

NOTICE OF PROPOSED RULEMAKING

The OSI eDocket Number for this rulemaking is: 2026-0127

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) will hold a public hearing in person, via video conference, and via telephone conference regarding a proposed rule 13.10.41 NMAC, *Specified Sex Trait Modification Procedure*. **The hearing for this rulemaking will commence on Tuesday, September 8, 2026, at 10:00 a.m. MDT.**

PURPOSE OF THE PROPOSED RULE: The purpose of this rulemaking is to clarify application of nondiscrimination provisions under Sections 59A-23E-11 and 59A-16-13 NMSA 1978 to individuals pursuing any medically necessary specified sex trait modification procedure.

BACKGROUND

On August 25, 2026, the federal Department of Health and Human Services – Centers for Medicare & Medicaid Services finalized a rule that prohibits an issuer of a health plan sold on New Mexico’s BeWell Exchange from including coverage for specified sex-trait modification procedures under 45 CFR § 156.115(d). The New Mexico Insurance Code has long prohibited discrimination against individuals with protected attributes. Under 59A-16-13 NMSA 1978, an issuer of a health plan may not refuse to insure, refuse to continue to insure or limit the amount of coverage available to an individual because of the sex of the individual. The nondiscrimination laws under 59A-23E-1 NMSA 1978 further protect health status, gender, and sexual orientation. Regardless of whether a specified sex-trait modification procedure most closely relates to present health status, sex, gender, or sexual orientation, the law under the New Mexico Insurance code is settled. Discrimination is prohibited, and thus an issuer of a health plan must continue providing coverage for any medically necessary specified sex-trait modification procedure by operation of state law. This rulemaking formalizes OSI’s interpretation about how existing nondiscrimination laws in the New Mexico Insurance Code protect an individual’s right to coverage for specified sex-trait modification procedures and conveys OSI’s expectation that issuers of health plans continue providing coverage during plan year 2027 and onward.

Determinations of medical necessity would remain between the patient and healthcare provider, in consultation with the issuer of the health plan, consistent with how any other health procedure is currently administered in New Mexico for insurance purposes. Healthcare providers may consider consulting the *World Professional Association for Transgender Health’s Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8 (2022) by Coleman et al, (often called “WPATH-8”), as other jurisdictions and clinicians have (Oregon Department of Consumer and Business Services Division of Financial Regulation, Bulletin No. DFR 2025-4; Safer, J. D., and Tangpricha, V. (2019). *Care of Transgender Persons*. New England Journal of Medicine, 381(25), 2451–2460). However, OSI does not intend for this rulemaking to deliberate appropriate clinical standards of care.

SIMILAR NONDISCRIMINATION EFFORTS

Other jurisdictions, such as California and Illinois, have previously contemplated how their existing nondiscrimination laws apply to this topic. (Notice 5-1-2025, CA Notice No. 5-1-2025 *Nondiscrimination and Access to Care for All Californians* (2025); Ricardo Lara, Letter 12-30-2020 *Permissibility of Denial of Coverage Based Solely on Age for Female-to-Male Chest Reconstruction Surgery as Part of a Treatment for Gender Dysphoria* (2020); Bulletin 2024-1, IL Bulletin No. 2024-1 *Company Bulletin 2024-01 Coverage of Gender-Affirming Care* (2024)).

For example, California published a May 1, 2025, bulletin that incorporated a December 30, 2020, legal opinion from the California Insurance Commissioner General Counsel regarding the possibility of denial of coverage based solely on age for female-to-make chest reconstruction surgery as part of a treatment for gender dysphoria. The bulletin stated, “[I]mposing strict age limits on coverage of male chest reconstruction surgery when it is required to treat gender dysphoria, but not other medical conditions, such as breast cancer or trauma, constitutes discrimination

in health coverage based on age, sex, gender identity, gender expression, sexual orientation, and health conditions in violation of federal and state law.” Here, California interprets and extends nondiscrimination provisions for protected attributes similar to those present in the New Mexico Insurance Code, including health conditions, sex, gender, and sexual orientation, as OSI intends to do through this rule.

STATUTORY AUTHORITY: Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act, and Sections 59A-23E-11 and 59A-16-13 NMSA 1978.

TO ATTEND THE HEARING IN PERSON: Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501.

PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist, then each guest will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before the hearing starts.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:

COPY AND PASTE THE FOLLOWING INTO YOUR BROWSER:

Join: <https://teams.microsoft.com/meet/233916808064369?p=INojhWwU2o1tIQqcE>
Meeting ID: 233 916 808 064 369
Passcode: pw7VV7db

TO ATTEND THE HEARING DIAL BY PHONE:

+1 505-312-4308,,413174163# United States, Albuquerque
Phone conference ID: 413 174 163#

PUBLIC COMMENT: The Superintendent designates Ms. Danelle Callan as the hearing officer. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or via electronic video conference. Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the OSI eDocket: <https://edocket.osi.state.nm.us/home>. You must login or register to get access if you are not already registered. You may also request copies of the Notice of Proposed Rulemaking and proposed rule by emailing Dr. Monica Snowden at monica.snowden@osi.nm.gov or by phone at: 505-699-6311. Email communication is preferred. To view all filings in OSI’s rulemaking information, please visit the OSI website at: <https://www.osi.state.nm.us/en/legal-information/rulemaking/>, as the OSI rulemaking record is filed on the eDocket. Please follow the instructions on the web page for using the eDocket. There is no charge for using the eDocket (to find this rulemaking use the following eDocket Number: 2026-0127). You may also visit the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (from the “Agency” drop down menu, select “Office of Superintendent of Insurance”).

DEADLINE TO SUBMIT WRITTEN COMMENTS: Written comments will be accepted through 4:00 p.m. on Thursday, August 27, 2026. Responses to written comments or to oral comments delivered at the hearing will be accepted through 4:00 p.m. on Thursday, September 10, 2026. All comments shall be filed electronically through the OSI eDocket. Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/home>, you must login or register to get access. To find this rulemaking use the following Docket Number: 2026-0127.

FILING WRITTEN COMMENTS: To file written comments on the OSI eDocket please send written comments to the following email address: osi-docketfiling@state.nm.us.

Please send written comments by at least 3:30 p.m. to ensure filing by the 4:00 p.m. deadline.

To access filings on the OSI eDocket, please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/home>, you must login or register to get access. To find this rulemaking use the following Docket Number: 2026-0127.

Written comments may be sent via U. S. mail to:

OSI Records and Docketing
NM Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689

Written comments must be received by OSI and stamped as accepted between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please send an email to: osi-docketfiling@state.nm.us. **The docket number and title below must be indicated on all written comments submitted to OSI:**

Docket Number: 2026-0127

IN THE MATTER OF 13.10.41 NMAC, *Specified Sex Trait Modification Procedure*.

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Ms. Andrea Padilla at 505-531-7171 no later than ten (10) business days prior to the hearing.