HUMAN RIGHTS CAMPAIGN FOUNDATION'S

2023 Corporate Equality Index Criteria Evolution

LGBTQ+ Inclusive Benefits FAQs
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Introduction

As a part of the 2023 CEI criteria evolution, the HRC Foundation’s Workplace Equality Program is making significant changes to the requirements inclusive family and transgender-inclusive benefits. In order to further educate and prepare CEI participants for these changes, we have created the following resource to answer the most common questions we have received since the criteria changes were announced.
Family Formation Benefits

What can family formation benefits include?
Family formation benefits comprise a wide array of services including leave policies, fertility services, and more. The 2023 CEI will evaluate the following services and benefits:

1. **Coverage for assisted reproductive services such as**
   a. **IUI (Intrauterine insemination):** The process of depositing sperm directly into the patient’s uterus at an optimal time for fertilization of the patient’s egg.
   b. **IVF (In-vitro fertilization):** A treatment for infertility involving multiple significant medical interventions over many months: hormone injections, repeated blood tests, medical monitoring. Egg(s) are obtained through a minor surgical procedure and exposed to sperm (from a partner or donor) in a laboratory, where they are monitored for fertilization and embryogenesis. One or more embryos are then either stored cryogenically for future use or transferred to a uterus for gestation.

2. **Cryopreservation:** The controlled freezing process and subsequent storage of gametes or embryos for later use. This requires precise methodology and controlled conditions, and legal arrangements for ownership of, access to, and disposition of the biological material. For the purposes of the CEI, we are asking about coverage or a monetary benefit for elective cryopreservation.

3. **Surrogacy:** A legal arrangement with a person with a functioning uterus, who undergoes embryo implantation, carries the fetus, and delivers the child, who is then the legal child of the intended parents. Employers can offer stipend or reimbursement to offset the high cost of surrogacy.

4. **Adoption/Foster care assistance:** Monetary benefit to offset the often arduous and expensive process of adopting or fostering children. Employers can offer this in the form or a stipend or reimbursement.

5. **Paid family leave:** Paid time off to employees for family-related needs. This can include postpartum recovery or bonding time and time off for new adopted or fostered children, among other family medical needs.
FAQ #1: Why won’t employers be receiving points for equivalence in spousal benefits for same-and different-sex spouses?

Answer: Since Obergefell was decided and made marriage equality the law of the land, all legal spouses (including same-sex spouses) should be eligible for benefits extended to those dependents. The CEI has always been about filling in the gaps where the law fall short and Obergefell has, thankfully, filled a large gap in coverage for same-sex spouses. For that reason, we will not be awarding companies for extending benefits to all legal spouses, essentially complying with current law.

FAQ #2: If marriage equality is the law of the land, why should employers continue to cover benefits for domestic partners?

Answer: HRCF and the WEP has been consistent in our guidance not to remove domestic partner benefits in the wake of Obergefell. Although marriage equality was a major step forward for the LGBTQ+ community, it did not solve all problems of discrimination. Marriage equality protects a same-sex couple’s legal right to be married, nationwide, but the ruling does not protect LGBTQ+ couples from discrimination on the basis of their sexual orientation (or gender identity). In more than half of the states in the U.S., LGBTQ+ people are not protected from discrimination and marriage creates a public record that can make those in the community even more vulnerable to discrimination. For that reason we have continued to require coverage for domestic partners.

FAQ #3: I see that the CEI will now require equivalency in family formation benefits for spouses and domestic partners, regardless of sex. Does that mean we now have to cover all the benefits evaluated in the survey?

Answer: No. Consistent with our guidance and the way we score so-called “soft benefits,” we are requiring that existing benefits be offered to same-and different-sex spouses and partners. If you simply do not offer these family formation benefits, this will not result in a penalty. Companies that only offer some or all of the benefits to spouses will receive partial credit, consistent with how the CEI scores “soft-benefits.”
Transgender-Inclusive Benefits

What can trans-inclusive include?
Transgender-inclusive health benefits can include a variety of services, from mental health counseling to reconstructive surgeries. These are often services that cisgender people can receive without exclusion, but that transgender people can face barriers to accessing. Every individual’s experience and needs for transition is unique, so it is important for employers and insurers to cover a wide array of services. The following is an overview of the services and procedures the CEI evaluates as a part of the trans-inclusive health care criterion.

Baseline services

- **Mental health counseling:** Insurers typically require mental health evaluations and a diagnosis of gender dysphoria from a qualified mental health professional to receive surgical and non-surgical treatment. Additionally, mental health services for transitioning people can include support and guidance pre- and post-operatively, as well as treatment for any co-existing mental health conditions. Many insurers often require that transitioning individuals have coexisting mental health conditions “well controlled” before they are deemed eligible for additional treatment.

- **Pharmaceutical coverage:** Transgender people, youth and adults, may undergo hormone replacement therapies. Hormone replacement therapy is treatment with hormones to replace natural hormones when the body does not make enough. For transgender people this means taking hormones that increase the levels of estrogen or testosterone or block production of certain hormones (such as testosterone for transfeminine people). Transgender youth may also use gonadotropin-releasing hormone analogs (GnRHa), commonly known as puberty blockers, to delay unwanted physical changes that do not match their gender identity.

- **Doctor’s visits and routine lab testing:** Just like cisgender people, trans people need access to routine office visits and lab testing for a variety of reasons. For example, hormone replacement therapy often requires regular monitoring. Additionally, transgender people will need certain sex-specific screenings and care, such as prostate exams and pap smears, regardless of their gender identity.
Baseline services (cont.)

- **Reconstructive surgical procedures related to gender reassignment:** Baseline coverage must include genital, chest, and breast surgeries for transmasculine and transfeminine people, commonly known as “top” and “bottom” surgeries. Surgical intervention for the treatment of gender dysphoria is considered reconstructive and medically necessary by all major health associations, including WPATH.

- **Short term medical leave:** Transitioning employees should be able to take medical leave to recover from any transition-related procedures, as necessary. This can include regular company sick leave. Additionally, recovery from transition procedures should not be excluded from any short-term disability plans made available by the employer. Plans with such exclusions cannot be accepted for credit.

Additional necessary services and treatments (at least 5 for full credit)

- Hair removal necessary for reconstructive surgery
- Hair removal (not necessary for reconstructive surgery)
- Tracheal shave or reduction thyroid chondroplasty
- Facial feminization surgeries
- Voice modification surgery
- Voice modification therapy
- Lipoplasty or lipofilling for body masculinization or feminization
- Travel and lodging
FAQ #1: How are baseline trans-inclusive health care benefits changing for 2023 CEI criteria?

Answer: The 2023 CEI will continue to require coverage of mental health counseling, pharmaceutical care (hormone replacement therapy), medical visits and lab monitor, surgical procedures (chest, breast, and genital surgeries), and paid short term leave (either employer offered or employer provided). Additionally, the 2023 CEI will continue to require that all broad exclusions for transition-related care be eliminated from all plan offerings. In addition to those continued requirements, the 2023 CEI will also require coverage for puberty blockers for youth and elimination of unnecessary barriers to care (exclusion of so-called “reversals”, initial or one-surgery only policies, and limits to only in-network providers).

FAQ #2: Do we need to cover all the additional essential treatments and services?

Answer: No. The requirement is that at least 5 services be covered. Companies that cover less than five, but at least one, can earn partial credit (5/10 points).
FAQ #3: We are a fully-insured company and can’t cover additional benefits or remove certain barriers? Can I get an exception? Are you working with insurers to update their standard coverage?

Answer: Employers will not be given exceptions for the CEI criteria. However, it is relatively common for companies to use concierge services or small additional self-insured plans to close gaps in coverage.

Many of barriers to care set by insurers are based in harmful myths about the transgender community. Such as the idea that transgender individuals are seeking cosmetic services or that transgender individuals receive surgical intervention only to later desire a “reversal” of these procedures.

WPATH and other authoritative medical associations consider surgical intervention for the treatment of gender dysphoria to be “reconstructive” not “cosmetic.” This includes surgical intervention to change secondary sex characteristics. Surgical interventions for transition-related care are broadly considered irreversible. As a part of competent care, patients are made aware of that fact. Furthermore, the rates of surgical regret and detransition among transgender individuals are vanishingly small.

We are in regular contact with major US insurers about updating their plans to reflect the real world needs of transitioning individuals and to remove unnecessary barriers to care.
FAQ #4: What are “blanket exclusions” of transition-related care? What are ineligible “barriers to care”?

Answer: “Blanket exclusions” refer to broad prohibitions on coverage for healthcare services under a benefits plan(s). For the purposes of the CEI, blanket exclusions are those plan exclusions that prohibit coverage for medically necessary transition care (i.e. mental health services, doctors visits and lab testing, pharmaceutical benefits, and reconstructive surgical procedures related to gender reassignment). This will typically be listed under sections titled “Exclusions” or “What This Plan Does Not Cover/Pay For” and say things like “services related to sex reassignment” or more dated language such as “sex transformation,” “transsexualism,” “gender identity disorder,” etc. The CEI has required removal of all broad exclusions from all benefit plans since the 2019 cycle (calendar year 2018).

There are additional barriers that can create obstacles for employees and/or their families who need medical transition services. Exclusions of so-called “reversals,” limitations on the time frame for, or number of, surgeries (e.g., “one surgery only” or “initial surgery” limitations), and requirements to use only in-network specialists (above and beyond standard plan requirements) all represent unacceptable barriers to care. The CEI has encouraged companies to remove these barriers since the 2012 survey cycle.

Similar to previous CEI criteria, companies that fail to remove blanket exclusions and/or barriers to care will receive a 5 points deduction from their baseline benefit point total.
FAQ #5: What should I include in a LGBTQ+ Benefits Guide?

Answer: Include a listing of all benefits (standard healthcare and soft benefits) that impact the LGBTQ+ community. This can be a recruiting brochure highlighting services and plans that are inclusionary and an employer would like to highlight for community members at a job fair, for example. Having an internal guide that provides a more comprehensive overview for employees of services offered. Things to consider listing in this guide are, overview of standard benefits (medical, dental, vision) highlighting gender affirming care for employees and their dependents, any soft benefits available such as family formation benefits, HIV treatments and services, access to EAP services, etc.

The goal is to provide employees with information about what benefits are available and how an employee can find out more about these benefits without having to go to their supervisor or HR team directly. Having to “out” oneself to gain information and access to care is a serious barrier to care for many LGBTQ+ employees.