard to . . . gender identity and expression." COMAR 01.01.2007.16.A(5). Similarly, the Regents of the University System of Maryland have adopted a policy that "specifically prohibits discrimination against . . . staff on the basis of . . . gender identity and expression in . . . employment . . . and employee services." Regents Policy VI-1.05 § II.A.

Pursuant to COMAR 17.04.08.02.B(2), the definition of a "personnel action" includes a "decision affecting . . . benefits." Thus, the decision of DBM to approve and establish the Sex Reassignment Exclusion, and the application of the Sex Reassignment Exclusion to deny Mr. Holobaugh coverage in this instance, was a "personnel action" as to which discrimination on the basis of gender identity is prohibited.¹¹

¹¹ We recognize that Regents Policy VI-1.05 § II.B "reserves" to the University System of Maryland the "right to comply with conditions on the application of [the policy of non-discrimination on the basis of sexual orientation and gender

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 9 of 13

The Sex Reassignment Exclusion discriminates on the basis of gender identity because it applies uniquely and exclusively to transgender plan participants. The Sex Reassignment Exclusion precludes coverage for any "procedure or treatment designed to alter an individual's physical characteristics to those of the opposite sex." **Exhibit D** at 72. By definition, such procedures or treatments, including sex reassignment surgery and hormone therapy, are only medically necessary for persons whose gender identity is transgender. There is no medical diagnosis under which sex reassignment treatment is clinically appropriate for so-called "cisgender" persons—that is, persons whose gender identity matches their gender assigned at birth.¹²

That the Sex Reassignment Exclusion discriminates on the basis of gender identity is made all the more plain by the fact that the Plan provides coverage for many procedures and treatments that are substantially identical to the excluded procedures—so long as the reason for undergoing the procedure is not sex reassignment. For example, the surgery that Mr. Holobaugh received, a bilateral mastectomy, would have been covered if it had been necessitated by a diagnosis of breast cancer. *See Exhibit D* at 55 (Plan provisions for "Mastectomy-Related Services").¹³ It is only because Mr. Holobaugh's surgery was necessitated by his

identity or expression] required by the terms of any bona fide employee benefit plan" This provision does not negate Mr. Holobaugh's complaint. Although it "reserves the right" not to observe the policy where required by an employee benefit plan, nothing in the policy requires the University System to disregard its non-discrimination policy where employee benefits are concerned. The University System just as surely possesses the right to remedy violations of the non-discrimination policy that would otherwise occur by reimbursing employees such as Mr. Holobaugh for the cost of health coverage that they are denied because of their gender identity. Moreover, Regents Policy VI-1.05 in no way affects DBM's obligation not to discriminate on the basis of gender identity in formulating the health benefit plans available to State employees.

¹² The term "cisgender" has been coined as a useful antonym for "transgender." It is derived from the Latin prefix "cis-" (denoting "on this side"), which is the antonym of the prefix "trans-" (denoting "on the other side"). *See, e.g.,* Kristen Schilt & Laurel Westbrook, *Doing Gender, Doing Heteronormativity*, 23 GENDER & Soc'y 440 (Aug. 2009). Thus, a "cisgender" person is a person who is not transgender.

¹³ Mastectomy is also a medically appropriate treatment for gynecomastia in cisgender (*i.e.*, non-transgender) men. Similarly, other surgical and medical treatments that are commonly utilized for sex reassignment, such as hormone therapy, orchiectomy, hysterectomy, phalloplasty, and vaginoplasty, are medically necessary treatments for certain conditions not related to sex reassignment (*e.g.*, endocrine disorders, treatment of various cancers,

Hon. T. Eloise Foster & Dr. William E. Kirwan
 Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)
 November 11, 2013
 Page 10 of 13

diagnosis of gender dysphoria—a diagnosis corresponding to his gender identity as a transgender man—that coverage was denied.

It is noteworthy that Mr. Holobaugh could not have avoided the Sex Reassignment Exclusion simply by “shopping around” for appropriate coverage options under a different employee health benefit plan. Every one of the seven other health benefit plans offered by the State of Maryland to its employees also contains the same exclusion or one that is substantially similar.¹⁴ DBM, in the exercise of its authority to formulate the required terms of coverage under the health benefit plans provided to State employees, has approved (if not required) use of the Sex Reassignment Exclusion by its contracted plan administrators in the State-funded health benefit plans offered to State employees. DBM’s decision to do so constitutes discrimination on the basis of gender identity in violation of the Governor’s Executive Order, as does the offering of coverage to employees on such a discriminatory basis by State employers, such as UMB.

DBM’s decision to discriminate on the basis of gender identity in the State’s provision of health benefits is all the more baffling given that there is no obvious fiscal or actuarial justification for the exclusion. The therapies and procedures involved are not exorbitantly expensive compared to other surgical and medical treatments, and the prevalence of persons for whom sex reassignment treatment is medically indicated is relatively low. Although noting that “[f]ormal epidemiologic studies on the incidence and prevalence of transsexualism specifically or transgender and gender nonconforming identities in general have not been conducted, and efforts to achieve realistic estimates are fraught with enormous difficulties,” the WPATH *Standards of Care* summarize the results of “ten studies involving eight countries” that attempted to quantify “the most easily counted subgroup of gender-nonconforming individuals: transsexual individuals who experience gender dysphoria and who present for gender transition-related care at specialist gender clinics”; according to the *Standards of Care*, the “prevalence figures reported in these ten studies range from 1:11,900 to 1:45,000 for male-to-female individuals (MtF) and 1:30,400 to 1:200,000 for female-to-male (FtM) individuals.” *Standards of Care* at 169. In comparison, as

reconstruction following traumatic injury). In such instances, the treatments would typically be covered by health benefit plans.

¹⁴ All three CareFirst plans contain the same Sex Reassignment Exclusion. The two Aetna plans exclude coverage for “Sex change: Any treatment, drug, service or supply related to changing sex or sexual characteristics, including: Surgical procedures to alter the appearance or function of the body; Hormones and hormone therapy; Prosthetic devices; and Medical or psychological counseling.” The three United HealthCare plans exclude coverage for “Sex transformation operations.”

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 11 of 13

of 2011, UMB employed a total of 7,652 employees.¹⁵ According to DBM's Annual Personnel Report for Fiscal Year 2012, as of June 30, 2012, there were a total of 69,908 employees enrolled in State-funded employee and retiree health benefit plans.¹⁶ Even adopting the least conservative estimates from the studies cited in the *Standards of Care*, it is evident that extending coverage to the small number of plan participants who require the treatments covered by the Sex Reassignment Exclusion would not present an overwhelming burden on the State's finances.

We do not suggest that an actuarial basis for the Sex Reassignment Exclusion would render it lawful. Rather, the apparent lack of any financial justification for the exclusion tends to indicate that the exclusion's continued existence is simply a product of inertia, outdated prejudice against transgender persons, or an attitude that sex reassignment is a purely elective or cosmetic treatment, rather than the medically necessary, appropriate, and effective therapeutic treatment that it is.

We respectfully request that DBM and UMB remedy the employment discrimination on the basis of gender identity that Mr. Holobaugh has experienced and eliminate the Sex Reassignment Exclusion from the employee health benefit plans offered by UMB and the State of Maryland.

Relief Requested

On behalf of Mr. Holobaugh, we respectfully request the following relief:

1. Reverse the decision to exclude Plan coverage for Mr. Holobaugh's surgery of November 20, 2012;
2. Provide reimbursement to Mr. Holobaugh in the amount of \$4,550 or 70% of CareFirst's allowed benefit for the surgical procedure and related health services at issue, whichever is less;
3. As soon as is practicable, amend all health benefit plans offered by the State of Maryland Employee and Retiree Health and Retirement Benefit Program by contractual modification to eliminate the Sex Reassignment Exclusion; and

¹⁵ See UMB Office of Communications & Public Affairs, "UMB News: Press Kits," May 2012, *available at* <http://um.umaryland.edu/news/kit> (last visited Nov. 11, 2013).

¹⁶ See DBM, Annual Personnel Report for Fiscal Year 2012 at 21 (Jan. 1, 2013), *available at* <http://dbm.maryland.gov/employees/Documents/PersonnelAnnualReport.pdf> (last visited Nov. 11, 2013).

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 12 of 13

4. Until such time as such amendments can be put in place, provide appropriate reimbursement outside of the health benefit plan claim submission process to participants affected by the Sex Reassignment Exclusion, and notify such participants, to the extent possible, of the availability of this relief.

Pursuant to SPP § 5-203 and COMAR 17.04.08.03.B(2), this complaint is without prejudice to Mr. Holobaugh's rights under applicable law including, without limitation, State and federal law prohibiting discrimination on the basis of gender and/or disability in employment, publicly funded programs, and/or the provision of insurance.

As noted, in the spirit of SPP § 5-210(c), which directs all parties to an EEO complaint to "make every effort to resolve a complaint at the lowest level possible," we would welcome the opportunity to discuss this matter cooperatively in a good faith effort to reach a speedy and fair resolution. Please do not hesitate to contact the undersigned with any questions or concerns. You may reach me by mail at 1111 North Charles Street, Fourth Floor, Baltimore, MD 21201; by phone at (410) 625-5428; or by email at jwelter@freestatelegal.org.

Thank you for your attention to this important matter. We look forward to your response.

Respectfully submitted,

FREESTATE LEGAL PROJECT



Jer Welter, Managing Attorney
Attorney for Sailor F. Holobaugh

Encl.: Exhibits A-P

cc: Sailor Holobaugh

Hon. T. Eloise Foster & Dr. William E. Kirwan

Re: EEO Complaint of Sailor F. Holobaugh (Gender Identity Discrimination)

November 11, 2013

Page 13 of 13

AFFIRMATION

I hereby affirm that I have read the foregoing EEO complaint dated November 11, 2013, and that it is true to the best of my knowledge, information, and belief.

11/Nov 2013

Date

Sailor F. Holobaugh
Sailor F. Holobaugh