



Northern  
California

October 22, 2019

**Via email and mail:**

Dr. Douglas B. Houston  
Chancellor  
Yuba Community College District  
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Yuba City, CA 95991  
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Mathew D. Evans  
Director and Plan Administrator  
Tri-County Schools Insurance Group  
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Dear Dr. Houston and Mr. Evans:

We have been contacted by an employee of Yuba Community College District (YCCD) whose family has been subjected to an exclusion in your employee health plan regarding gender-affirming care, causing them to have to pay thousands of dollars out-of-pocket for medically necessary care for their transgender child. Exclusions of this nature single out transgender people for unequal treatment, and therefore constitute unlawful discrimination under both state and federal law. Indeed, all of California's nondiscrimination laws explicitly prohibit discrimination based on gender identity, and we are distressed that, in 2019, a public college in California would be engaged in this type of explicit discrimination against transgender people.

In the hope of avoiding unnecessary litigation in this matter, we urge you to take immediate action to remove the unlawful exclusion for gender-affirming care from your health plan, as well as to compensate your employees who were harmed by the exclusion.

**Factual Background**

Brian Condrey, an English professor at Yuba College—one of two schools in the Yuba Community College District—has a dependent child who is transgender. To be transgender means to have a different gender identity than the sex assigned at birth. Professor Condrey's daughter, Stella, has undergone medically necessary treatment related to her diagnosis of gender dysphoria. Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and International Classification of Diseases (ICD-10).

However, all the Condrey family's claims of coverage for Stella's gender-affirming care were denied on the basis of an explicit exclusion in your health plan. This exclusion, which appears on p.

46 of the Tri-County Schools Insurance Group (TCSIG) Employee Health Plan (“Health Plan,” attached as Exhibit A), provides that the following care is not a covered benefit: “[c]harges for services, supplies or treatment for transsexualism, gender dysphoria or sexual reassignment or change, including medications, implants, hormone therapy, surgery, medical or psychiatric treatment.”

Professor Condrey first raised the issue with YCCD and TCSIG in 2017, and has since then continued to advocate to have the exclusion removed, to no avail. Upon learning that TCSIG would not cover transition-related care, the Condrey family was forced to begin paying premiums for secondary insurance to cover Stella’s unmet medical expenses. In January 2019, after a change in Stella’s mother’s employment status led to a loss of access to this secondary coverage, the Condrey family began having to pay directly out-of-pocket for Stella’s healthcare. The family is paying out of their savings not only for transition-related treatment, but even for doctor’s visits relating to issues other than gender dysphoria, because gender dysphoria is always listed for Stella as an ongoing secondary or tertiary diagnosis. To date, the Condrey family has spent over \$7,000 out-of-pocket to pay for care that should have been covered by the employee health plan.

The effect of this trans-exclusionary policy on the Condrey family has not only created the financial strain of out-of-pocket costs but has generated severe emotional stress for Stella despite describing the treatment as having been “life-saving” for her. She is now in fear of having to seek care for any health issue, whether it be a cold, an accidental injury, or a serious illness, because she is worried about the resulting financial hardship on the family.

The only written explanation Professor Condrey has received regarding the exclusion is from Delta Health Systems, the Third-Party Administrator for the Health Plan, when they stated in November 2017 that TCSIG “is not subject to the [Affordable Care Act] non-discrimination rule. Therefore, the charges were denied correctly and no allowance can be provided.” In June 2019, TCSIG informed Professor Condrey that it would evaluate the exclusion on gender-affirming care at its October 25, 2019 board meeting. We now urge you to remove this exclusion for gender-affirming care immediately.

### **Legal Analysis**

It is plainly illegal for both employers and public entities in California to discriminate against transgender people. A health care plan that explicitly excludes medically necessary care only for transgender people discriminates against transgender people.

The Fair Employment and Housing Act (FEHA) prohibits discrimination by all public employers in California on the basis of “race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, **gender identity**, gender expression, age, sexual orientation, or military and veteran status of any person... in compensation or **in terms, conditions, or privileges of employment.**” Cal. Gov. Code § 12940(a) (emphases added). Healthcare is a privilege of employment. *See Knight v. Hayward Unified School Dist.*, 132 Cal.App.4th 121, 128 (2005) (the “terms and conditions” of employment include fringe benefits such as healthcare insurance). Similarly, the Equity in Higher Education Act prohibits discrimination in California community colleges on the basis of disability, gender, **gender identity**, gender expression, nationality, race or ethnicity, religion, sexual orientation . . .” Cal. Ed. Code § 66270 (emphasis added).

California law in fact explicitly recognizes that healthcare coverage exclusions related to gender-affirming care are discrimination based on gender identity. Cal. Code Regs, tit.10, § 2561.2(a)(4)(A) (prohibited discrimination based on gender identity includes: “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: 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.”).

Beyond the plain proscriptions of California statutory law, a public entity’s exclusion of gender-affirming care in its employee healthcare plan also violates federal employment nondiscrimination law and constitutional equal protection, as courts around the country have recognized.<sup>1</sup>

Any law that applies to YCCD as a public education agency also applies to TCSIG.<sup>2</sup> Thus regardless of the applicability of the nondiscrimination provision of the Affordable Care Act to TCSIG, numerous other state and federal laws prohibit YCCD, through TCSIG, from discriminating against transgender people.

Finally, we note that although YCCD and TCSIG have failed to provide Professor Condrey with any explanation as to the Health Plan exclusion of gender-affirming care—other than the erroneous conclusion that the exclusion is legal—cost is not a justification for discrimination.<sup>3</sup> Indeed, employers who have added gender-affirming care to their health plan benefits report zero or low cost.<sup>4</sup>

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<sup>1</sup> See *Boyden v. Conlin*, 341 F.Supp.3d 979, 995-997 (W.D. Wis. Sept. 18, 2018) (exclusion of gender-affirming care in Wisconsin’s state-employee health plan discriminated against transgender employees on the basis of sex in violation of Title VII and the federal Equal Protection Clause); *Flack v. Wis. Dep’t of Health Servs.*, 328 F.Supp.3d 931, 946-951 (W.D. Wis. July 25, 2018) (plaintiffs granted preliminary injunction on claims that exclusion of gender-affirming care in Wisconsin Medicaid statute discriminated against transgender beneficiaries on the basis of sex in violation of the federal Equal Protection Clause); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1118–21 (N.D. Cal. 2015) (plaintiff stated valid claim that exclusion of gender-affirming care in prison healthcare policy discriminated against transgender prisoners on the basis of sex in violation of the federal Equal Protection Clause); *Good v. Iowa Dep’t of Human Servs.*, 924 N.W.2d 853 (Iowa 2019) (exclusion of gender-affirming care in Iowa Medicaid statute discriminated against transgender beneficiaries on the basis of gender identity in violation of state nondiscrimination law).

<sup>2</sup> See Joint Powers Agreement, § 3.1, available at: [http://tcsig.com/assets/jpa\\_agreement\\_doc2.pdf](http://tcsig.com/assets/jpa_agreement_doc2.pdf).

<sup>3</sup> See e.g., *Diaz v. Brewer*, 656 F.3d 1008, 1014 (9th Cir. 2011) (state’s cost justification for discriminating against gay and lesbian employees in provision of healthcare benefits did not pass muster under lowest test of constitutional scrutiny—rational basis review).

<sup>4</sup> Jody L. Herman, *Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans: Findings from a Survey of Employers* (20130), available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>

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It is again astonishing to us that in 2019 a California community college would have an exclusion for gender-affirming care in its employee health plan—and apparently defend the exclusion as both legal and appropriate. *See* YCCD Board Policies Ch. 1 § 1300 (“We confront and reject all manifestations of discrimination, including those based on ethnicity, gender, age, disability, sexual orientation, religious or political beliefs, status within or outside of the District...”).

For the reasons stated above, YCCD and TCSIG must take immediate action to remove the exclusion on gender-affirming care from its employee healthcare plan, as well as to compensate its employees who were harmed by the exclusion. Please contact me as soon as possible to resolve this issue, and no later than October 29, 2019. It is in the interest of all to resolve this on an informal basis without resorting to formal proceedings.

Sincerely,



**Elizabeth Gill**  
Senior Staff Attorney  
ACLU Foundation of Northern California

cc: Richard Teagarden, President of Board of Trustees, Yuba Community College District (via email, [rteagard@yccd.edu](mailto:rteagard@yccd.edu));  
Mazie Brewington, Vice Chancellor, Yuba Community College District (via email, [mbrewington@yccd.edu](mailto:mbrewington@yccd.edu));  
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