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California Department of Insurance

Guidance SB 923: 1

Trans-Inclusive Health Care for Individuals who Identify as Transgender, Gender Diverse or Intersex (TGI)

September 1, 2024

The California Department of Insurance (CDI) issues this guidance[1] regarding the requirements set forth under California Insurance Code (CIC) sections 10133.13 and 10133.14.

Background

Senate Bill 923 ((Wiener), Stats. 2022, ch. 822, § 5) enacted CIC sections 10133.13 and 10133.14 as a component of the Transgender, Gender Diverse, or Intersex (TGI) Inclusive Care Act (the Act). In order to provide trans-inclusive health care for individuals who identify as TGI, health insurer staff that are in direct contact with insureds must complete evidence-based cultural competency training.[2]

The Act established a TGI Working Group (TGI WG), which was tasked with recommending a trans-inclusive evidence-based cultural competency training curriculum (training curriculum) for health plans, as well as health insurers subject to section 10133.13, whose staff are in direct contact with insureds.[3] In addition, the TGI WG was charged with developing a quality standard for patient experience to measure cultural competency related to the TGI community.[4] Consistent with statutory requirements, the TGI WG conducted listening sessions across the state to inform the recommended training curriculum for providing TGI-inclusive health care.[5]

On April 3, 2024, the TGI WG's *Transgender, Gender Diverse, or Intersex Working Group Recommendations* (TGI WG Recommendations) were published.[6] The TGI WG

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[1] This guidance is issued pursuant to CIC § 10133.13(d)(1). Citations are to the California Insurance Code (CIC), unless otherwise noted.
[2] CIC § 10133.13(a).
[3] CIC § 10133.13(a)(1).
[4] Cal. Health & Safety Code § 150950(b).
[5] *Ibid*.
[6] The TGI WG Recommendations were published on the Department of Managed Health Care website: 2024 Transgender, Gender Diverse, or Intersex Working Group Recommendations Report (ca.gov).

Recommendations detail topics to be included in the training curriculum for health insurer staff, as well as guidelines to adopt quality standards for patient experience to measure cultural competency.

I. Authority

The Department is tasked with developing guidance and procedures for compliance with section 10133.13 and is required to consider the TGI WG Recommendations in developing guidance.[7] This guidance details key components that must be included in the training curriculum, based upon the TGI WG Recommendations. This guidance also reminds insurers of the requirements imposed by section 10133.14 related to provider directories, as well as other legal obligations related to trans-inclusive care.

II. Applicability

Section 10133.13 applies to all health insurers issuing, selling, renewing or offering health insurance policies for health care in California, with exceptions only for specialized dental- or vision-only policies.[8] Section 10133.14 applies to all health insurers subject to section 10133.13.

III. Trans-Inclusive Evidence Based Cultural Competency Training – CIC section 10133.13

Section 10133.13(a)(2) details topics that must be included in the trans-inclusive evidence based cultural competency training (training) and section 10133.13(d)(1) requires the Department to consider the curriculum in the TGI WG Recommendations in developing guidance.

The Department has reviewed the training curriculum set forward by the TGI WG Recommendations to ensure that it is consistent with the provision of trans-inclusive health care. The Act defines trans-inclusive health care as:

> [C]omprehensive health care that is consistent with the standards of care for individuals who identify as TGI, honors an individual's personal bodily autonomy, does not make assumptions about an individual's gender, accepts gender fluidity and nontraditional gender presentation, and treats everyone with compassion, understanding, and respect.[9]

The Department also reviewed the training curriculum to ensure that it includes all topics required by section 10133.13(a)(2). After review, the Department has determined that the training curriculum meets the goal of providing trans-inclusive health care, as well as the statutory requirements set forth in section 10133.13. Therefore, the

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[7] CIC § 10133.13(d)(1).
[8] This includes student health insurance and grandfathered health insurance.
[9] CIC § 10133.13(c)(3).

Department adopts the curriculum found in the TGI WG Recommendations as it pertains to topics for inclusion in the training.

a. Necessary Elements of Training

A health insurer must collaborate with a TGI-serving organization(s) to develop the training.[10] This includes receiving stakeholder input from local constituency groups and TGI-serving organizations, including but not limited to the California Transgender Advisory Council.[11] In addition, TGI-serving organizations must facilitate the training.[12]

The training must, at a minimum, include the following information and topics as detailed in the TGI WG Recommendations:[13]

Welcome/Introduction	• Introduction
	• Important Terms
	• Intended Use
	• Evidence-Based Practices
	• Importance of Gender Diversity, Sensitivity, and Inclusivity Training
	• Facilitation by TGI-Serving Organizations

Topics to Include[14]	• Introduction to Cultural Competency in Health Care Coverage
	• Effects of Historical, Contemporary, and Present-Day Exclusion, Microaggressions, and Oppression
	• Effective Communication Across Gender Identities
	• Trauma-Informed Approaches to Care Delivery
	• Health Inequities and Family/Community Acceptance
	• Perspectives from Diverse Constituency Groups and TGI-Serving Organizations

[10] CIC § 10133.13(a)(3).
[11] CIC § 10133.13(a)(3).
[12] CIC § 10133.13(a)(2)(F).
[13] Section V of the TGI WG Recommendations provides additional detail about the information and topics that must be included in the training curriculum.
[14] Referred to as “Topics of Inclusion” in the TGI WG Recommendations.

	• Personal Values and Professional Responsibilities
	• Health Plan Considerations for Gender-Affirming Care
	• Ensure Culturally Competent Health Care Services
	• Collaborative Approaches to Enhance TGI Access to Care
	• Continuous Quality Improvement

Real-Life Experiences and Challenges of TGI Individuals	• Challenges with Accessing Health Care Services
	• Lack of Knowledge Among Health Plan Staff
	• Gaps in Data Collection
	• Denials in Plans – Gender Affirming Care
	• Denials in Plans – Interlapping Health Care Problems
	• Effects on Mental Health
	• Privacy Considerations
	• Positive Experiences with Health Care Providers and Health Plans or Insurers

Considerations of Sub-Populations	• Intersex Individuals
	• TGI Youth
	• Elderly TGI Individuals
	• Non-Binary Individuals
	• Physical Health Disabilities
	• Mental Health Disabilities
	• Neurodivergence
	• Guardians
	• The Spectrum of Reproductive Health Care for TGI individuals

b. *Who Must Take the Training*

Health insurer staff with direct contact with insureds must complete this training. Staff with direct contact includes staff in direct contact with insureds in the delivery of care or insured services.[15] Direct contact includes staff that have oral and/or written contact with insureds.

In addition, training must occur in these instances:

- When a health insurer delegates duties to a contracted entity that has direct contact with insureds, the staff of that entity that has direct contact with insureds must complete this training. Contracting entities include, but are not limited to, delegated behavioral health, mental health, or pharmacy benefit entities.[16]
- When a health insurer hires a new staff member whose duties include direct contact with insureds, the new staff member must receive training before having direct contact with insureds.
- When a current staff's duties currently include, or will include, direct contact with insureds.
- When, after completion of the first training, a complaint has been filed against a staff member for not providing trans-inclusive health care and a decision has been made in favor of the complainant, then that staff member shall complete a refresher course, within 45 days before further direct contact with insureds.[17]

Health insurers may require staff to receive this training on a more frequent basis for the purposes of providing trans-inclusive health care.[18] Health insurers may consider, and the Department recommends, providing this training as a part of cultural competency, antidiscrimination or Diversity Equity and Inclusion (DEI) training efforts to staff that are not otherwise subject to the requirements of SB 923.

The Department may require training on a more frequent basis if deemed necessary for purposes of providing trans-inclusive health care.[19] In order to provide trans-inclusive health care, health insurer staff with direct contact with insureds should complete this training every two years. The Department recommends that the insurer post the training materials on their public internet website.

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[15] CIC § 10133.13(a)(1).
[16] CIC § 10133.13(e).
[17] CIC § 10133.13(a)(4).
[18] *Ibid.*
[19] *Ibid.*

c. *When Must Training Occur*

Within six months after the Department issues this guidance, but not later than March 1, 2025, a health insurer shall require all staff in direct contact with insureds to complete training for the purpose of providing trans-inclusive health care for individuals who identify as TGI.[20] New staff, or staff with new duties that include direct contact with insureds, should complete training no later than six (6) months after their start date.

d. *Delegation of Duties*

A reminder that if a health insurer delegates duties under section 10133.13 to a contracted entity[21], the contracted entity to which those duties are delegated shall comply with section 10133.13.[22] Violations of section 10133.13 that are committed by a delegated entity are imputed to the contracting insurer, and will subject the contracting insurer to enforcement action, including fines and penalties.

e. *Disputes, Complaints and Grievances*

Section 10133.13(a)(4) requires an individual staff member to complete a refresher course within 45 days if a complaint has been filed against that individual for not providing trans-inclusive care and a decision has been made in the favor of the complainant. An insurer must have a system set up to ensure that should a complaint be submitted and a decision is made in favor of the complainant, that the staff member completes a refresher course.[23] Insurers should note that any pattern of repeated sustained complaints against a staff member, or multiple complaints against multiple staff members, gives rise to a presumption that an insurer is not providing adequate trans-inclusive care as required by section 10133.13. Such patterns and practices suggest that training is ineffective or that the working culture is hostile to trans-inclusive care and requires further remediation including further staff training. Ongoing failure to address patterns of violations by insurer staff may be considered to be a willful violation of section 10133.13, and each violation may be subject to a $10,000 penalty.[24]

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[20] CIC § 10133.13(a)(1).
[21] Contracted entity includes, but is not limited to, a medical group or independent practice association.
[22] CIC § 10133.14(e).
[23] CIC § 10133.14(a)(4).
[24] CIC § 10133.13(f).

f. Training Compliance Submission Requirements

The training curricula used by health insurers for purposes of implementing section 10133.13(a)(1) is subject to approval by the Department.[25] Therefore, health insurers must submit the following on System for Electronic Rate and Form Filing (SERFF):

- Initial and Ongoing Training
  - The identity of the TGI-serving organization(s) chosen to facilitate the training as defined under section 10133.13(c)(2), including a description of how the insurer chose the organization;
  - The training curriculum;
  - A description of the training materials, including whether the training materials are written and/or electronic;
  - The format of the training (i.e., in-person, via video conferencing, hybrid, through on-demand video, etc.);
  - The bid, procurement, or selection process, if any, to select a TGI-serving organization qualified to facilitate the training[26];
  - The process the insurer used to engage local constituency groups or TGI-serving organizations, in creating the training; and
  - Timeline for staff completion of initial and ongoing training, including new hires. Current staff must complete training no later than March 1, 2025. New staff, or staff with new duties that include direct contact with insureds, should complete training no later than six (6) months after their start date. This timeline should also include the insurer's schedule for ongoing training.
  - Affirm that the staff against whom a complaint has been made for failure to provide trans-inclusive care, and a decision has been made in favor of the complainant, will complete a refresher course within 45 days.
- Contracted entities
  - Explain whether the health insurer delegated compliance with section 10133.13 to a contracted entity. If so, identify the entity to whom compliance was delegated, explain the scope of delegation, and identify procedures utilized to monitor and oversee performance of the delegated entity.

[25] CIC § 10133.13(a)(3).
[26] *Ibid*.

The initial filing should be titled "SB 923 Training" and should be submitted to the Department no later than March 1, 2025. Subsequent filings should be similarly titled and submitted by March 1, of odd numbered years.

g. *Complaint Submission Requirements*

To ensure compliance with obligations in section 10133.13 related to complaints, health insurers must annually submit an SB 923 Complaint Summary on SERFF. The SB 923 Complaint Summary shall include:

- A brief summary of all complaints related to trans-inclusive care, including:
  - The number of complaints sustained and un-sustained;
  - The number of complaints per staff member;
  - Actions taken to prevent further complaints; and
  - Information pertaining to completion of training for sustained complaints.

The initial filing should be titled "SB 923 Complaint Summary" and should be submitted to the Department no later than March 1, 2025. Subsequent filings should be similarly titled and submitted annually thereafter.

h. Enforcement Actions and Penalties

Health insurers are reminded that the Commissioner may take enforcement action and impose penalties for noncompliance with section 10133.13 as follows:

> If the [C]ommissioner determines that a health insurer, or an entity contracted with the health insurer, has violated this section, the [C]ommissioner may, after appropriate notice and opportunity for hearing in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), by order, assess a civil penalty not to exceed five thousand dollars ($5,000) for each violation, or if a violation was willful, a civil penalty not to exceed ten thousand dollars ($10,000) for each violation.[27]

IV. **Provider Network Requirements - CIC section 10133.14**

a. Provider Directories

No later than March 1, 2025, health insurers are required to include "information within or accessible from the insurer's provider directory, and accessible through insurer's call center" identifying which of the in-network providers have affirmed they offer and have provided gender-affirming services, and which of those services they offer.[28] Gender-affirming services, include, but are not limited to those listed in section 10133.14. Health

[27] CIC § 10133.13(f).
[28] CIC § 10133.14.

insurers must update this information whenever an in-network provider requests their inclusion or exclusion as a provider that offers and provides gender-affirming services. Health insurers shall update their provider directory policies and procedures to accommodate these changes regarding providers of gender-affirming care.[29] Provider directories must also be available consistent with section 10133.15.

In addition, health insurers are reminded of their obligations to update provider network directories consistent with section 10133.15 and 10 California Code of Regulations (CCR) section 2240.6.

b. Arranging for Care

Insurers are reminded that if an in-network provider is unavailable to provide services within applicable geographic and timely access standards, the insurer shall arrange for an out-of-network provider to provide the services, consistent with CIC section 10144.5(d) and 10 CCR section 2240.1(e).

To arrange for out-of-network provider to provide covered services includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the insured within geographic and timely access standards. An insurer will not meet the “arranging for” requirement if it merely provides an insured with the names of non-contracted providers who may be available to provide services. Such actions do not satisfy the requirement to provide services to secure out-of-network care.

Rather, the insurer must take additional steps to ensure the insured has access to the services. Such steps may include contacting non-contracted providers with the appropriate expertise to ensure they have appointments available within the timely access standards and advising the insured of their available appointment times, or actually scheduling an appointment for the insured. Giving an insured a list of providers who might be able to provide services to the insured is insufficient and does not constitute arranging for care. Further, an insurer may not delay an insured’s care beyond the applicable timely access standards due to a lack of a single case agreement or other arrangement with a non-contracting provider. Any cost sharing paid by the insured for out-of-network services arranged shall be limited to the in-network cost-sharing for the services, treatment or item. In addition, such cost-sharing shall accrue to the in-network deductible, if any, and the in-network limit on annual out-of-pocket expenses.

[29] CIC 10133.15(m).

V. Other Legal Requirements

Trans-inclusive health care is defined by the Act to mean:

> [C]omprehensive health care that is consistent with the standards of care for individuals who identify as TGI, honors an individual's personal bodily autonomy, does not make assumptions about an individual's gender, accepts gender fluidity and nontraditional gender presentation, and treats everyone with compassion, understanding, and respect.

Insurers are reminded of additional legal requirements that apply to the provision of trans-inclusive care.

a. Coverage Requirements

Trans-inclusive care means care that is consistent with the generally accepted standards of care for individuals that identify as TGI. Insurers are reminded of their obligation to cover medically necessary basic health care services, and in many cases Essential Health Benefits as described in sections 10112.27 and 10112.281. This includes health care services related to gender transition that are basic health care services, mandated benefits in the Insurance Code, or Essential Health Benefits. In addition, insurers must cover services for gender transition if coverage is available for those services under the policy when the services are not related to gender transition, and health care services that are ordinarily or exclusively available to individuals of one sex when the denial or limitation is due only to the fact that the insured is enrolled as belonging to the other sex or has undergone, or is in the process of undergoing, gender transition.[30]

Coverage of benefits for medically necessary behavioral health services is also required, including behavioral health interventions to treat gender dysphoria.[31] Medically necessary treatment of a mental health or substance use disorder must be in accordance with generally accepted standards of care.[32] In addition, when conducting utilization review for treatment of behavioral health services, insurers must apply the criteria and guidelines set forth in the most recent versions of the treatment criteria developed by the nonprofit professional association for the relevant clinical specialty.[33] This includes, but is not limited to, age requirements.[34]

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[30] 10 CCR § 2561.2.
[31] CIC §§ 10112.27, 10112.281, and 10144.5.
[32] CIC § 10144.5(a)(3)(A)(i).
[33] CIC § 10144.52(b).
[34] Notice to Health Insurers re Requirements of Senate Bill 855 (ca.gov).

b. *Antidiscrimination Protections*

Insurers are reminded that members of the TGI community are included in the protected classes by a variety of anti-discrimination protections in state and federal law.[35]

The broadest protection in state law arises from Insurance Code section 10140, which prohibits insurers licensed to issue disability insurance from:

> [F]ail[ing] or refus[ing] to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation.[36]

As used in section 10140:

> "Sex" as used in this section shall have the same meaning as "gender." "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

The Department's regulations implementing section 10140 prohibit discrimination "on the basis of an insured's or prospective insured's actual or perceived gender identity, or on the basis that the insured or prospective insured is a transgender person."[37] 10 CCR section 2561.2(a)(4), in part, prohibits the following discriminatory conduct:

> Denying or limiting coverage, or denying a claim, for services including but not limited to the following, due to an insured's actual or perceived gender identity or for the reason that the insured is a transgender person:
>
> (A) Health care services related to gender transition if coverage is available for those services under the policy when the services are not related to gender transition, including but not limited to hormone therapy, hysterectomy, mastectomy, and vocal training; or
>
> (B) Any health care services that are ordinarily or exclusively available to individuals of one sex when the denial or limitation is due only to the fact that the insured is enrolled as belonging to the other sex or has undergone, or is in the process of undergoing, gender transition.[38]

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[35] Notice re Compliance with Health Insurance Antidiscrimination Protections in California Law; Gender Dysphoria Male Chest Surgery: CDI General Counsel opinion letter (ca.gov).
[36] CIC § 10140(a).
[37] 10 CCR § 2561.2(a).
[38] 10 CCR § 2561.2(a)(4).

The Code of Federal Regulations (CFR) at 45 CFR section 147.104(e) also broadly prohibits discrimination in marketing and benefit plan designs in all non-grandfathered policies based on an individual's present or predicted disability, age, sex, health conditions, among other factors.[39] Beginning July 5, 2024, discrimination on the basis of sex, includes discrimination on the basis of sex characteristics, including intersex traits, sexual orientation, gender identity, sex stereotypes, as well as pregnancy or related conditions.[40]

Other notable, more specific laws include, but are not limited to, the following:

- 10 CCR section 2240.1(h) provides that insurers networks must not be created in a manner designed to discriminate or that results in discrimination against a person based upon a variety of factors, including but not limited to, age, gender, actual or perceived gender identity as defined in section 2561.1, on the basis that the insured is a transgender person as defined in section 2561.1, sexual orientation, disability, sex, marital status, health status, or medical condition, including physical and mental illnesses, and conditions arising out of domestic violence.[41]
- Insurance Code sections 10965.5(a)(3),10753.05(h)(3) and 10112.282(a) prohibit discrimination in marketing and benefit plan designs in nongrandfathered individual, small group and large group health insurance policies based upon age, sex, gender identity, sexual orientation, or health conditions, among other factors.[42]
- 10 CCR section 2594.2(g)(2) prohibits a benefit plan design or the implementation of a plan design that discriminates against an individual based on sex, gender, gender identity, or gender expression in nongrandfathered individual and small group policies.
- 10 CCR section 2695.7(a) prohibits discriminatory claims settlement practices based on age, gender, or sexual orientation, among other factors.
- 42 United States Code § 18116 includes provisions to protect individuals from being excluded, denied benefits or being subject to discrimination, to the extent an insurer is a covered entity. This includes discrimination on the basis of race, color, national origin, sex, age, disability, or any combination thereof.

[39] 45 CFR § 147.104(e).
[40] 45 CFR § 147.104(e) (effective July 5, 2024).
[41] 10 CCR § 2240.1(h).
[42] See also 10 CCR § 2594.2(g)(2).

- 45 CFR part 92 implements this law and provides that a covered entity must “provide individuals equal access to its health programs and activities without discriminating on the basis of sex.”[43]
- The rule explicitly provides that “discrimination on the basis of sex” includes discrimination on the basis of sex characteristics, including but not limited to, intersex traits; pregnancy or related conditions; sexual orientation; gender identity; and sex stereotypes.[44]
- The rule includes specific nondiscrimination protections for members of the TGI community.[45]

Insurers should make themselves familiar with all antidiscrimination laws applicable to the provision of trans-inclusive care.

c. *Privacy and Confidentiality*

Health insurers are reminded of their obligations to maintain confidentiality and privacy for insureds seeking or receiving TGI services. Further, insurers are advised to review the definition of “sensitive services”[46] under CIC section 791.02 and adhere to the steps set forth in section 791.29 to ensure protection of an insured’s medical information for TGI-related services to the extent that they are “sensitive services.” Insurers should note that failure to comply with these sections, including notice of confidential communications, will result in investigation and enforcement actions.

[43] 45 CFR § 92.206(a).
[44] 45 CFR § 92.101(a)(2).
[45] See 45 CFR §§ 92.206(b), 92.207(b), and 92.208-211.
[46] CIC § 791.02(ac) provides “‘Sensitive services’ means all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient of any age at or above the minimum age specified for consenting to the service specified in the section.”