

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.B., by and through his parents, L.B. and
M.B., on his own behalf and on behalf of
similarly situated others; L.B.; and M.B.,

Plaintiffs,

v.

PREMERA BLUE CROSS,

Defendant.

NO.

COMPLAINT

(CLASS ACTION)

I. INTRODUCTION

1. The Patient Protection and Affordable Care Act (“Affordable Care Act” or “ACA”) prohibits discrimination on the basis of age and sex in health care. This includes the administration, application, and enforcement of any exclusions of gender-affirming care by health insurance companies and claims administrators that receive federal financial assistance and participate in health care insurance marketplaces established under the ACA.

2. As a health insurance company, Premera Blue Cross (“Premera”) provides health insurance and related services to approximately 2 million people across the States of Washington and Alaska. And as a health carrier, Premera, directly or through a subsidiary, participates in the health care insurance marketplaces including the Washington Health Benefit Exchange in Washington State. In doing so, and

1 notwithstanding its legal obligation to not discriminate on the basis of age or sex
2 pursuant to Section 1557 of the ACA, Premera administers and enforces an exclusion of
3 coverage of gender-affirming care (including medically necessary surgery) for
4 transgender youth under the age of 18. Premera's exclusion deprives transgender youth
5 of essential, evidence-based, and even lifesaving medical care. The exclusion facially
6 excludes coverage for gender-affirming surgical care that transgender adolescents under
7 18 may require.

8 3. Plaintiff A.B., a fifteen-year-old transgender boy, and his parents, L.B. and
9 M.B., are being discriminated against on the basis of sex because A.B. is transgender.
10 They are also being discriminated against based on age because Premera has arbitrarily
11 imposed a categorical exclusion based on age, notwithstanding that medical care should
12 be individualized, based on a particular patient's development and medical needs, and
13 consistent with well-established clinical practice guidelines.

14 4. Through L.B.'s employment, A.B. receives health insurance coverage
15 through the Association of Washington Business HealthChoice Health Plan, a non-
16 grandfathered Washington insured plan offered by Premera. A.B. is enrolled in the
17 Premera insured plan as a dependent of L.B.

18 5. Premera purports to cover gender-affirming care when medically
19 necessary, according to the express terms of the plan. *Exh. A*, pp. 3, 9, 20.

20 6. Indeed, gender-affirming care is typically covered without arbitrary and
21 categorical age limitations: "Benefits for medically necessary gender affirming care
22 services are subject to the same cost shares that you would pay for inpatient or outpatient
23 treatment for other covered medical conditions *for all ages.*" *Id.*, p. 20 (emphasis added).

24 7. Despite this plan language, Premera categorically excludes coverage for
25 gender-affirming surgical care for insureds under the age of 18. *See Exh. B*, Medical
26 Policy 7.01.557 Gender Transition/Affirmation Surgery and Related Services. Premera

1 has imposed an exclusion of gender-affirming surgical care for youth since May 1, 2016.
2 *Id.*, p. 37 of 41.

3 8. A.B.'s pre-service request for authorization of gender-affirming care in the
4 form of chest surgery (mastectomy) and reconstruction was denied because he is not yet
5 18, even though he, his parents, and treating medical providers all agree that the chest
6 surgery and reconstruction is clinically appropriate.

7 9. Premera's internal medical policies for the same or similar procedures
8 provided to treat cisgender patients are not restricted or limited based upon the
9 insured's age.

10 10. For example, Premera does not impose an age restriction on medically
11 necessary breast reduction for cisgender female insureds. *See Exh. C.*

12 11. Premera does not apply an age restriction on medically necessary
13 mastectomy for gynecomastia when performed on cisgender male insureds. *See Exh. D.*

14 12. Premera does not apply an age restriction on medically necessary
15 prophylactic mastectomy for cisgender female insureds. *See Exh. E.*

16 13. Based on information and belief, Premera only imposes an age restriction
17 on mastectomy when prescribed to treat gender dysphoria. In other words, Premera only
18 imposes an age restriction when the surgical care is prescribed for transgender insureds.

19 14. Premera's age restriction on coverage of gender-affirming care is not
20 consistent with generally accepted standards of medical practice. Nor is the age limit
21 clinically appropriate or effective for the treatment of gender dysphoria. *See Exh. A*, p. 76
22 (definition of "medical necessity").

23 15. The Premera medical policy relies on the World Professional Association
24 for Transgender Health (WPATH) Standards of Care as the "best available science and
25 expert professional consensus." *Exh. B*, p. 34 of 41.

1 16. WPATH, however, confirms that chest surgery and reconstruction to treat
2 gender dysphoria can be medically necessary for transgender adolescents under the age
3 of 18. Specifically, WPATH Standards of Care, Version 8 details the requirements for
4 gender-affirming medical and surgical treatment for adolescents under the age of 18. *See,*
5 *e.g.,* Coleman, E., et al. (2022), Standards of Care for the Health of Transgender and
6 Gender Diverse People, Version 8, *International Journal of Transgender Health*, 23(Suppl 1),
7 S1-S259, available at <https://doi.org/10.1080/26895269.2022.2100644> (Statement of
8 Recommendations 6.12) (last visited 6/22/23).

9 17. Premera cites certain studies asserting that developmental maturity is
10 required in order to “make a truly informed, educated decision” required for gender-
11 affirming surgical care. *Exh. B*, pp. 34–35 of 41.

12 18. Premera, however, does not impose the same limitations on coverage for
13 similar surgical procedures for cisgender insureds with other conditions who are under
14 age 18. *See Exhs. C–E*.

15 19. Finally, while Premera notes that coverage of gender-affirming care is
16 mandated in Washington State as of 2022, it did not remove or revise its internal policy
17 limiting coverage of such treatment to only insureds over the age of 18. *See Exh. B*, p. 35
18 of 41.

19 20. Premera’s internal medical policy of excluding gender-affirming surgical
20 care for transgender adolescents under 18 contravenes the well-established medical
21 consensus that gender-affirming health care can be medically necessary and even
22 lifesaving for adolescents and adults, and that determinations about medical necessity
23 should be individualized.

24 21. A.B. has been denied coverage for medically necessary gender-affirming
25 health care because A.B. is transgender and under the age of 18, based on the exclusion
26 imposed by Premera’s internal medical policy.

1 22. Plaintiffs will incur financial hardship without the coverage promised in
2 the Premera health plan.

3 23. A.B. has also suffered stigmatization, humiliation, and a loss of dignity
4 because of the Plan's targeted discrimination against transgender youth, which wrongly
5 deems their health care needs as unworthy of equal coverage.

6 24. This targeted discrimination against transgender youth, which Premera
7 designed, administers, and enforces, violates the ACA's Section 1557.

8 25. Plaintiffs bring this lawsuit on behalf of themselves and a proposed class
9 of similarly situated individuals for declaratory and injunctive relief preventing
10 Premera's design, administration, and enforcement of the discriminatory exclusion of
11 coverage of gender-affirming surgical care for youth.

12 26. Plaintiffs bring this lawsuit to obtain a judgment to remedy their injuries
13 and that of the proposed class and to have the design and administration of such
14 exclusions declared unlawful, thereby preventing their enforcement by Premera.

15 27. Plaintiffs also seek compensatory, consequential, and nominal damages for
16 their own individual injuries resulting from Premera's discriminatory administration of
17 the Plan.

18 **II. PARTIES**

19 28. *Plaintiff A.B.* Plaintiff A.B. is a fifteen-year-old transgender boy who is
20 enrolled in a Premera Washington insured non-grandfathered health plan. A.B. brings
21 suit by and through his next friends and parents, L.B. and M.B. A.B. is enrolled in a
22 Premera health plan issued through the Association of Washington Business due to his
23 father's employment. A.B. and his parents live in King County, Washington.

24 29. *Plaintiffs L.B. and M.B.* Plaintiffs L.B. and M.B. are the parents of A.B. As
25 part of his employment, L.B. receives health insurance coverage through the Plan, which
26

1 is insured and administered by Premera. Together, L.B. and M.B. pay for A.B.'s health
2 care needs.

3 30. *Defendant Premera Blue Cross.* Defendant Premera Blue Cross
4 ("Premera") is a health carrier that issues and administers health plans in Washington
5 State. Premera is a recipient of federal financial assistance and participates in health care
6 insurance marketplaces established under the ACA, including the Washington Health
7 Benefit Exchange. Premera is headquartered in Mountlake Terrace, Snohomish County,
8 Washington. Premera is not a religious organization.

9 **III. JURISDICTION AND VENUE**

10 31. This action arises under Section 1557 of the Patient Protection and
11 Affordable Care Act, 42 U.S.C. § 18116.

12 32. This Court has original jurisdiction over the subject matter of this action
13 pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the
14 Constitution and laws of the United States.

15 33. Declaratory relief is authorized by Rules 57 and 65 of the Federal Rules of
16 Civil Procedure and by 28 U.S.C. §§ 2201 and 2202.

17 34. Venue is proper under 28 U.S.C. § 1391(b)(2) because, *inter alia*, Premera is
18 located in and a substantial part of the events giving rise to the claim occurred in
19 Snohomish County, Washington.

20 35. The Court has personal jurisdiction over Premera because Premera is
21 headquartered in Snohomish County, Washington.

22 **IV. FACTUAL BACKGROUND**

23 **A. *Gender Dysphoria and Its Treatment***

24 36. Every individual's sex is multifaceted and comprises a number of
25 characteristics, including but not limited to chromosomal makeup, hormones, internal
26

1 and external reproductive organs, secondary sex characteristics, and most importantly,
2 gender identity.

3 37. Gender identity is a person’s internal sense of their sex. It is an essential
4 element of human identity that everyone possesses, and a well-established concept in
5 medicine.

6 38. A person’s sex is generally assigned at birth based solely on a visual
7 assessment of external genitalia at the time of birth. External genitalia are only one of
8 several sex-related characteristics and are not always indicative of a person’s sex.

9 39. For most people, these sex-related characteristics are all aligned, and the
10 visual assessment performed at birth serves as an accurate proxy for that person’s
11 gender.

12 40. Where a person’s gender identity does not match that person’s sex
13 assigned at birth, however, gender identity is the critical determinant of that person’s
14 sex.

15 41. The ability to live in a manner consistent with one’s gender identity is vital
16 to the health and wellbeing of transgender people.

17 42. For transgender people, an incongruence between their gender identity
18 and sex assigned at birth can result in a feeling of clinically significant stress and
19 discomfort known as gender dysphoria.

20 43. Being transgender is not a medical condition to be treated or cured. But
21 gender dysphoria—the clinically significant distress that some transgender people
22 experience as a result of the incongruence between their gender identity and sex
23 assigned at birth—is a serious medical condition.

24 44. Gender dysphoria is recognized in the American Psychiatric Association’s
25 Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision
26 (“DSM-5-TR”), which sets forth the criteria for diagnosing gender dysphoria, and by

1 other leading medical and mental health professional groups, including the American
2 Medical Association (“AMA”) and the American Psychological Association.

3 45. Gender dysphoria can be assessed, diagnosed, and treated in accordance
4 with evidence-based, widely accepted clinical practice guidelines, such as WPATH’s
5 Standards of Care, Version 8.

6 46. The goal of medical treatment for gender dysphoria is to eliminate or
7 alleviate the clinically significant distress by helping a transgender person live in
8 alignment with their gender identity. This treatment is sometimes referred to as “gender
9 transition,” “transition-related care,” or “gender-affirming care.”

10 47. The clinical practice guidelines for the treatment of gender dysphoria, such
11 as WPATH’s Standards of Care and the Endocrine Society’s guidelines, are widely
12 accepted as best practices for the treatment of adolescents and adults diagnosed with
13 gender dysphoria and have been recognized as authoritative by leading medical
14 organizations, including the American Academy of Pediatrics, AMA, and American
15 Psychological Association, which agree that this care is safe, effective, and medically
16 necessary for many adolescents suffering from gender dysphoria.

17 48. The precise treatment for gender dysphoria depends upon each person’s
18 individualized needs, and the guidelines for medical treatment differ depending on
19 whether the treatment is for an adolescent or an adult.

20 49. Under the WPATH Standards of Care, medically necessary treatments
21 may include, among other things, “[h]ormone therapy” and “[s]urgery to change
22 primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or
23 internal genitalia, facial features, body contouring).”

24 50. The individualized steps that transgender people take to live in a manner
25 consistent with their gender, rather than the sex they were assigned at birth, are known
26 as transitioning.

1 51. Transitioning is particular to the individual but typically includes social,
2 legal, and medical transition.

3 52. Social transition entails a transgender individual living in accordance with
4 their gender identity in all aspects of life. For example, social transition can include
5 wearing attire, following grooming practices, and using pronouns consistent with that
6 person's gender identity. The steps a transgender person can take as part of their social
7 transition help align their gender identity with all aspects of everyday life.

8 53. Legal transition involves steps to formally align a transgender individual's
9 legal identity with their gender identity, such as legally changing one's name and
10 updating the name and gender marker on their driver's license, birth certificate, and
11 other forms of identification.

12 54. Medical transition, a critical part of transitioning for many transgender
13 people, includes gender-affirming care that bring the sex-specific characteristics of a
14 transgender person's body into alignment with their gender identity. Gender-affirming
15 care can involve counseling to obtain a diagnosis of gender dysphoria, hormone
16 replacement therapy, surgical care, or other medically necessary treatments for gender
17 dysphoria.

18 55. Gender-affirming surgical care might be sought by a transgender person
19 to better align primary or secondary sex characteristics with their gender identity.
20 Surgical care can include, but is not limited to, hysterectomies, gonadectomies,
21 mammoplasties, mastectomies, orchiectomies, vaginoplasties, and phalloplasties. These
22 treatments are for the purpose of treating gender dysphoria.

23 56. Under the WPATH Standards of Care, transgender adolescents also may
24 receive medically necessary chest reconstructive surgeries before the age of majority
25 provided that the adolescent has lived in their affirmed gender for a significant period
26 of time.

1 57. These various components associated with transition—social, legal, and
2 medical transition—do not change an individual’s sex, as that is already established by
3 gender identity, but instead bring the individual’s appearance, legal identity, and sex-
4 related characteristics into greater alignment with the individual’s gender identity and
5 lived experience.

6 58. Medical treatment recommended for and provided to transgender
7 adolescents with gender dysphoria can substantially reduce lifelong gender dysphoria
8 and eliminate the medical need for surgery or other medical interventions later in life.

9 59. Providing gender-affirming medical care can be lifesaving treatment and
10 positively change the short- and long-term health outcomes for transgender adolescents.

11 60. The consequences of untreated, or inadequately treated, gender dysphoria
12 are dire. Symptoms of untreated gender dysphoria include intense emotional suffering,
13 anxiety, depression, suicidality, and other attendant mental health issues. Untreated
14 gender dysphoria is associated with higher levels of stigmatization, discrimination, and
15 victimization, contributing to negative self-image and the inability to function effectively
16 in daily life.

17 61. When transgender people are provided with access to appropriate and
18 individualized gender-affirming care in connection with treatment of gender dysphoria,
19 these symptoms can be alleviated and even prevented.

20 62. The AMA, American Psychological Association, American Psychiatric
21 Association, Endocrine Society, American College of Obstetricians and Gynecologists,
22 American Academy of Family Physicians, and other major medical organizations have
23 recognized that gender-affirming care is medically necessary, safe, and effective
24 treatment for gender dysphoria—and that access to such treatment improves the health
25 and well-being of transgender people. Each of these groups has publicly opposed
26

1 exclusions of coverage of this treatment by private and public health care administrators
2 and payors, like the exclusion at issue here.

3 63. WPATH has stated that, like hormone replacement therapy and other
4 gender-affirming treatments, the “medical procedures attendant to sex reassignment are
5 not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient,” but instead are
6 “medically necessary for the treatment of the diagnosed condition.” Nor are they
7 experimental, because “decades of both clinical research and medical research show that
8 they are essential to achieving well-being for the [transgender] patient.”

9 64. In 2008, the AMA passed Resolution 122 recognizing gender dysphoria
10 (then known as gender identity disorder) as a “serious medical condition” which, “if left
11 untreated, can result in clinically significant psychological distress, dysfunction,
12 debilitating depression, and for some people without access to appropriate medical care
13 and treatment, suicidality and death.” AMERICAN MED. ASS’N, *Resolution 122: Removing*
14 *Financial Barriers to Care for Transgender Patients* (June 16, 2008). The AMA also opposes
15 exclusions of coverage for treatment of gender dysphoria because “many of these same
16 treatments ... are often covered for other medical conditions” and “the denial of these
17 otherwise covered benefits for patients suffering from [gender dysphoria] represents
18 discrimination based solely on a patient’s gender identity.” *Id.*

19 65. Similarly, in 2019, the AMA published an Issue Brief reiterating that, “The
20 AMA opposes any discrimination based on an individual’s sex, sexual orientation or
21 gender identity, opposes the denial of health insurance on the basis of sexual orientation
22 or gender identity, and supports public and private health insurance coverage for
23 treatment of gender dysphoria as recommended by the patient’s physician.” AMERICAN
24 MED. ASS’N and GLMA, *Issue brief: Health insurance coverage for gender-affirming care of*
25 *transgender patients* (2019), at 5, [https://www.ama-assn.org/system/files/2019-](https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf)
26 [03/transgender-coverage-issue-brief.pdf](https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf) (last visited 6/22/23).

1 66. In the past, public and private health administrators and payors excluded
2 coverage for medically necessary treatment of gender dysphoria on the erroneous
3 assumption that such treatments were cosmetic or experimental. Today, the medical
4 consensus recognizes that exclusions of treatment for gender dysphoria on those
5 grounds have no basis in medical science.

6 ***B. Premera Is Subject to the ACA's Anti-Discrimination Law***

7 67. Premera offers health care plans in health care exchanges established
8 under the ACA.

9 68. At all relevant times, Premera has received and continues to receive federal
10 financial assistance in part of its health programs or activities, including programs
11 and/or activities engaged in by affiliates, parents, or subsidiaries of Premera.

12 69. At all relevant times, Premera was and remains a “health program or
13 activity”, a part of which receives federal financial assistance. 42 U.S.C. § 18116. As a
14 result, Premera was and continues to be a “covered entity” under the Affordable Care
15 Act, Section 1557.

16 70. Premera provided assurances to the U.S. Department of Health and
17 Human Services that it complies with the requirements of Section 1557. *See* 45 C.F.R.
18 § 92.4.

19 71. Premera also provided written assurances to A.B. and his parents that it
20 would comply with the requirements of Section 1557. *See, e.g., Exh. A*, p. iii.

21 72. Despite these assurances, Premera has administered the exclusion of
22 medically necessary gender-affirming surgical care for transgender youth under the age
23 of 18. Premera continues to do so, to date.

1 C. *Premera Denies Coverage of Gender-Affirming Surgical Care for A.B.*

2 73. A.B. is a boy who is transgender. That means that he was assigned the sex
3 of female at birth, but his gender identity is male. A.B. has openly identified and lived
4 as male since May 2021.

5 74. A.B. has been diagnosed with gender dysphoria.

6 75. Although Premera has covered some of A.B.'s past treatment for gender
7 dysphoria, Premera has denied coverage for A.B.'s medically necessary gender-
8 affirming surgical care solely because he is transgender and under the age of 18.

9 76. Specifically, Premera denied all coverage for A.B.'s chest surgery and
10 reconstruction by letter dated December 3, 2022. *Exh. F.* The denial of coverage was
11 based on Premera's medical policy No. 7.01.557 Gender Transition/ Affirmation Surgery
12 and Related Services. *Id.* The sole reason for the denial was that A.B. was under 18 years
13 old. *Id.*, p. 2.

14 77. A.B.'s medical providers at the Seattle Children's Gender Clinic appealed
15 Premera's denial on December 23, 2022. *Exh. G.* They explained and presented
16 documentation to show that A.B. met all of the requirements for coverage of gender-
17 affirming surgical care consistent with WPATH and generally accepted medical
18 standards. *Id.*

19 78. On December 30, 2022, Premera denied the appeal, again stating that the
20 gender-affirming surgical care sought was "not considered medically necessary for
21 people under age 18." *Exh. G.*

22 79. The sole reason for the denial given by Premera was its determination that
23 gender-affirming surgery can never be medically necessary for youth under the age of
24 18. *Exhs. G-H.*

25 80. A.B.'s parents have repeatedly sought the internal records related to
26 Premera's denials.

1 81. They first requested the records on January 31, 2023. *Exh. I*. Premera never
2 responded to the request, even though it was sent via certified mail and return receipt
3 requested, so that Plaintiffs know it was received.

4 82. Plaintiffs' counsel also sent a request for the internal records, which was
5 similarly ignored. *Exh. J*.

6 83. Finally, after Plaintiffs sent a pre-litigation demand letter to Premera, the
7 internal records were received on or about June 9, 2023.

8 84. The internal records show that Premera's assistant medical director,
9 Dr. Robert Small, reviewed A.B.'s appeal of the denial of pre-authorization for coverage
10 of A.B.'s chest surgery. *Exh. K*.

11 85. Upon information and belief, Dr. Small is the sole psychiatrist on staff at
12 Premera.

13 86. Dr. Small apparently applies his own criteria when he reviews claims for
14 top surgery for insureds under the age 18. *Id.*

15 87. Specifically, Dr. Small's notes indicate that he will "make an exception to
16 the minimum age of 18" for gender-affirming chest surgery when all of the other
17 published criteria in the Medical Policy (*Exh. B*) are met and when:

- 18 • The member is binding and the breast/chest binding is causing rib
19 injury/skeletal injury, respiratory compromise, significant skin wounds
20 (which can be a precursor to rib/skeletal injury) or pain (which is generally
21 a precursor to rib/skeletal injury);
- 22 • Or the member is experiencing suicidal ideation and/or intent or self-harm
23 behaviors or severe functional impairment due to psychiatric symptoms
24 due to breast-induced gender dysphoria;

- Or the member has severe gynecomastia to the extent that binding is not feasible and the member is therefore unable to adequately reduce visible breast size or hide breasts.

See *Exh. K*, p. AB_PRE00000034.

88. Dr. Small's personal (and seemingly arbitrary) criteria for an exception were never disclosed to A.B. or his parents and were not included by Premera in any of the denial letters to them.

89. Dr. Small's personal criteria for top surgery for transgender persons under the age of 18 are not based on and are not consistent with any generally accepted clinical practice guidelines.

90. Dr. Small's personal criteria do not appear in any of the sources Premera relied upon for crafting its Gender Transition/ Affirmation Surgery and Related Services medical policy.

91. Premera's application of Dr. Small's personal criteria, imposed only on gender-affirming care, also is illegal sex discrimination.

92. A.B. is scheduled to have gender-affirming chest surgery and reconstruction on June 27, 2023, by Dr. Morrison at Seattle Children's Hospital.

93. As a result of Premera's deliberate discriminatory actions, A.B. has not received pre-service authorization for medically necessary treatment for his gender dysphoria. His parents, L.B. and M.B., have been forced to make arrangements to pay out-of-pocket for A.B.'s needed surgery.

94. A.B. and his parents, L.B. and M.B., anticipate that they will incur additional expenses related to his medically necessary treatment for gender dysphoria if Premera continues to administer and enforce its exclusion of gender-affirming surgical care for transgender youth.

1 95. Premera's administration of the exclusion denies transgender youth the
2 benefits and health coverage available to other insureds. It is discrimination on the basis
3 of sex, which includes discrimination on the basis of sex characteristics, gender identity,
4 nonconformity with sex stereotypes, transgender status, and gender transition.

5 96. It is also discrimination based on age in that it arbitrarily and categorically
6 imposes an age restriction on coverage for medically indicated gender-affirming surgical
7 care, notwithstanding that medical care should be individualized and provided
8 consistent with clinical practice guidelines.

9 97. A.B., by and through his medical providers, has appealed Premera's denial
10 of pre-authorization for A.B.'s medically necessary treatment, but his appeal has been
11 denied. While any further administrative appeals would be futile, no such appeal is
12 required before a claim may be brought under Section 1557 of the Affordable Care Act.

13 98. Because of Premera's administration and enforcement of the exclusion,
14 Plaintiffs have suffered humiliation, degradation, embarrassment, emotional pain and
15 anguish, violation of their dignity, loss of enjoyment of life, and other harms.

16 **V. CLASS ALLEGATIONS**

17 99. Plaintiffs, on behalf of themselves and all similarly situated individuals,
18 bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil
19 Procedure.

20 100. *Class Definitions.* Plaintiffs assert their claims against Premera on behalf
21 of the following class. The proposed Class is defined as:

22 All individuals who have been, are, or will be participants or
23 beneficiaries in Premera non-grandfathered "group health
24 plans" (whether insured or administered by Premera) who
25 required, require, or will require treatment with gender-
26 affirming chest surgery to treat their diagnosis of gender
dysphoria, and who were denied pre-authorization or

1 coverage of required surgical care because they were or are
2 under the age of 18.

3 101. *Size of Class.* The proposed class is expected to be so numerous and
4 geographically dispersed that joinder of all members is impracticable.

5 102. *Class Representative A.B.* Named Plaintiff A.B. is a member of the
6 proposed class. A.B. is enrolled in a Premera non-grandfathered group health plan.
7 Premera has applied its internal medical policy that excludes coverage for gender-
8 affirming surgical care for youth under the age of 18. A.B.'s treating providers have
9 prescribed and recommended gender-affirming mastectomy and reconstruction that is
10 medically necessary and effective to treat A.B.'s gender dysphoria. The proposed
11 treatment meets all of Premera's requirements for coverage, except that A.B. is under the
12 age of 18. By the plain terms of A.B.'s Premera plan, this treatment should be covered,
13 when medically necessary for transgender youth under 18, just as it is for cisgender
14 youth with other conditions. Nonetheless, Premera refuses to cover the surgical care
15 solely because A.B. is seeking the treatment for his gender dysphoria and he is under the
16 age of 18. A.B.'s claims are typical of the claims of other members of the proposed class,
17 and through his parents, he will fairly and adequately represent the interests of the class.

18 103. *Common Questions of Law and Fact.* This action requires a determination
19 of whether Premera's internal medical policy, which has the effect of denying coverage
20 for gender-affirming surgical care for transgender insureds under the age of 18, violates
21 Section 1557 of the Affordable Care Act. Adjudication of this issue will in turn determine
22 whether Premera must reprocess all such wrongfully denied claims and be prospectively
23 enjoined from administering such exclusions now and in the future.

24 104. *Separate suits would create risk of varying conduct requirements.* The
25 prosecution of separate actions by proposed class members against Premera would
26 create a risk of inconsistent or varying adjudications with respect to individual class

1 members that would establish incompatible standards of conduct. Certification is
2 therefore proper under Federal Rule of Civil Procedure 23(b)(1).

3 105. *Premera has acted on grounds generally applicable to the relevant class.*

4 By administering and applying policies and exclusions that result in the denial of
5 coverage of gender-affirming surgical care, Premera has acted on grounds generally
6 applicable to the relevant class, rendering declaratory relief appropriate respecting the
7 entirety of the class for the particular claim. Certification is therefore proper under
8 Federal Rule of Civil Procedure 23(b)(2).

9 106. *Venue.* This action can be most efficiently prosecuted as a class action in the
10 Western District of Washington, where Premera and A.B. reside. The case is properly
11 assigned to the Western District of Washington in Seattle because the claim arose in
12 Snohomish County, Washington, where Premera resides.

13 107. *Class Counsel.* A.B. and his parents have retained experienced and
14 competent class counsel. Plaintiffs are represented by Sirianni Youtz Spoonemore
15 Hamburger PLLC, a Seattle-based law firm with significant experience representing
16 individuals who have been denied pension, health, or disability benefits under plans
17 governed by both state law and ERISA, as well as in class actions. Plaintiffs are also
18 represented by Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”), the
19 nation’s oldest and largest legal organization dedicated to protecting the rights of
20 lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people and everyone living
21 with HIV; and Q Law Foundation of Washington (“Q Law Foundation”), which protects
22 the rights of LGBTQ+ Washingtonians through legal services and community
23 organizing. Lambda Legal and Q Law Foundation have extensive federal court
24 experience litigating on behalf of LGBTQ+ people, including regarding transgender
25 people’s access to nondiscriminatory health care, and Lambda Legal has served as class
26 counsel and putative class counsel in a number of LGBTQ+-related cases.

VI. CLAIMS FOR RELIEF:

**ONE – VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT
(SEX DISCRIMINATION), 42 U.S.C. § 18116**

108. Plaintiffs re-allege and incorporate each of the allegations in the paragraphs above as though fully set forth herein.

109. Plaintiffs state this cause of action on behalf of themselves and members of the proposed class for purposes of seeking declaratory and injunctive relief, and they challenge the discriminatory sex-based discrimination arising out of the administration of the exclusions denying coverage for gender-affirming surgical care, such as the exclusion to transgender persons under the age of 18, both facially and as applied to Plaintiffs and the proposed class.

110. Named Plaintiffs also state this cause of action for their individual compensatory damages, including but not limited to out-of-pocket damages, consequential damages, and nominal damages.

111. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that “an individual shall not, on the ground prohibited under ... title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) ... be excluded from participation in, denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.”

112. Premera is a covered “health program or activity”, a part of which receives federal financial assistance and is therefore a “covered entity” for purposes of Section 1557.

113. Because Premera is a covered entity under Section 1557 of the ACA, Plaintiffs and members of the proposed class have a right under Section 1557 to receive health benefits administered by Premera free from discrimination on the basis of sex, sex characteristics, gender identity, nonconformity with sex stereotypes, transgender status, or gender transition.

1 114. Discrimination on the basis of sex characteristics, gender identity,
2 nonconformity with sex stereotypes, transgender status, or gender transition is
3 discrimination on the basis of “sex” under Section 1557.

4 115. A covered entity, such as Premera, cannot cover chest surgery (such as
5 mastectomy and chest reconstruction) for cisgender youth while excluding the same
6 surgical care for transgender youth. Premera’s medical policy that excludes coverage of
7 this procedure for transgender youth is discrimination based upon sex.

8 116. Premera’s exclusion of gender-affirming surgical care for transgender
9 youth violates Section 1557’s prohibition against discrimination on the basis of sex in a
10 health program or activity receiving federal financial assistance.

11 117. By administering the internal medical policy which excludes all coverage
12 of gender-affirming surgical care for transgender youth, Premera has drawn a
13 classification that discriminates on the basis of “sex.” Specifically, Premera has denied
14 A.B. and other similarly situated individuals coverage for medically necessary services
15 based on their sex, sex characteristics, gender identity, nonconformity with sex
16 stereotypes, transgender status, or gender transition. Other enrollees whose gender
17 identity conforms with their sex assigned at birth are able to receive these services when
18 medically necessary, and even when they are under the age of 18.

19 118. By implementing the hidden exclusion in its medical policy, Premera has
20 intentionally discriminated and continues to discriminate on the basis of sex against
21 A.B., his parents, and similarly situated individuals in violation of Section 1557.

22 119. Premera has discriminated against Plaintiffs and the members of the
23 proposed class on the basis of sex in violation of Section 1557 and have thereby denied
24 Plaintiffs and the members of the proposed class the full and equal participation in,
25 benefits of, and right to be free from discrimination in a health program or activity.
26

1 120. Plaintiffs and the members of the proposed class have been and continue
2 to be injured by Premera’s administration, application, and enforcement of the exclusion
3 of gender-affirming surgical care for transgender persons under the age of 18 in its
4 medical policy, and they are entitled to reprocessing of all claims wrongfully denied and
5 all medical expenses never submitted for consideration to Premera as a result of any such
6 exclusions.

7 121. Without reprocessing, declaratory, and prospective injunctive relief from
8 Premera’s ongoing, discriminatory medical policy, Plaintiffs and proposed class
9 members have suffered and will continue to suffer irreparable harm.

10 **TWO – VIOLATION OF SECTION 1557 OF THE AFFORDABLE CARE ACT**
11 **(AGE DISCRIMINATION), 42 U.S.C. § 18116**

12 122. Plaintiffs re-allege and incorporate each of the allegations in the
13 paragraphs above as though fully set forth herein.

14 123. Plaintiffs state this cause of action on behalf of themselves and members of
15 the proposed class for purposes of seeking declaratory and injunctive relief, and they
16 challenge the discriminatory age-based discrimination arising out of the administration
17 of the exclusions denying coverage for gender-affirming surgical care, such as the
18 exclusion, to transgender persons under the age of 18, both facially and as applied to
19 Plaintiffs and the proposed class.

20 124. Named Plaintiffs also state this cause of action for their individual
21 compensatory damages, including but not limited to out-of-pocket damages,
22 consequential damages, and nominal damages.

23 125. Section 1557 of the ACA, 42 U.S.C. § 18116, provides that “an individual
24 shall not, on the ground prohibited under ... the Age Discrimination Act of 1975 (42
25 U.S.C. 6101 et seq.) ... be excluded from participation in, denied the benefits of, or be
26

1 subjected to discrimination under, any health program or activity, any part of which is
2 receiving Federal financial assistance.”

3 126. Premera is a covered “health program or activity”, a part of which receives
4 federal financial assistance and is therefore a “covered entity” for purposes of
5 Section 1557.

6 127. Because Premera is a covered entity under Section 1557 of the ACA,
7 Plaintiffs and members of the proposed class have a right under Section 1557 to receive
8 health benefits administered by Premera free from discrimination on the basis of age.

9 128. A covered entity, such as Premera, also cannot impose arbitrary and
10 categorical age limits for coverage of gender-affirming medical care, particularly when
11 the treatment is clinically effective for the age group.

12 129. The design and implementation of categorical age limits for coverage,
13 particularly when the treatment is clinically effective for the age group, constitutes age
14 discrimination.

15 130. By administering the internal medical policy which excludes all coverage
16 of gender-affirming surgical care for transgender youth, Premera has drawn a
17 classification that discriminates on the basis of “sex.” Specifically, Premera has denied
18 A.B. and other similarly situated individuals coverage for medically necessary services
19 based on their sex, sex characteristics, gender identity, nonconformity with sex
20 stereotypes, transgender status, or gender transition. Other enrollees whose gender
21 identity conforms with their sex assigned at birth are able to receive these services when
22 medically necessary, and even when they are under the age of 18.

23 131. By implementing the hidden exclusion in its medical policy, Premera has
24 intentionally discriminated and continues to discriminate on the basis of age against
25 A.B., his parents, and similarly situated individuals in violation of Section 1557.

1 132. Premera has discriminated against Plaintiffs and the members of the
2 proposed class on the basis of age in violation of Section 1557 and have thereby denied
3 Plaintiffs and the members of the proposed class the full and equal participation in,
4 benefits of, and right to be free from discrimination in a health program or activity.

5 133. Plaintiffs and the members of the proposed class have been and continue
6 to be injured by Premera's administration, application, and enforcement of the exclusion
7 of gender-affirming surgical care for transgender persons under the age of 18 in its
8 medical policy, and they are entitled to reprocessing of all claims wrongfully denied and
9 all medical expenses never submitted for consideration to Premera as a result of any such
10 exclusions.

11 134. Without reprocessing, declaratory, and prospective injunctive relief from
12 Premera's ongoing, discriminatory medical policy, Plaintiffs and proposed class
13 members have suffered and will continue to suffer irreparable harm.

14 **VII. DEMAND FOR RELIEF**

15 WHEREFORE, Plaintiffs request that this Court:

16 1. Enter judgment on behalf of Plaintiffs and the members of the proposed
17 class due to Premera's discrimination on the basis of sex and age in violation of the
18 Affordable Care Act's Section 1557;

19 2. Declare that Premera violated the rights of Plaintiffs and the members of
20 the proposed class under Section 1557 of the ACA when it designed, adopted,
21 administered, and/or enforced the exclusion of all coverage for gender-affirming chest
22 surgery for transgender persons under the age of 18 in the Premera medical policy;

23 3. Enjoin Premera, its agents, employees, successors, and all others acting in
24 concert with them from designing, adopting, administering, or enforcing the medical
25 policy that results in the exclusion of all coverage for gender-affirming chest surgery for
26 transgender persons under the age of 18 and other similar medical policies that Premera

1 administers and enforces in violation of the Affordable Care Act, during the class period,
2 now, and in the future;

3 4. Require Premera, its agents, employees, successors, and all others acting in
4 concert with them to reprocess and, when medically necessary and meeting the other
5 terms and conditions under the relevant plans, provide coverage (payment) for all
6 denied pre-authorizations and denied claims for coverage during the class period that
7 were based solely upon the age of the enrollee when seeking gender-affirming chest
8 surgery;

9 5. Enter judgment in favor of the named Plaintiffs for damages in an amount
10 to be proven at trial that would fully compensate Plaintiffs for their financial harm and
11 other damages due to Premera's conduct in violation of Section 1557 of the Affordable
12 Care Act, including nominal damages;

13 6. Award reasonable attorney fees, costs, and expenses under 42 U.S.C. § 1988
14 and all other applicable statutes; and

15 7. Award such other and further relief as is just and proper.

16 DATED: June 27, 2023.

17 SIRIANNI YOUTZ
18 SPOONEMORE HAMBURGER PLLC

19 /s/ Eleanor Hamburger

Eleanor Hamburger (WSBA #26478)

Email: ehamburger@sylaw.com

21 /s/ Daniel S. Gross

Daniel S. Gross (WSBA #23992)

Email: dgross@sylaw.com

23 3101 Western Avenue, Suite 350

24 Seattle, WA 98121

Tel. (206) 223-0303; Fax (206) 223-0246

1 LAMBDA LEGAL DEFENSE AND
2 EDUCATION FUND, INC.

3 /s/ Omar Gonzalez-Pagan

4 Omar Gonzalez-Pagan
5 (Pro Hac Vice Application forthcoming)
6 Email: ogonzalez-pagan@lambdalegal.org
7 120 Wall Street, 19th Floor
8 New York, NY 10005
9 Tel. (646) 307-7406; Fax (212) 658-9721

10 Q LAW FOUNDATION OF WASHINGTON

11 /s/ J. Denise Diskin

12 J. Denise Diskin (WSBA #41425)
13 Email: denise@qlawfoundation.org

14 /s/ Dallas Martinez

15 Dallas Martinez (WSBA #52798)
16 Email: dallas@qlawfoundation.org
17 400 East Pine Street, Suite 225
18 Seattle, WA 98122
19 Tel. (206) 483-2725

20 *Attorneys for Plaintiffs*